



# GHURA

Guam Housing and Urban Renewal Authority  
Aturidat Ginima' Yan Rinueban Siudat Guahan  
117 Bien Venida Avenue, Sinajana, GU 96910  
Phone: (671) 477-9851 · Fax: (671) 300-7565 · TTY: (671) 472-3701  
Website: [www.ghura.org](http://www.ghura.org)



Lourdes A. Leon Guerrero  
Governor of Guam

Joshua F. Tenorio  
Lt. Governor of Guam

## INVITATION FOR BID IFB GHURA-24-006 Fleet Vehicles Bid

This ad is paid with HUD Funds by GHURA

Guam Housing and Urban Renewal Authority (GHURA) will receive sealed proposals for, **IFB GHURA-24-006 Fleet Vehicles Bid** until **2:00 p.m. ChST on Thursday, April 18, 2024** at GHURA's main office in Sinajana.

Bid registrations are available on GHURA's website: <https://www.ghura.org/doing-business-us/bidsproposalsrelease-funds/invitation-bids> beginning **Monday, March 25, 2024**. Interested parties **must register at GHURA's main Office in Sinajana to receive access to a downloadable bid packet file, and receive notifications of any changes, amendments and/or addendums; or to obtain a physical copy of the bid packet, there is a fee of \$25.00 (in exact cash amount, money order, or company check) which is non-refundable.** Registration schedule is: Monday through Friday, 8:30 am – 4:00 pm ChST; with the exception of **government of Guam holidays**. Any questions regarding the bid or requirements must be submitted in writing via email to Antonio C. Camacho, Housing Procurement Administrator, at [accamacho@ghura.org](mailto:accamacho@ghura.org) no later than **Wednesday, April 10, 2024**. **Bid closing date and time is Thursday, April 18, 2024 at 2:00 p.m. ChST.** All bid submittals will be opened publicly at GHURA's main office conference room, in Sinajana.

Pursuant to 5 GCA, Chapter 5, § 5212, bid guarantees in the amount of 15% of the total base bid shall accompany each bid. Bid guarantee shall be a bid bond secured by a surety company authorized to do business in Guam and listed in the latest Department of Treasury Circular 570 published in the Federal Register or as permitted by state law, a certified check, bank draft, or U.S. Government Bond at par value. All bid guarantees must be made payable to GHURA. Personal checks *will not* be accepted. GHURA reserves the right to waive irregularities and to reject any or all bids whole or in part in the best interest of the Territory as provided for in 2 GAR, Div. 4 § 3115(e)(2). In addition, GHURA also has the right to cancel all bids as provided in 5 GCA § 5225 and 2 GAR, Div. 4 § 3115(c).

GHURA intends to award a contract on the basis of the lowest most responsive and responsible bid described in the bid documents. No bid shall be withdrawn for a period of 60 days subsequent to the opening of bids without the prior written consent of GHURA.

GHURA is an Equal Opportunity Employer

/s/ Fernando B. Esteves  
Deputy Director

GHURA STAMP ISSUE DATE:



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## Guam Housing and Urban Renewal Authority Invitation for Bid Number: IFB GHURA-24-006 Fleet Vehicles Bid

As provided under 28 G.A.R. Chapter 4, any reference in the Solicitation to a manufacturer brand name or product number is due to GHURA's need to provide minimum satisfactory product specifications. A "brand name or equal" reference is solely intended to provide a description of the type or quality of products or services sought by GHURA and not to limit bids nor restrict a vendor from providing equivalent products or services of the same quality and construction. However, where a "brand name or equal" is set forth in the specifications, bidders must clearly state and provide proof of the quality and compatibility of the exact articles they are offering.

### I. BID ITEM(s)

<u>Item No</u>	<u>Description</u>	<u>Qty</u>	<u>Unit Cost</u>	<u>Total Cost</u>
1.0	Pickup Trucks Crew Cab 4 Door - Midsize	6 each	\$_____	\$_____
1.1	Pick Up Truck Crew Cab Full Size with Tommy Lift	3 each	\$_____	\$_____
1.2	Mini Passenger Wagon	1 each	\$_____	\$_____
1.3	Mini Cargo Wagon	2 each	\$_____	\$_____
1.4	Sports Utility Vehicle	2 each	\$_____	\$_____
1.5	5 Year Power Train and Vehicle Service Plan per each bid item. (Option to Purchase)			\$_____

### Breakdown of Trucks Per Site:

AMP 1: (1) Mini Cargo Wagon- 2023  
(1) Sports Utility Vehicle- 2023

AMP 2: (2) Pickup Trucks Crew Cab 4 Door- Mid- Size - 2023  
(2) Pickup Trucks Crew Cab with Tommy Lift- Full Size - 2023



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- AMP 3: (1) Pickup Trucks Crew Cab with Tommy Lift- Full Size - 2023  
(1) Sports Utility Vehicle - 2023
- AMP 4: (1) Mini Passenger Wagon- 2023  
(1) Mini Cargo Wagon- 2023  
(1) Pickup Trucks Crew Cab 4 Door- Mid- Size - 2023
- MOD: (1) Sports Utility Vehicle- 2023
- A/E: (2) Pickup Trucks Crew Cab 4 Door- Mid-Size

## **GENERAL SPECIFICATION ON ITEM 1.0 (OR APPROVED EQUAL): PICKUP TRUCKS CREW CAB 4 DOOR- MIDSIZE**

### **Year 2023**

#### **Body Exterior:**

- Mid-Size, Crew Cab

#### **Rear Cargo:**

- Tailgate

#### **Number of Doors:**

- Four (4)
- Front-Opened by driver or passenger
- Rear-Opened by driver or passenger

#### **Color:**

- White / Silver
- Tinting Standard
- Legal Shade

#### **Convenience Features:**

- Power Windows/Mirrors
- Remote keyless entry
- Key Fob with additional key Fob



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- Air conditioner
- Front Beverage holders
- Tilt steering wheel

## **Entertainment Features:**

- AM / FM radio
- Bluetooth hands-free phone capability
- Speakers- 4 minimum
- Lighting, visibility, and Instrumentation
- Low tire pressure warning
- Variably intermittent wipers
- Oil pressure gauge
- Clock
- Standard Powertrain

## **Fuel Economy:**

- 18 mpg or higher (city) 22 mpg or higher (highway)

## **Drive Type:**

- Minimum 2-wheel drive

## **Recommended Fuel:**

- Regular unleaded
- Cylinder configuration
- I4-V6 cylinder
- Transmission- automatic

## **Safety and Security:**

- Electronic Stability
- Occupant sensing airbag
- Overhead airbag
- Dual front side impact airbags
- ABS brakes
- Traction control



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## **Seats and Trim:**

- Split folding rear seat
- Front center armrest
- Front seats
- Rear seats
- Seating capacity

## **Suspension/handling:**

- Speed sensing steering
- Power steering
- Front/rear tires – stock
- Spare tire- must be full size

## **Cab Size:**

- Extended
- Bed size- regular
- Bed liner/ rustproof

## **Exterior:**

- Running Board

## **Towing Package:**

- Class IV with receiver hitch with trailer wiring, 4/7 pin connector

## **Hydraulic Lift-Rear:**

- Aluminum type with 750 lbs. Weight capacity. Able to hook up a trailer hitch, light kit with backup camera.

## **GENERAL SPECIFICATION ON ITEM 1.1 (OR APPROVED EQUAL): PICKUP TRUCK CREW CAB WITH TOMMY LIFT FULL SIZE**

## **Year 2023**

## **Body Exterior:**



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- Mid/Full -Size, Crew Cab
- Rhino liner/ hard liner or similar for inside bed

## **Rear Cargo:**

- Tailgate
- Truck toolbox

## **Number of Doors:**

- Four (4)
- Front-Opened by driver or passenger
- Rear-Opened by driver or passenger

## **Color:**

- White / Silver
- Tinting Standard
- Legal Shade

## **Convenience Features:**

- Power Windows/Mirrors
- Remote keyless entry
- Key Fob with additional key Fob
- Air conditioner
- Front Beverage holders
- Manual tilt steering wheel
- Back up camera
- Front seats 40/20/40 split bench seats, Rear seats 60/40 split folding bench
- 4X4 drivetrain
- Tow haul mode
- I6/V6 powertrain minimum

## **Entertainment Features:**

- AM / FM radio
- Bluetooth hands-free phone capability
- Speakers- 4 minimum
- Lighting, visibility, and Instrument cluster
- Low tire pressure warning indicator
- Variably intermittent wipers





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- Oil pressure gauge
- Clock

## **Tow Package:**

- Receiver hitch 2”
- 2” Tow hitch with variable height adjustment to include lock

## **Maximum Towing Capacity:**

- 12,750 lbs.

## **Max Payload Capacity:**

- 2,300 lbs.

## **Horsepower:**

- 260 to 702

## **Torque:**

- 273 to 650 lbs.-ft

## **Cab Options:**

- Crew or Quad Cab

## **Seating Capacity:**

- 5 or 6

## **Bed Options:**

- 5’7” or 6’4”

## **Truck Bed Capacity:**

- 53.9 to 61.5 cu ft

## **GENERAL SPECIFICATION ON ITEM 1.2 (OR APPROVED EQUAL): MINI PASSENGER WAGON**

## **Year 2023**



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## **Body Exterior:**

- 43.3" Tall & 47.0"
- Wide; LOAD Floor
- Height Under 2 ft

## **Rear Cargo:**

- 180 degrees swing out rear
- Cargo door

## **Number of Doors:**

- Two (2): Front Opened by driver or passenger
- Two (2) Dual sliding side doors

## **Color:**

- White/Silver
- Tinting Standard Legal Shade

## **Convenient Features:**

- Power front windows
- Remote keyless entry
- Air Conditioner
- Front beverage holders
- Tilt steering wheel

## **Entertainment Features:**

- AM/FM radio at minimum,
- Bluetooth hands-free phone capability
- Speakers
- Lighting, visibility, and instrumentation
- Low-tire pressure warning
- Variably intermittent
- Wipers
- Oil pressure gauge
- Clock

## **Fuel Economy:**



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- 18 mpg or higher (City), 22 mpg or higher (highway)

## **Drive Type:**

- Front Wheel Type

## **Recommended Fuel:**

- Regular Unleaded

## **Cylinder Configuration:**

- I4-V6 cylinder

## **Transmission:**

- Automatic
- Tow hitch receiver

## **Safety and Security:**

- Electronic Stability
- Occupant sensing airbag
- Overhead airbag
  
- Dual Front side impact airbags
- ABS brakes
- Traction control

## **Seats and Trim:**

- Split folding rear seat
- Front center armrest
- Front seats
- Seating capacity – minimum of 7

## **Suspension / Handling:**

- Speed-sensing steering
- Power steering
- Front / rear tires



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## **GENERAL SPECIFICATION ON ITEM 1.3 (OR APPROVED EQUAL): MINI CARGO WAGON**

### **Year 2023**

#### **Body Exterior:**

- 43.3” Tall & 47.0” Wide; LOAD Floor Height UNDER 2 FT.

#### **Rear Cargo:**

- 180 swing out rear cargo door

#### **Number of doors:**

- Two (2): Front Opened by driver or passenger
- Two (2) Dual sliding side doors

#### **Color:**

- White/Silver

#### **Tinting:**

- Standard legal shade

#### **Convenience Features:**

- Power front windows
- Remote keyless entry
- Air conditioner
- Front beverage holders
- Tilt steering wheel

#### **Entertainment Features:**

- AM/FM radio at minimum
- Bluetooth hands-free phone capability
- Front center armrest



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- Front seats
- Rear seats
- Seating capacity- 7 at minimum
- Speed-sensing steering
- Front/rear tires
- Speakers- 4 minimum

## **Lighting, Visibility and instrumentation:**

- Low-tire pressure warning
- Variably intermittent wipers
- Oil pressure gauge
- Clock

## **Fuel Economy:**

- 18 mpg or higher (city) 22 mpg or higher (highway)
- Drive type- front wheel drive
- Recommended fuel- regular unleaded
- Cylinder configuration- I4-V6 cylinder
- Transmission- Automatic
- Tow Hitch Receiver

## **Safety and Security:**

### Electronic stability

- Occupant sensing airbag
- Overhead airbag
- Dual front side impact airbags
- ABS brakes
- Traction control

## **Seats and Trim:**

- Split folding rear seat
- Spare tire- full size

## **Flooring:**

- Carpet front to back; with standard water proof mats throughout
- Splash Guards – 2 Front



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## **GENERAL SPECIFICATION ON ITEM 1.4 (OR APPROVED EQUAL): SPORTS UTILITY VEHICLE**

### **Year 2023**

### **Body Exterior:**

### **Number of doors:**

- Five (5)-(2) front, (2) back door, and (1) cargo/trunk
- Color – White or Silver
- Tint- Factory tint

### **Convenience of Features:**

- Power front windows
- Speed control
- Remote keyless entry
- Air conditioner
- Front/rear beverage holders
- Tilt steering wheel

### **Entertainment Features:**

AM/FM radio  
CD player  
Speakers- 4 minimum

### **Lighting, visibility, and instrumentation:**

- Low tire pressure warning
- Variably intermittent wipers
- Oil pressure gauge
- Clock
- Rear defogger

### **Fuel Tank Capacity:**

- 26 mpg or higher (city), 36 mpg or higher (highway)



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- Variable valve control
- Drive type- All-wheel drive
- Recommended fuel- regular unleaded
- Cylinder configuration – H-4

## **Off- road capability:**

- Clearance: 8 inches minimum

## **Transmission:**

- Automatic- 5 speed

## **Safety and Security:**

- Electronic Stability
- Occupant sensing airbag
- Passenger airbag
- Dual front side impact airbags
- ABS brakes
- Traction control

## **Seats and Trim:**

- Split folding rear seat
- Height adjustable driver seat
- Front seats- bucket
- Rear seats- folding
- Maximum seating capacity- 5

## **Suspension/ Handling:**

- Speed- sensing steering
- Power steering
- Front wheel independent suspension Front/rear tires

## **GENERAL SPECIFICATION ON ITEM 1.5:**

### **5 Year Power Train and Vehicle Service Plan,**

**Preventive Maintenance as per factory recommendations for a period of five (5) years, all servicing of the vehicle as required/specified** in the owner's manual shall be included in the bid price per vehicle. The servicing period shall be for five years regardless of mileage from the



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date of delivery and acceptance of the goods by. The servicing shall include, but not be limited to all parts, diagnostic testing, labor, and disposal fees at no additional cost to the Guam Housing and Urban Renewal Authority. In the event that any maintenance or service will require a vehicle to be kept longer than twenty-four (24) hours (or overnight) depending on delivery time, GHURA shall be provided an equivalent or better “loaner” vehicle as determined by GHURA for the duration the vehicle is in the custody and care of the Vendor. The loaner vehicle will be returned when the GHURA vehicle is ready for pickup.

## **Standard Warranty:**

- a. A three (3) year/36,000-mile bumper-to-bumper limited warranty and a five (5) year/60,000-mile limited power train warranty shall be included.
- b. All servicing of the vehicle as required under the owner’s manual shall be included for a period of one year or 12,000 miles (whichever occurs first) from the date of delivery and the service shall include all parts and labor at no additional cost to the Guam Housing and Urban Renewal Authority.
- c. If a defect in material or workmanship is found during the warranty period, the bidder will replace the defective part or parts or components needed to correct the defect and such service and/or repair will include all “parts and labor” as required without cost to the Guam Housing and Urban Renewal Authority (including any transportation of the vehicle from any place on Guam to the place of repair.
- d. Bidders are reminded that submission of a bid constitutes an acknowledgement that they have read and understood all bid terms and agree to be bound by such an that failure to read the bid shall not excuse performance or otherwise give rise to any claim by bidder, including mistake, neglect or for any other reason.

## **DESCRIPTIVE LITERATURE:**

Descriptive literature(s) as specified in this Solicitation must be furnished as a part of the bid and must be received at the date and time set for opening bids. The literature furnished must clearly identify the item(s) in the bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction, assembly or other characteristics





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## **Bidding On:**

### **ITEM 1.0**

Mfg.: \_\_\_\_\_

Make: \_\_\_\_\_

Model: \_\_\_\_\_

Year: \_\_\_\_\_

Date of delivery: \_\_\_\_\_  
Within 120-days of receipt of purchase order.

### **ITEM 1.1**

Mfg.: \_\_\_\_\_

Make: \_\_\_\_\_

Model: \_\_\_\_\_

Year: \_\_\_\_\_

Date of delivery: \_\_\_\_\_  
Within 120-days of receipt of purchase order.

### **ITEM 1.2**

Mfg.: \_\_\_\_\_

Make: \_\_\_\_\_

Model: \_\_\_\_\_

Year: \_\_\_\_\_

Date of delivery: \_\_\_\_\_  
Within 120-days of receipt of purchase order.



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## **ITEM 1.3**

Mfg.: \_\_\_\_\_

Make: \_\_\_\_\_

Model: \_\_\_\_\_

Year: \_\_\_\_\_

Date of delivery: \_\_\_\_\_

Within 120-days of receipt of purchase order.

## **ITEM 1.4**

Mfg.: \_\_\_\_\_

Make: \_\_\_\_\_

Model: \_\_\_\_\_

Year: \_\_\_\_\_

Date of delivery: \_\_\_\_\_

Within 120-days of receipt of purchase order.

## **II. GENERAL TERMS AND CONDITIONS**

### **A. AUTHORITY:**

This solicitation is issued subject to all the provisions of the 24 CFR 85.36, HUD Procurement Standards, Guam Procurement Act (P. L. 16-124), the Guam Procurement Regulations and Public Laws 26-111 and PL 28-98 (copies are available at the Office of the Compiler of Laws, Department of Law. Copies are available for inspection at the Guam Housing and Urban Renewal Authority (GHURA). It requires all parties involved in the preparation, negotiation, performance or administration of contracts to act in good faith.

### **B. EXPLANATION TO BIDDERS:**

Except as otherwise provided herein, no oral explanation in regard to the meaning of any



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provision of this Bid will be made and no oral instructions will be given before the award of the bid. Discrepancies, omissions, or doubts as to the meaning of any provision of this Bid shall be communicated in writing to the GHURA Procurement Office.

## C. QUESTIONS:

Only written comments or questions regarding this bid will be accepted. No oral representation made by any employee or agent of GHURA shall bind GHURA. All questions or requests for clarifications must be submitted **no later than five (5) business days before bid opening**. Any questions submitted after that date shall not be responded to except at the discretion of the GHURA Executive Director.

All questions regarding the bid must be submitted in writing, via US mail, via express delivery, fax, or email directed to the following:

GHURA Procurement Office  
Guam Housing and Urban Renewal Authority  
117 Bien Venida Avenue, Sinajana, Gu 96910  
E-mail : [accamacho@ghura.org](mailto:accamacho@ghura.org)  
Fax. No.: (671) 475-1356

Bids are to be submitted at the issuing offices not later than the time and date set for bid opening. Bidders may submit their bid to the GHURA Procurement office located on the first floor of the Sinajana Main Office.

## D. METHOD OF AWARD:

GHURA intends to review the bids immediately upon the opening of the bids as provided herein. The bid documents submitted will be the primary documents for evaluation. GHURA reserves the right to waive any minor information or irregularity in bids received. GHURA shall have the prerogative to award, amend or reject bids in whole or in part. GHURA is not responsible for any and all costs incurred by any person or party incurred in preparing any bid. GHURA reserves the right to retain all bids submitted regardless of whether a firm is selected. Submission of a bid indicates acceptance of all terms and conditions by the bidder.

Please note that in the event a bid is submitted by a bona-fide service-disabled veteran where the bidder is at least fifty-one percent (51%) owned by a service-disabled veteran and the price for the supply or service does not exceed one hundred five percent (105%) of the lowest price bidder, GHURA is required under 5 G.C.A. § 5011 to award the bid to the service-disabled owned business. A service-disabled veteran business must meet all of the following qualifications under 5 G.C.A. § 5012:

- i. the business concern is licensed to do business on Guam;



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- ii. the business concern maintains its headquarters on Guam;
- iii. the business concern is at least fifty-one percent (51%) owned by a service- disabled veteran(s) who served in the active U.S. military service, was discharged or released under honorable conditions and whose disability is service-connected as demonstrated by a DD214, and certified by an award letter from the U.S. Department of Veterans Affairs;
- iv. the DD214 and Disability award letter from the U.S. Department of Veterans Affairs are submitted to the procuring entity for every service or supply offered; and
- v. the service-disabled veteran(s) owner of the business concern has filed individual tax returns on Guam for a period of at least three (3) consecutive years.

## **WOMEN-OWENED BUSINESS:**

### **5 GCA §5013.**

§5013. Policy in Favor of Women-Owned Businesses.

(a) Notwithstanding any other provision of law, if nay entity of the government of Guam or any entity expending governmental funds intends to procure any supply or service which is offered by a business concern that is at least fifty-one percent (51%) owned by women, that entity shall procure such supply or service from that business concern, if the supply or service is available within the period required by procuring entity and the price for the supply pr service does not exceed one hundred five percent (105%) of the lowest bidder, and shall be in addition to any other procurement benefit the women-owned business may qualify for under Guam Law. The procuring entity shall determine the lowest price to the entity in the case of more than one (1) women-owned b business, o r a women-owned business and service-disabled veteran owned business, who are competing for the same government contract.

(b) Qualifications of a Women-Owned Business. A business concern is qualified under Subsection (a)of the Section if:

1. The business concern is licensed to business on Guam;
2. The business concern maintains its headquarters on Guam;
3. The business concern is at least fifty-one percent (51%) owned by women, who manage day-to-day operations and make long-term decision;
4. The business concern is certified as a Women -Owned Small Business (WOSB) or, an Economically Disadvantage Women-Owned Small Business (EDWOSB) by, the U.S Small Business Administration; and



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5. The owner(s) of the business concern has (have) filed individual tax returns on Guam for a period of at least three (3) consecutive years.

## **E. CANCELLATION, REJECTION AND FUNDING:**

GHURA reserves the right to cancel or to withdraw this Invitation for Bid, to delay determination on this Invitation, to reject all bids or any individual bid in whole or in part, at any time prior to the final award or to waive any minor informalities or irregularities of any bid. In case of cancellation or rejection, bid bonds will be concurrently returned. The reasons for the cancellation, delay or rejection shall be made a part of the procurement file and shall be available for public inspection.

- (a) **Rejection of all Bids.** Prior to the final award, all bids may be rejected in whole or in part when GHURA determines in writing that such action is in GHURA's best interest for reasons including, but not limited to:

- (1) The supplies and services being procured are no longer required;
- (2) Ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) The solicitation did not provide for consideration of all factors of significance to the territory;
- (4) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (5) All otherwise acceptable bids received are at clearly unreasonable prices;
- (6) There is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, and may have been submitted in bad faith.

When a solicitation is canceled or rejected prior to final award, notice of cancellation or rejection shall be sent to all bidders and all bid bonds shall be returned. The reasons for cancellation or rejection shall be made part of the procurement file and shall be available for public inspection.

- (b) **Rejection of Individual Bids.** Any individual bid may be rejected in whole or in part when in the best interest of the Territory of Guam as determined by GHURA in its sole discretion. Reasons for rejecting a bid include, but are not limited to:

- (1) The bidder is non-responsive pursuant to Guam's procurement laws, rules and regulations;
- (2) The bid is not responsive, as it does not conform, in all material respects, to the Invitation for Bids;



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- (3) The quantity and/or quality supply or service offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications set forth in the Invitation for Bids or other acceptability criteria set forth in the Invitation for Bids. Upon request, unsuccessful bidders shall be advised of the reasons for rejection;
- (4) The bid is not the lowest responsive bidder, which meets the requirements, criteria set forth in the Invitation for Bids;
- (5) The bidder has failed to submit to the GHURA procurement office, the necessary licenses, permits and authorizations when requested by the Procurement Officer prior to the award.
- (6) Any changes as initiated by the bidder to the attached Contract form constitute a basis to declare the bid submittal as non-conforming.

## **F. TAXES:**

Bidders are cautioned that they may be subject to Guam Business Privilege Taxes, including Gross Receipt Tax and Guam Income Taxes on Guam transactions. GHURA shall not be responsible for paying any taxes owed by any vendor. Specific information of taxes may be obtained from the Director of the Guam Department of Revenue and Taxation.

## **G. LICENSING:**

Bidder shall, without additional expense to GHURA, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Guam laws, codes and regulations necessary for performance by Bidder. Specific information on licenses may be obtained from the Guam Department of Revenue and Taxation.

## **H. COVENANT AGAINST CONTINGENT FEES:**

The bidder warrants that it has not employed any person to solicit or secure any resultant contract upon agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give GHURA the right to terminate the contract, or in its discretion, deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by the bidder upon contracts or sales secure or made through bona fide established commercial or selling agencies maintained by the bidder for the purpose of securing business.

## **I. JUSTIFICATION OF DELAY:**

The selected bidder guarantees performance will be completed within the agreed upon completion date. If, however, the selected bidder cannot comply with the completion requirement, it is the selected bidder's responsibility to advise GHURA in writing explaining the cause and reasons of the delay.



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## **J. DISCLOSURE OF MAJOR SHAREHOLDERS.**

### **OWNERSHIP AND INTEREST DISCLOSURE AFFIDAVIT**

As a condition of bidder, any partnership, sole proprietorship, or corporation doing business with GHURA, shall submit an affidavit executed under oath that list the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship, or corporation at any time during the twelve (12) month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship, or corporation, which have held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity, or other compensation for procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity or other compensation. A bid from any firm that has person on the list ten percent or more affidavit that is a member of the BOC or a GHURA officer that reports directly to the Board will not be evaluated and will be rejected. The affidavit shall be open and available to the public inspection and copying.

## **K. EQUAL EMPLOYMENT OPPORTUNITY:**

Bidders may not discriminate against any employee or applicant for employment because of race, creed, color or national origin. Bidder will take all steps are necessary to ensure that its employees are treated equally during employment without regard to their race, creed, color or national origin.

## **L. DETERMINATION OF RESPONSIBILITY OF OFFERORS:**

GHURA reserves the right to secure information necessary to assess the competency and qualifications of the bidder, in accordance with the "Standard for Determining Whether Bidder is Qualified" section of the General Terms and Conditions. The competency of bidders, includes, but is not limited to, testing of goods and/or services provided by the bidder.

## **M. STANDARD FOR DETERMINING WHETHER BIDDER IS QUALIFIED.**

In determining whether a bidder is qualified, GHURA shall be guided by the following:

1. The ability, capacity, and skill of the bidder to perform (i.e., is bidder qualified);
2. The ability of bidder to perform promptly and within the specified time;
3. The character, integrity, reputation, judgment experience, and efficiency of the bidder;
4. The sufficiency of the financial resources of the bidder to perform;
5. Weather the bidder has submitted all documents required under this bid; and
6. Whether the bidder can meet the terms and conditions of the bid.



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## **N. PRE-BID CONFERENCES:**

Pre-bid conferences may be held at any time prior to the date established herein for submission of bids to explain the procurement requirements for this Bid. GHURA will notify all bidders of any substantive clarification provided in response to any inquiry. GHURA may extend the due date if such information significantly amends the solicitation or makes compliance with the original proposed due date impractical.

## **O. BIDS:**

The bidder is required to read each and every page of the bid and by the act of submitting a bid shall be deemed to have accepted all conditions contained therein except as noted elsewhere in the bid. In no case will failure to inspect constitute grounds for a claim or for the withdrawal of a bid after opening. Bids shall be filled out in ink or typewritten and signed in ink. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures, or alterations or items not called for in the bid or irregularities of any kind may be rejected by GHURA in whole or in part.

## **P. COMPETENCY OF BIDDERS:**

Bids will be considered only from such bidders who, in the sole opinion of GHURA, can show evidence of their ability, experience, equipment, and facilities to render satisfactory performance of the terms and conditions herein (see item "M" above for standards). GHURA reserves the right to take all reasonable steps to determine the competency of bidders, including asking questions, testing or any other act deemed prudent by GHURA based on the circumstances.

## **Q. REQUEST FOR BID FORMS:**

Interested parties must register at GHURA's main Office in Sinajana to receive access to a downloadable bid packet file, and receive notifications of any changes, amendments and/or addendums. To obtain a physical copy of the bid packet, a non-refundable fee of \$25.00 (in exact cash amount, money order, or company check) is required.

All payments shall be by cash, certified check, credit card or money order and shall be made payable to GHURA. Prospective bidders are required to notify GHURA's Procurement Office located on the first floor of 117 Bien Venida Avenue, Sinajana, Gu 96910 Main Office at (671) 475-1356 to be registered as a prospective bidder. Failure to register as a bidder, with the GHURA Procurement Office, could result in not obtaining answers to questions or bid amendments since GHURA will send these types of documents only to registered vendors. GHURA shall not be liable for any reason for the failure of any vendor to register with GHURA and provide accurate and complete contact information.





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## **R. BID ENVELOPE:**

Bid envelopes shall be sealed and marked with the bidder's name and GHURA's Invitation for Bid Number.

## **S. FORM OF BID:**

**One (1) original hard copy, two (2) complete hard copies and one (1) electronic copy of the bid must be submitted.** The original bid must be signed in ink by a person authorized to submit bids on behalf of the bidder. All bids shall be submitted entirely in English (including brochures).

**The electronic copy of the bid shall be submitted on a USB Drive** but must follow GHURA's requirements/guidelines: Product must be made in the USA or TAA compliant country, must be an encrypted USB Thumb Drive/External Drive (like SanDisk, Data Traveler, Defender etc.; Encryption key must be provided upon submittal and USB must be free from viruses. All documents shall be in ".pdf" format. Electronic bids shall constitute an exact replica of the original hard copy of the bid that is being submitted.

Bidders may declare portions of their bid as being confidential. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. However, prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

GHURA may review the material declared to be confidential to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, GHURA shall inform the bidders in writing what portions of the bids will be disclosed. All bids shall be opened to public inspections subject to any continuing prohibition on the **confidential** data.

## **T. MODIFICATION OR WITHDRAWAL OF BIDS:**

After the opening of bids, GHURA or its designee(s) may conduct discussions with bidders that have submitted valid bids for the purpose of clarification to provide GHURA with a full understanding as to the responsiveness and capabilities of the proposed bidder in meeting the requirements of the bid. In conducting discussions there shall be complete confidentiality of any information derived from bids submitted by competing bidders.

Bids may be modified or withdrawn at any time prior to bid submission, as otherwise provided herein or by the Guam Procurement Code.



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## **U. CONTACT FOR CONTRACT NEGOTIATION:**

All vendors are required to designate a person whom GHURA may contact for prompt negotiation.

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **V. AWARD OF CONTRACT AND NEGOTIATION (IF APPLICABLE)**

The award of the Contract shall be made by GHURA to the lowest responsive and responsible bidder whose bid for each item that conforms to the Invitation for Bid and would be most advantageous to GHURA, in terms of price and all other factors considered as determined by GHURA as provided for in the bid. GHURA reserves the right to award the Contract to a vendor other than the lowest price offeror for good cause and to reject any or all offers if it is determined to be in the best and proper interest of GHURA. A written Notice of Award (or acceptance of offer) will be mailed or otherwise furnished via facsimile, or electronic email transmittal to the successful bidder within the time for acceptance specified in the offer. GHURA reserves the right to waive informalities and minor irregularities in bids received. In the evaluation process, the following factors will be considered:

- (a) Price;
- (b) Whether the bidder's ultimate offer meets and conforms to the announced requirements of GHURA in all material respects (specifications);
- (c) Overall clarity and presentation of bid;
- (d) Whether the bidder has:
  - (1) the available appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all Contractual requirements;
  - (2) a satisfactory record of performance;
  - (3) a satisfactory record of integrity;
  - (4) supplied all necessary information in connection with the inquiry concerning responsibility.

Bidder is responsible for providing adequate information on experience and on financial status (i.e., annual report with audited financial statements) and references for use in evaluating its



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capabilities.

In addition to the evaluation criteria, GHURA also requires submission of descriptive literature, technical data, or other material. It may also require accomplishing any of the following prior to award:

- (a) Inspection or testing of a product sample prior to award for such characteristics, as quality, or workmanship;
- (b) Examination of such elements as appearance, grade, texture, or
- (c) Other examinations to determine whether it conforms to any other purchase description requirements.

The lowest responsible bidder may be required to enter into a contract within twenty (20) days following Bidder's receipt of the Notice of Award of Bid.

## **W. NOTICE OF AWARD:**

Written notice of award will be public information and made a part of the procurement file.

## **X. CERTIFICATION AGAINST THE EMPLOYMENT OF CONVICTED SEX OFFENDERS:**

All vendors must complete and fill out a Certification Against the Employment of Convicted Sex Offenders.

## **Y. TERMINATION OF BID.**

After opening, but prior to award, GHURA may terminate the bid in whole, or in part if:

1. It is in the best interest of GHURA to do so.
2. The goods or services being sought are no longer required.
3. Bid amounts exceed available funding.
4. No bidder is qualified.

## **III. SPECIAL TERMS AND CONDITIONS**

**Note, these special terms and conditions apply in the event that GHURA uses a purchase order. However, in the event a formal contract is entered into, the terms of the Contract shall control in the event of a conflict between these terms and conditions and the contract.**



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## **A. GENERAL COMPLIANCE WITH LAWS:**

The Bidder agrees that they shall comply with all Federal and territorial laws, rules, regulations and ordinances applicable to the work being performed hereunder. Bidder shall attach a copy of appropriate business license or an affidavit executed under penalty of perjury that indicates that Bidder is exempt under Guam law (must include legal citations proving exemption). Bidder agrees that they have and will continue to familiarize themselves with the requirements of all laws and rules applicable to this procurement. Failure on the part of the Bidder to familiarize themselves with the law and rules shall not excuse the Bidder in any way.

## **B. ACCESS TO RECORDS AND OTHER REVIEW:**

The bidder, including his subcontractors, if any, shall maintain copies of all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by the GHURA. All originals of any documents related to this Contract shall be provided to GHURA as soon as possible, but not later than one day prior to the conclusion of this Agreement. Each subcontract entered into by Bidder pursuant to this agreement shall include a provision containing the conditions of this Section.

## **C. OWNERSHIP OF DOCUMENTS:**

If applicable, all briefs, memoranda and other incidental Bidder work or materials furnished hereunder shall be and remain the property of GHURA including all publication rights and copyright interests, and may be used by GHURA without any additional cost to GHURA.

## **D. CHANGES:**

Should GHURA wish to alter any of the specifications set out under Section I, terms of delivery, for good cause, it shall give written notice to Contractor within thirty (30) days. If such changes cause an increase or decrease in Contractor's cost of performance of Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim by Contractor for adjustment under this section must be asserted in writing within thirty (30) days from the date of receipt by Contractor of the notification of changed specifications. Contractor and GHURA shall, in good faith, negotiate an equitable adjustment pursuant to the change in specifications. If Contractor and GHURA fail to agree on the adjustment to be made within thirty (30) days after Contractor receives notice of altered specifications, or if Contractor is unwilling to meet the altered specifications, the parties agree to subject themselves to the terms of the "Disputes" clause herein. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract specifications as changed.



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Within thirty (30) days after receipt of a written change order, unless such period is extended by GHURA in writing, the Bidder shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Bidder's claim unless GHURA is prejudiced by the delay in notification. No claim by the Bidder for an adjustment hereunder shall be allowed if notice is not given prior to final payment given under this bid.

In the absence of such a change order, nothing in this clause shall be deemed to restrict the bidder's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled "Claims Based on Acts or Omissions by GHURA" of this Contract.

In the absence of such a change order, nothing in this clause shall be deemed to restrict the bidder's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled "Claims Based on Acts or Omissions by GHURA" of this Contract.

## **E. TERMINATION:**

### **TERMINATION FOR DEFAULT & EXCUSE FOR NON PERFORMANCE:**

(1) Default. If the Bidder refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract as determined by GHURA, then GHURA may notify the Bidder in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by GHURA. GHURA may terminate the Bidder's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part GHURA may procure similar services in a manner and upon terms deemed appropriate by GHURA. The Bidder shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar services.

(2) Bidder's Duties. Notwithstanding termination of the contract and subject to any directions from GHURA, the Bidder shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Bidder in which GHURA has an interest.

(3) Compensation. Payment for completed services delivered and accepted by GHURA shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Bidder and GHURA; if the parties fail to agree, GHURA shall set an amount subject to the Bidder's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. GHURA may withhold from amounts due the Bidder such sums as GHURA deems to be necessary to protect GHURA against loss because of outstanding liens or claims of former lien holders and to reimburse GHURA for the excess costs incurred in procuring similar goods and services.

(4) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of sub-contractor(s) of Bidder, the Bidder shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Bidder to make progress in the prosecution of the work hereunder which endangers such performance) if the



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Bidder has notified GHURA within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the government of Guam and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform or to make progress due to such causes similar to those set forth above, the Bidder shall not be deemed to be in default, unless the services to be furnished by the sub-contractor were reasonably obtainable from other sources in sufficient time to permit the Bidder to meet the contract requirements. Failure of the sub-contractor to perform for reasons other than cited above shall constitute a default of the Bidder unless cured by Bidder with a reasonable time. Upon request of the Bidder, GHURA shall ascertain the facts and extent of such failure, and, if GHURA determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Bidder's progress and

performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of GHURA and the government of Guam under the laws of Guam.

(5) **Erroneous Termination for Default.** If, after notice of termination of the Bidder's right to proceed under the provisions of this clause, it is determined for any reason that the Bidder was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Subsection C, below.

## **TERMINATION FOR CONVENIENCE:**

(1) **Termination.** GHURA may, when the interest of GHURA so requires, terminate this contract in whole or in part, for the convenience of GHURA. GHURA shall give written notice of the termination to the Bidder specifying the part of the contract terminated and when termination becomes effective.

(2) **Bidder's Obligations.** The Bidder shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Bidder will stop work to the extent specified. The Bidder shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Bidder shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. GHURA may direct the Bidder to assign the Bidder's right, title, and interest under terminated orders or subcontracts to GHURA. The Bidder must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) **Right to Work Product.** Upon termination of the contract for the convenience of GHURA or for any other reason, Bidder shall transfer title and deliver to GHURA all documents and reports, plans, drawings, information and other material produced by Bidder or any of its sub-contractors in connection with the performance of this contract. The Bidder shall protect and preserve property in its possession or in the possession of any of its sub-contractors in which GHURA has an interest.



# GHURA

Guam Housing and Urban Renewal Authority  
Aturidat Ginima' Yan Rinueban Siudat Guahan  
117 Bien Venida Avenue, Sinajana, GU 96910  
Phone: (671) 477-9851 · Fax: (671) 300-7565 · TTY: (671) 472-3701  
Website: [www.ghura.org](http://www.ghura.org)



#### (4) Compensation.

(a) The Bidder shall submit a termination claim specifying the amount due because of the termination for convenience together with cost or pricing data to the extent required by 2 G.A.R. § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the Bidder fails to file a termination claim within one (1) year from the effective date of termination, GHURA may pay the Bidder, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) GHURA and the Bidder may agree to a settlement provided the Bidder has filed a termination claim supported by cost or pricing data to the extent required by 2 G.A.R. § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by GHURA and the contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph 4(b) of this Section, GHURA shall pay the Bidder the following amounts, provided payments that are agreed upon under Subparagraph 4(b) shall not duplicate payments under this Subparagraph:

- (i) contract prices for services accepted under the contract;
- (ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Bidder would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (iii) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph (b) of this clause;
- (iv) the reasonable settlement costs of the Bidder including accounting, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts hereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. Attorney's fees if for any reason it files suit against the government must be paid by the Bidder. The total sum to be paid the Bidder under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Bidder reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.



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## F. **SEVERABLE PROVISIONS:**

If any provision of this agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the agreement and the agreement shall be enforced according to its valid and subsisting terms and provisions. The terms of this Contract shall control in the event of any conflict between this Contract and any other document incorporated or referenced herein.

## G. **GOVERNING LAW AND VENUE:**

The validity of any agreement entered into under this bid and any of its terms or provisions, as well as the rights and duties of the parties to this agreement, shall be governed by the laws of Guam. Moreover, any and all actions governing this agreement shall be brought in either the Guam Superior Court or the Guam District Court if applicable.

## H. **EFFECTIVE DATE OF AGREEMENT:**

Any agreement under this Bid shall take effect upon the date said agreement is signed by the GHURA Executive Director (who shall sign last). Agreements under this provision include Purchase Orders in the absence of a formal written contract.

## I. **GOVERNMENT NOT LIABLE:**

1. GHURA, its officers, agents, employees and governing board assumes no Liability for any accident or injury that may occur to the bidder, bidder's agents, employees, or to bidder's property while on the job or otherwise in route to or from the job during any travel required by the terms of this agreement.
2. GHURA, its officers, agents, employees and governing board shall not be liable to bidder for any work performed by the bidder prior to the written and signed approval of this Contract by the Executive Director for GHURA and by submitting a bid, the bidder expressly waives any and all claims for service performed in expectation of this agreement prior to its signature of the Executive Director.

## J. **ASSIGNMENT:**

An assignment of any portion of the performance required under this Bid is not valid unless written approval is first obtained from GHURA. Requests for approval of the right to assign any portion of the contract or obligation, if awarded, must be made in writing and submitted with the bid. No other requests for assignment will be accepted.





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## **K. LIQUIDATED DAMAGES:**

By submitting a bid, the Bidder agrees to commence work on the date to be specified in a written “Notice to Proceed” from GHURA and to fully complete the project within the allotted time thereafter. In the event that the Bidder fails to complete the work called for in the bid, fails to provide the goods or services in the allotted time, then Bidder shall pay to GHURA 1/4 of 1% of the total bid price per day as liquidated damages for the non-performance as specified by the Guam Code Annotated. The liquidated damages herein are not a penalty, but rather a reasonable estimate by GHURA of the loss it would suffer as a result of non-performance. The contractor remains liable for damages caused other than by delay (GPR Section 6-101.09.1).

## **L. CONTRACT DOCUMENTS:**

It is hereby mutually agreed that the following list of instruments, plans, specifications and documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the Contract Documents, all of which are made a part hereof, and collectively evidence and constitute the Contract between the parties, hereto, and they are as fully a part of any Agreement resulting from this bid as if they were set out verbatim and in full therein, and are designated as follows:

- a. Invitation to Bid
- b. Instructions to Bidders
- c. Bid
- d. AG Form-002 Affidavit Disclosing Ownership and Commissions
- e. AG Form-003 Affidavit re Non-Collusion
- f. AG Form-004 Affidavit re No Gratuities or Kickbacks
- g. AG Form-005 Affidavit re Ethical Standards
- h. AG Form-007 Affidavit re Contingent Fees
- i. 5369- Hud Form- Instructions to Bidders for contracts
- j. 5369-A- Hud Form- Representations, certifications, and other statements of bidders
- k. 5369-B- Hud Form- Instructions to Offerors Non-Construction
- l. 5370-C General Conditions for Non-Construction Contracts
- m. Certification of Bidders Regarding Equal Employment Opportunity
- n. Bid and Performance Bond for Goods and Services
- o. Payment Bond (when applicable)
- p. Special Provisions
- q. Technical Specifications
- r. Plans (if any)
- s. Addenda/Amendments
- t. Answers to Questions (if GHURA determines they are applicable).



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## **M. DISPUTES:**

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this bid shall be decided by the GHURA Executive Director whose decision shall be final and conclusive upon the parties thereto. In the meantime, the bidder shall diligently proceed with the work as directed. However, the final decision of the GHURA Executive Director is appealable to the Guam Public Auditor as provided under 5 G.C.A. § 5427(e).

## **N. CONTRACT ISSUED UNDER THIS BID IS BINDING:**

It is agreed that any contract under this bid and all the Covenants hereof shall insure to the benefit of and binding upon GHURA and the bidder respectively and his parties, successors, assignees and legal representative. Neither GHURA nor the Bidder shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party.

It is hereby mutually agreed by and between the parties hereto that no mechanic, contractor, subcontractor, material man or other person can or will contract for or in any other manner have or acquire any lien upon the binding or works covered by the contract, or the land upon which the same is situated.

## **O. BIDDER'S RESPONSIBILITIES:**

The Bidder shall be responsible for the quality and workmanship of all services and materials furnished under this contract. The Bidder shall, without additional cost to GHURA, correct or revise all errors or deficiencies in his/her products or work.

GHURA's review, approval, acceptance of, and payment for goods, fee, or for services required under this contract, shall not be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the Bidder's failure of performance of this contract and the Bidder shall be and remain liable to the GHURA for all costs of any kind which may be incurred by GHURA as a result of the Bidder's negligent or erroneous performance of any of the services performed under this Bid. GHURA shall continue to remain liable for its own negligent acts and those of its employees and its failure to perform as provided under this agreement.

## **P. SCOPE OF AGREEMENT:**

Any Agreement issued under this bid, and signed by the GHURA Executive Director (formal contract or Purchase Order) supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to retaining the services of Bidder by GHURA and contains all of the covenants and terms between the parties with respect to such this project. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not embodied herein, and that no other agreement, statement, or promise not contained in this



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Agreement and addenda will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire agreement, the signature of the Executive Director for the Guam Housing and Urban Renewal Authority (or his designee) is the only signature that will bind GHURA.

## **Q. CHANGE ORDERS:**

By written order, at any time, and without notice to Bidder's surety, GHURA may, subject to all appropriate adjustments, make changes within the general scope of work of this Contract in any one or more of the following:

1. Drawings, designs or specifications, if the supplies or services to be furnished are to be specifically manufactured for GHURA in accordance therewith;
2. Method of shipping or packing; or
3. Place of delivery.

If any such change order increases or decreases the Bidder's cost of, or the time required for performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Contract.

Failure of the parties to agree to an adjustment shall not excuse the Bidder from proceeding with the Contract as changed, provided that GHURA promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Bidder shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

Within thirty (30) days after receipt of a written change order, unless such period is extended by GHURA in writing, the Bidder shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Bidder's claim unless GHURA is prejudiced by the delay in notification. No claim by the Bidder for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.

In the absence of such a change order, nothing in this clause shall be deemed to restrict the Bidder's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled "Claims Based on Acts or Omissions by GHURA" of this Contract.

## **R. STOP WORK ORDERS:**

GHURA may by written order to the Bidder, at any time, and without notice to any surety, require the Bidder to stop all or any part of the work called for in the Contract. This order shall be for a specified period not exceeding ninety (90) days after the order is received by the Bidder, unless the parties agree to any longer period. Upon receipt of the order, the Bidder shall comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or



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within any further period to which the parties have agreed, GHURA shall either cancel the work order or terminate the work covered by the order as provided under the Termination for Default or Termination for Convenience Clauses contained in this contract.

If a stop work order issued under this clause is cancelled at any time during the period specified in the order, of the period of the order or any extension thereof expires, the Bidder shall have the right to resume work. An appropriate adjustment shall be made to the delivery schedule or Bidder only if: (a) the stop work order results in an increase in the time required for performance or the Bidder's cost; and (b) if the Bidder asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if GHURA decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract. If a stop work order is not cancelled and the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed pursuant to the price adjustment clause of this Contract.

Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provision of Section 6-101.04.3 of the Guam Procurement Regulations.

## **S. CLAIMS BASED ON ACTS OR OMISSIONS BY GHURA:**

If any action or omission on the part of GHURA requiring performance changes within the scope of the contract constitutes the basis for a claim by the Bidder for additional compensation, damages, or an extension of time for completion, the Bidder shall continue with performance of the contract in compliance with the directions or orders of GHURA, but by so doing, the Bidder shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (a) the Bidder shall have given written notice to GHURA:
  - (i) prior to the commencement of the work involved, if at that time the Bidder knows of the occurrence of such action or omission;
  - (ii) within thirty (30) days after the Bidder knows of the occurrence of such action or omission, if the Bidder did not have such knowledge prior to the commencement of the work; or
  - (iii) within such further time as may be allowed by the Procurement Officer in writing.

This notice shall state that the Bidder regards the act or omission as a reason which may entitle the Bidder to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer.

- (b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the Bidder believes that additional compensation, damages, or an extension of time may be remedies to which the Bidder is entitled; and



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(c) the Bidder maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

Nothing herein contained, however, shall excuse the Bidder from compliance with any rules of law precluding any GHURA official or its Bidders from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

## **T. PRICE ADJUSTMENT CLAUSE:**

Any adjustment in contract price pursuant to clauses in this contract shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the contract or subsequently agreed upon;

## **IV. SPECIAL PROVISIONS**

### **1. Bid and Performance Bond Requirements:**

All bidders are required to submit bid security in the amount of **15%** of their total bid amount which must also indicate that the security is not only for a bid bond, but also for performance under this Bid as required by 5 G.C.A. 5312. Failure to submit a proper bid bond will cause the bid to be rejected.

As required by law, the bid security shall not be released upon award of the bid, but instead shall continue in full force and effect until after delivery of the supplies or services required by the contract awarded to the Bidder under the associated Invitation for Bid is completed to secure the faithful performance under this Bid (**e.g., until warranty period has ended as any warranty is a service provided in conjunction with the delivery of goods**).

### **THE BID/PERFORMANCE GUARANTEE MAY BE IN THE FORM OF:**

- a. Cashier's Check or Certified Check
- b. Letter of Credit
- c. Surety Bond – Valid only if accompanied by:
  - i. Current Certificate of Authority;
  - ii. Power of Attorney issued by the Surety to the Resident General Agent;



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- iii. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf

2. **Performance Bond:** see Section 1 above.

3. **Failure to Submit Required Documentation.**

Failure by Bidder to submit the required information or data will be cause to declare the bidder as non-compliant with the bid. Any declaration of non-compliance shall be at the sole discretion of the Executive Director of the Guam Housing and Urban Renewal Authority.

4. **Cost:**

Total cost must include CIF and delivery \*(see No. 6 below).

5. **Delivery:**

The vendor will be responsible for all costs and all risks associated with the provision of these goods until delivery is made and the items are formally accepted by GHURA. All goods shall be delivered to the Guam Housing and Urban Renewal Authority at Sinajana Office 117 Bien Venida Avenue, Sinajana GU 96910, Delivery time is 120 days from the date on the Notice to Proceed.

6. **Warranty and Service:**

- a. All vendors shall provide to GHURA the maximum period for the manufacturer's warranty and shall act as the manufacturer's agent on Guam for the purposes of processing any warranty claims or conducting warranty related repairs. GHURA shall not be required to address any warranty issues with the manufacturer and the successful vendor shall provide the interface for all warranty work to be covered.
- b. The service plan for each vehicle during the manufacturer's warranty period shall be included for each item being purchased and said service shall include all parts and labor at no additional cost to the Guam Housing and Urban Renewal Authority.
- c. Notwithstanding the service requirements, if a defect covered by the warranty arises during the warranty period, the bidder will replace the defective part or parts or components needed



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to correct the defect and such service and/or repair will include all “parts and labor” as required without cost to the Guam Housing and Urban Renewal at (including any transportation of the vehicle from any place on Guam to the place of repair). GHURA may negotiate with the Vendor for servicing the vehicle as required following the termination of the manufacturer’s warranty, provided however, the GHURA may require the Vendor to provide cost and pricing date prior to or during the negotiations. In no event shall the service period continue longer than the useful life of the asset.

- d. In the event any item to be procured under this bid is not available to GHURA for a period of seventy-two hours, the vendor shall provide a replacement of equal or greater capacity than item being serviced at no cost to GHURA.
- e. Vehicle must be inspected and pass inspection by authorized safety inspection stations prior to delivery and be “ready for use when delivered”. In addition, the safety inspection forms proving the vehicles have passed the inspection must accompany the vehicles at the time of delivery the vendor shall call and schedule delivery at the following contact number: 671-475-1356
- 7. These specifications have been written to describe minimum performance requirements to be supplied by the manufacturers bidding.
- 8. A reasonable test of all vehicles being furnished under this bid may be conducted upon delivery before acceptance.
- 9. The successful bidder shall furnish all necessary information and instructions for the proper operation/completion of all requirements in bid specifications.
- 10. GHURA reserves the right to accept and/or reject any and all bids, to waive any defects, irregularities, or specification discrepancies and to award the bid in the best interest of GHURA.

These specifications were approved by Fernando B. Esteves Deputy Director, and hereby constitute the findings and determinations of the Deputy Director.

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**AFFIDAVIT DISCLOSING OWNERSHIP, INFLUENCE, COMMISSIONS AND  
CONFLICTS OF INTEREST**

(Required by 5 GCA § 5233 as amended by P.L. 36-13 (4/9/2021))

CITY OF \_\_\_\_\_ )  
 ) ss.  
 ISLAND OF GUAM )

Preface. As a condition of submitting a Bid/Offer/Proposal or responding to any method of source selection under Guam’s Procurement Law for the purpose of entering into a contract with the government of Guam, this Affidavit requires all Bidders/Offerors/Prospective Contractors to make disclosures of ownership, influence, commissions, gratuities, kickbacks, and conflicts of interest occurring **during the 365 calendar days preceding the publication of this solicitation and until award of a contract**. This includes the duty to disclose **any changes** to the facts disclosed herein throughout the solicitation process; and if the entity submitting this Affidavit is awarded a contract, the duty to disclose **any changes** to the facts disclosed herein **continues throughout the life of the contract, including any extensions or renewals**.

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the Bidder/Offeror/Prospective Contractor and that (please check and fill out all that apply):

The Bidder/Offeror/Prospective Contractor is an individual with a business license, and all decisions are by, and all profit is for, that same individual, with principal place of business street address being: \_\_\_\_\_  
 \_\_\_\_\_

The Bidder/Offeror/Prospective Contractor is a business or artificial person (as defined in 1 GCA § 715 or 5 GCA §§ 5030(n) or 5233(b)), and is a sole proprietorship owned entirely (100%) by \_\_\_\_\_, with principal place of business street address being: \_\_\_\_\_  
 \_\_\_\_\_

The Bidder/Offeror/Prospective Contractor is a business or artificial person (as defined in 1 GCA § 715 or 5 GCA §§ 5030(n) or 5233(b)), and is owned by the following multiple individuals. Note: owners of more than 10% are statutorily required to be listed below, but other owners of smaller percentage are encouraged to be listed as well.

Name of Owner	Principal Place of Business Street Address	% of Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



[ ] One or more of the more-than-10% owners listed above is a business or artificial person. Any more-than-25% owners of such a business or artificial person are listed below per 5 GCA § 5233. Note: any less-than-25% owners of such a business or artificial person is encouraged to also be listed below.

**Name of >10% Owner Business or Artificial Person:**

--

Names of owners of the >10% Owner Business or Artificial Person (“Second Tier Owner”)	Owner’s Principal Place of Business Street Address	% of Interest

**Name of other >10% Owner Business or Artificial Person:**

--

Names of owners of the >10% Owner Business or Artificial Person (“Second Tier Owner”)	Owner’s Principal Place of Business Street Address	% of Interest

B. If any Second Tier Owner identified above is an artificial person, the natural or artificial owners of such Second Tier Owner who have held more than 49% of the shares or interest in the Bidder/Offeror/Prospective Contractor (Third Tier Owners) are as follows [if none, please so state]:

Second Tier Owner Name \_\_\_\_\_

Name of Third Tier Owner	Principal Place of Business Street Address	% of Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

C. If the name of no natural person has been identified as an owner, or a Second or Third Tier Owner of the Bidder/Offeror/Prospective Contractor, please identify the name, position, address, and contact information of the natural person having the authority and responsibility for the Bid/Offer/Proposal/Prospective Contract, and the name of any natural person who has the authority and power to remove and replace the designated responsible person:

Name of Natural Person	Position	Street Address of Principal Place of Business	Phone Number, Email Address, and other Contact Information

D. Further, I say that the persons who have received or are entitled to receive a commission, gratuity, contingent fee or other compensation to solicit, secure, or assist in obtaining business related to the Bid/Offer/Proposal/Prospective Contract for which this Affidavit is submitted are as follows (if none, please so state):

Name	Principal Place of Business Street Address	Amount of Compensation
_____	_____	_____
_____	_____	_____

E. Further, I say that the persons who have directly or indirectly participated in this solicitation and who are also employees of the government of Guam or the government of the United States, if federal funds are to be used in the payment of the contract related to the Bid/Offer/Proposal/Prospective Contract for which this Affidavit is submitted, are as follows (if none, please so state):

Name	Principal Place of Business Street Address
_____	_____
_____	_____

F. Regardless of any ownership interest, the following individuals have the power to control the performance of the contract or to control the Bidder/Offeror/Prospective Contractor, directly or indirectly:

Name	Principal Place of Business Street Address
_____	_____
_____	_____

///

///

- G. Until award of the contract, and throughout the term of any contract awarded to the Bidder/Offeror/Prospective Contractor represented herein, I agree to promptly make any disclosures not made previously and update changes in ownership, identities of owners and other required information, interests, compensation or conflicts of the persons required to be disclosed. I understand that failure to comply with this requirement shall constitute a material breach of contract.
- H. I hereby declare under penalty of perjury under the laws of Guam that the foregoing is true and correct.

Executed on: \_\_\_\_\_  
(date)

---

Signature of one of the following:  
Bidder/Offeror/Prospective Contractor, if a licensed individual  
Owner of sole proprietorship Bidder/Offeror/Prospective  
Contractor  
Partner, if the Bidder/Offeror/Prospective Contractor is a  
partnership  
Officer, if the Bidder/Offeror/Prospective Contractor is a  
corporation

Subscribed and sworn to before me

This \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

---

NOTARY PUBLIC

My commission expires: \_\_\_\_\_



# **AFFIDAVIT RE GRATUITIES OR KICKBACKS**

CITY OF \_\_\_\_\_ )  
 ) SS.  
 ISLAND OF GUAM )

\_\_\_\_\_ [state name of affiant signing below], being  
 first duly sworn, deposes and says that:

1. The name of the offering firm or individual is [state name of offeror company]  
 \_\_\_\_\_. Affiant is \_\_\_\_\_ [state one  
 of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing  
 identified bid or proposal.

2. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers,  
 representatives, agents, subcontractors, or employees have violated, are violating the prohibition against  
 gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e). Further, affiant promises, on behalf of  
 offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR  
 Division 4 § 11107(e).

3. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers,  
 representatives, agents, subcontractors, or employees have offered, given or agreed to give, any government  
 of Guam employee or former government employee, any payment, gift, kickback, gratuity or offer of  
 employment in connection with the offeror's proposal.

4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of  
 the offeror's officers, representatives, agents, subcontractors, and employees.

\_\_\_\_\_  
 Signature of one of the following:

Offeror, if the offeror is an individual;  
 Partner, if the offeror is a partnership;  
 Officer, if the offeror is a corporation.

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
 NOTARY PUBLIC  
 My commission expires \_\_\_\_\_, \_\_\_\_\_.

**AFFIDAVIT RE ETHICAL STANDARDS**

CITY OF \_\_\_\_\_ )  
  ) SS.  
ISLAND OF GUAM                                    )

\_\_\_\_\_ [state name of affiant signing below], being first  
duly sworn, deposes and says that:

The affiant is \_\_\_\_\_ [state one of the following: the offeror, a  
partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal. To the best  
of affiant’s knowledge, neither affiant nor any officers, representatives, agents, subcontractors or employees  
of offeror have knowingly influenced any government of Guam employee to breach any of the ethical  
standards set forth in 5 GCA Chapter 5, Article 11. Further, affiant promises that neither he or she, nor any  
officer, representative, agent, subcontractor, or employee of offeror will knowingly influence any  
government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11.  
These statements are made pursuant to 2 GAR Division 4 § 11103(b).

\_\_\_\_\_  
Signature of one of the following:

- Offeror, if the offeror is an individual;
- Partner, if the offeror is a partnership;
- Officer, if the offeror is a corporation.

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires \_\_\_\_\_, \_\_\_\_\_.



**U.S. Department of Housing and  
Urban Development**  
Office of Public and Indian Housing

**Instructions to Bidders for Contracts  
Public and Indian Housing Programs**



# Instructions to Bidders for Contracts

## Public and Indian Housing Programs

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### 1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

### 2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

### 3. Amendments to Invitations for Bids

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

### 4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

- (1) Integrity;
- (2) Compliance with public policy;
- (3) Record of past performance; and
- (4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

## 5. Late Submissions, Modifications, and Withdrawal of Bids

(a) Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the PHA/IHA will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

## 6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

## 7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

## 8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

#### **9. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)**

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

#### **10. Assurance of Completion**

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[ ] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[ ] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[ ] (3) a 20 percent cash escrow;

[ ] (4) a 25 percent irrevocable letter of credit; or,

[ ] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

#### **11. Preconstruction Conference (applicable to construction contracts)**

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

#### **12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)**

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to be used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [ ] does [ ] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

**U.S. Department of Housing  
and Urban Development**  
Office of Public and Indian Housing

**Representations, Certifications,  
and Other Statements of Bidders**  
**Public and Indian Housing Programs**

# Representations, Certifications, and Other Statements of Bidders

## Public and Indian Housing Programs

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### 1. Certificate of Independent Price Determination

#### (a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

\_\_\_\_\_ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

### 2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1) [ ] has, [ ] has not employed or retained any person or company to solicit or obtain this contract; and

(2) [ ] has, [ ] has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

### 3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

#### 4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

#### 5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

#### 6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

#### 7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a) [ ] is, [ ] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [ ] is, [ ] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [ ] is, [ ] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- [ ] Black Americans
- [ ] Asian Pacific Americans
- [ ] Hispanic Americans
- [ ] Asian Indian Americans
- [ ] Native Americans
- [ ] Hasidic Jewish Americans

#### 8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

**9. Certification of Eligibility Under the Davis-Bacon Act** (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

**10. Certification of Nonsegregated Facilities** (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

**Note:** The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

**11. Clean Air and Water Certification** (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

**12. Previous Participation Certificate** (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [ ] is, [ ] is not included with the bid.

**13. Bidder's Signature**

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

\_\_\_\_\_  
(Signature and Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Address)



# Instructions to Offerors Non-Construction

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing



- 03291 -

## 1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

## 2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

## 3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

## 4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

## 5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

## 6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

#### **7. Contract Award**

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

#### **8. Service of Protest**

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

#### **9. Offer Submission**

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show **the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.**

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

# General Conditions for Non-Construction Contracts

## Section I — (With or without Maintenance Work)

## U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (excl. 11/30/2023)

Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**Applicability.** This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$250,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$250,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$250,000 — use Sections I and II.**

### Section I - Clauses for All Non-Construction Contracts greater than \$250,000

#### 1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

#### 2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

#### 3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

#### 4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- 
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
  - (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
    - (i) appeals under the clause titled Disputes;
    - (ii) litigation or settlement of claims arising from the performance of this contract; or,
    - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

#### 5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

#### 6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

#### 7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section 111, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

#### 8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

#### 9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

#### 10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

#### 11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
  - (i) Award of the contract may result in an unfair competitive advantage; or
  - ( ) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

#### 12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

### 13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

### 14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

### 15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(v) The prohibition does not apply as follows:

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- (1) Agency and legislative liaison by Own Employees.
- (a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.
- (b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
- (c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:
- (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,
- (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:
- (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
- (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
- (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.
- (2) Professional and technical services.
- (a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-
- (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
- (i) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.
- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.
- (iii) Selling activities by independent sales representatives.
- (c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:
- (i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
- (ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.
- (e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.
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## 16. Equal Employment Opportunity

During the performance of this contract, the

Contractor/Seller agrees as follows:

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c) The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

## 17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Brail or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

#### **18. Dissemination or Disclosure of Information**

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

#### **19. Contractor's Status**

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

#### **20. Other Contractors**

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

#### **21. Liens**

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

#### **22. Training and Employment Opportunities for Residents in the Project Area** (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 prioritization requirements, and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04)..
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.
- (e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts
- (f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

#### **23. Procurement of Recovered Materials**

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered



materials practicable consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract