

GUAM HOUSING AND URBAN RENEWAL AUTHORITY



**INVITATION FOR BID
(IFB#GHURA-022-002-S8)
Disassembly, Purchase and Installation of Section 8
Workstations**

START DATE:	November 4, 2021
PRE-BID CONFERENCE:	November 15, 2021 at 10:00 AM at GHURA Main Office in Sinajana
DUE DATE:	November 30, 2021
TIME:	10:00 AM, ChST
LOCATION:	BOC Conference Room, 1st Floor GHURA Main Office Sinajana

Ray S. Topasna
Executive Director

MEMORANDUM

November 4, 2021

TO: All Interested Applicants

FROM: Executive Director

SUBJECT: INVITATION FOR BID IFB#GHURA-022-002-S8
DISASSEMBLY, PURCHASE AND INSTALLATION OF SECTION 8
WORKSTATIONS

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Guam Housing and Urban Renewal Authority (GHURA) is soliciting bids from licensed Bidders for the purchase of panel-based workstation cubicles and accessories starting November 4, 2021 until November 30, 2021. The bid package may be obtained from GHURA's website at <https://www.ghura.org/doing-business-us/bidsproposalsrelease-funds/invitation-bids>. Bids will be opened and read aloud immediately after the deadline in the BOC Conference Room on November 30, 2021 at the GHURA Main Office in Sinajana. GHURA reserves the right to waive any information and reject any and all bids and to contract as in the best interest of the Authority may require.

The bid provides information which will assist applicants to prepare, plan and budget, including:

- A description of IT Equipment sought
- Requirements to be met by bidder.

Please review the bid package very closely. Respondents must address all parts of the bid. In order for the bid to be considered, all respondents are required to submit:

One (1) original copy, one (1) copy, and one (1) PDF file of their bid marked:

Invitation for Bid: IFB#GHURA-022-002-S8
DISASSEMBLY, PURCHASE AND INSTALLATION OF SECTION 8
WORKSTATIONS

Guam Housing and Urban Renewal Authority
Procurement Division Office
117 Bien Venida Avenue
Sinajana, Guam 96910

Bids submission shall be received no later than Tuesday, November 30, 2021 at 10:00 a.m., CHST. Bids received after the deadline will not be accepted for consideration. Any questions or inquires shall be directed via email to Greta Balmeo at gbalmeo@ghura.org.

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Ray S. Topasna
Executive Director

I. ADMINISTRATIVE REQUIREMENTS

A. GENERAL INSTRUCTIONS

A. Purpose of this Bid

Guam Housing and Urban Renewal Authority (GHURA) is soliciting bids for the dismantling of existing workstations, and the purchase and assembly of new workstation cubicles and accessories. This is NOT an “All or None” bid. Bidder is not required to bid on all bid items. GHURA maintains the right to award the bid to the lowest most responsive, responsible bidder(s).

The respondent must state clearly of their products. Additionally, the respondent will be selected based on their response to the bid.

B. Issuing Office

GHURA’s Buyer Supervisor II will administer the bid process. The office address is:

Guam Housing and Urban Renewal Authority
Procurement Division
117 Bien Venida Avenue
Sinajana, Guam 96910

C. Contact Person

If you have any questions or require additional information regarding this Bid, please contact Greta Balmeo, Buyer Supervisor II, via email at gbalmeo@ghura.org.

D. Procurement Schedule

Bid issue date:	Thursday, November 4, 2021
Pre-Bid conference & Site Visit:	Monday, November 15, 2021 at 10:00 a.m., CHST
Q/A Deadline from Bidders:	Friday, November 19, 2021 at 5:00 p.m., CHST
GHURA’s Response Deadline:	Tuesday, November 23, 2021 at 5:00 p.m., CHST
Bid Opening:	Tuesday, November 30, 2021 at 10:00 a.m., CHST

E. Bid Package

The bid specifications will be made available on the GHURA website at: <https://www.ghura.org/doing-business-us/bidsproposalsrelease-funds/invitation-bids> beginning September 9, 2021.

F. Cost of Preparing Bids

Respondents are completely responsible for cost of developing their Bids. GHURA will not reimburse any applicant for these specific costs.

G. Bid Preparation and Submission of Bid

Respondents are required to submit one (1) original, one (1) copy, and one (1) PDF file via USB to:

Guam Housing and Urban Renewal Authority
Procurement Division
117 Bien Venida Avenue Sinajana, Guam 96910

Bids must be received no later than 10:00 a.m., CHST, on Tuesday, November 30, 2021. Bids submitted after the deadline will not be accepted for consideration.

H. Disposition of Bids

All Bids become the property of GHURA. The selected Bid may be incorporated into resulting agreement by reference.

I. Execution of the Agreement

The successful respondent will be required to enter into a formal written agreement and Purchase Order with GHURA in accordance with the laws, rules and regulations of Guam and all federal requirements.

GHURA reserves the right to enter into agreements for only the products, which appear to be in the best interest of GHURA and persons participating in its program and services. GHURA reserves the right to cancel the agreement if the applicant violates the terms and condition of the agreement.

The cost of any work performed by any contractor prior to receiving a letter to proceed from GHURA will not be the responsibility of GHURA. GHURA will not be liable for nor will GHURA reimburse the contractor for any work, costs, expenses, and loss of profits or damages borne by the contractor prior to receiving a written notice to proceed.

GHURA will notify all respondents of the selection upon completion of the evaluation process, subject to final negotiations and award. GHURA will forward the formal agreement to the successful respondent for execution. The successful respondent will sign and return the agreement with other supporting documents covering the agreement. The successful bidder is required to retain all records for three (3) years after GHURA makes final payment and for other pending matter such as servicing and until all warranties are expired or closed.

J. Disqualification of Bid

GHURA may reject without further consideration any Bid offering or any set of terms or conditions contradictory to the requirements set forth or referenced in this BID.

A respondent will be disqualified and the Bid automatically rejected for any one or more of the following reasons:

1. Submission of the Bid after the deadline specified.
2. Bid shows any non-compliance with applicable laws; Bid is conditional, incomplete or irregular in such a way as to make the Bid incomplete, indefinite or ambiguous in its meaning.

3. Bid has provisions reserving the right to accept or reject award or enter into a contract pursuant to an award, or provisions contrary to those required.

K. Payment

GHURA shall pay successful bidder for all workstation equipment upon receipt of Vendor's invoice. Bidder invoices should have all information such as name of GHURA staff, description of item(s), purchase order/blanket purchase agreement number, cost, and must include "a certified true copy" of the invoice. Bidder submitting incomplete invoices not containing the required information may be rejected or subject to delay in payment. Payment terms shall be Net 30 Days from receipt of item(s).

L. Termination

GHURA reserves the right to terminate for cause and for convenience of GHURA. See General Terms and Conditions item 38.

M. Inspection of Records

GHURA and the Comptroller General of the United States, and/or any other duly authorized representatives shall have the right to inspect any books, documents, papers and records of the contractor which are directly pertinent to this specific contract for the purposes of making an audit, examination, excerpts and transcriptions.

N. Required Documents

Vendors are required to submit the following documents:

- a. Current business license
- b. GHURA Form 016, 15% Bid Bond
- c. Contact for Contract Administration Form
- d. Vendor Bid Form
- e. Affidavit Disclosing Ownership and Commissions (AG Form 002)
- f. Non-Collusion affidavit (AG Form 003)
- g. Non-Gratuity Affidavit (AG Form 004)
- h. Affidavit re Ethical Standard (AG Form 005)
- i. Declaration re Compliance with U.S. DOL Wage Determination (AG Form 006)
- j. Affidavit re Contingent Fees (AG Form 007)
- k. Certifications and Representations of Offerors (HUD Form 5369-C)
- l. Disclosure of Organizational Conflict of Interest Affidavit
- m. Brochures and Descriptive Literature
- n. Any and all addendums

O. Method of Award

GHURA reserves the option, depending on the availability of funds, to award a contract to the lowest responsible responsive bidders submitting the lowest bid on Base Bid Item No. 1 and/or Base Bid Item No. 2. A bid maybe submitted for either all bid items or any individual Bid Item(s). GHURA shall award contract to the most responsible, responsive and best price bidder(s).

P. Non-Refundable Bid Packet Payment

Vendors are required to pay the \$50.00 non-refundable payment for each bid packet before submission of their bid. Non-payment shall result as a non-responsive bid and vendor's bid shall not be considered.

Q. MONITORING

GHURA's Procurement Division and Section 8 Administrator will monitor the Agreement. Areas of review include:

1. Overall compliance with agreement terms;
2. Degree to which performance goals and objectives are met and activities described in the scope of work and agreement are being provided.

R. SECTION 3 PROGRAMS

Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

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. 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.

II. Scope of Work

SPECIAL CONDITIONS

1. PROJECT SITE AND DESCRIPTION

The project is located at GHURA’s main office (Section 8 division) in Sinajana. See attached map for exact location. The work consists of the removal of the existing cubicle and minor demolition work. Provide new 17-cubicle work stations, as indicated on scope of work.

2. TIME OF COMPLETION

The work shall commence at the time stipulated in the Notice to Proceed and shall be fully completed within the time frame indicated below:

Complete the required work per the Bid specifications.

Contract Period

BASIC BID 1 ----- 3 consecutive calendar days.

BASIC BID 2 ----- 2 consecutive calendar days.

3. LIQUIDATED DAMAGES

In case of failure on the part of the Contractor to complete the work within the time fixed in the Contract or within any time extensions given thereof, the Contractor and his sureties shall be liable for and shall pay to GHURA the sum of \$100.00 liquidated damages per calendar day of delay until the work is completed and accepted.

4. Scope of work and Standards

a. SCOPE OF WORK

OBJECTIVE – It is the intent of Guam Housing and Urban Renewal Authority to remove the existing cubicle workstations and provide 17-new cubicle workstations located at GHURA’s Main Office, Section 8 division in Sinajana.

II. Scope of work / Construction Sequence:

BID ITEM 1

1. Existing office cubical, disconnect all electrical and communication raceway system (do not cut or damage and of the communication wires). All communication wires to be secured above the existing drop ceiling for future use.
2. Provide new 6-CAT6 UTP cables at the center room to services the 6-cubicles work stations. The 6-CAT6 UTP to merge to a gutter box with a 3 inch diameter raceway above the drop ceiling and runs below the MIS server control panel room and through the existing floor slab. Provide 6ft wire slack for connection purpose. GHURA MIS staff to perform all communication connection.
3. Existing interior gypsum board (12ft x 8ft high) to be demolished and disposed. Disconnect existing electrical and secure above the existing ceiling panels.

4. Existing carpet to be removed and disposed. Portion of the existing concrete slab slope evident. Contractor to provide non-shrink topping to minimize the existing floor slope (approx. 8ft square), provide ½” deep minimum feather edges on the new concrete topping.
5. Provide new electrical raceway to the new cubicle work stations, existing electrical system can be modified to suit new cubicle work station connections.
6. Provide new floor carpet finish at all areas, work to include carpet adhesive.

BID ITEM 2

1. Existing office cubical to be disassembled and stored at the covered shed structure within the GHURA’s parking stalls. The contractor shall collect all nuts, bolts and other connecting appurtenances. Provide plastic cover and secure all items to avoid future water damage to the cubical partitions and table tops.
2. Provide new 17-cubicle work stations as indicated on the attached cubical layout drawing and specified listed items. The new cubical work station shall include a built-in electrical outlets (120V) and a communication outlet connection ready for plug in.

Note: It is anticipated that all work will start on a Friday afternoon and completed 5 days after the start day.

Others:

1. Prior to start of construction the contractor shall field verify actual dimensions, conditions and locations and shall immediately notify GHURA of any discrepancies between the plans for this project and actual field conditions which may interfere with this project.
2. Damage done by the contractor to any items shall be repaired by the contractor at no cost to the Government.
3. Miscellaneous items of work not indicated but which are necessary to implement the project intent of which are customarily performed shall be provided by the Contract Bidder as if fully and correctly described in the scope of work and/or drawings. Contractor to notify GHURA official prior to commencement of work.
4. All notices, demands, requests, instructions, approvals, proposals and claims must be in writing.
5. Contractor to notify GHURA official prior to commencement of work.

5. COMMUNICATIONS

- a. All notices, demands, requests, instructions, approvals, proposals, and claims must be in writing.
- b. Any notice to or demand upon the Contractor shall be sufficiently given if delivered at the office of the Contractor stated on the signature page of the Contract (or at such office as he may from time to time designate in writing to GHURA), or deposited in the United States mail in sealed, postage-prepaid envelope, or if delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.
- c. All papers required to be delivered to GHURA shall, unless otherwise specified in writing to the Contract, be delivered to the Guam Housing and Urban Renewal Authority at 117 Bien Venida Avenue, Sinajana , Guam, 96926, and any notice to or demand upon GHURA shall sufficiently given if so delivered, or deposited in the United States mail in sealed, postage-prepaid envelope, or delivered with charges prepaid to any telegraph company for transmission to said Guam Housing and Urban Renewal Authority at such address as GHURA may subsequently specify in writing to the Contractor for such purposes.

- 6. Any damages to existing conditions shall be repaired in good condition with finish to match existing.**
- 7. MINIMUM RATES OF PAY AND WAGE RATES- See attached General Decision**
- 8. CLEAN UP**
 - a. The Contractor shall, at all times, keep the premises free from accumulations of waste materials or rubbish caused by his operations. At the completion of the work, he shall remove all his waste materials and rubbish from and about the sites as well as all his tools.

SPECIFICATIONS FOR CUBICLE WORKSTATIONS

1. **TABLE:** Rectangular laminated L-shaped work surface table and side table with mobile pedestal and lockable drawer on side table for computer and office activity.

Quantity: 3 each W40" x D24"
 1 each W63" x D24"
 14 each W72" x D24"
 13 each W48" x D32"
 3 each W55" x D32"

2. **STORAGE:** Over Head Cabinet Flipper Door with Lock Hinged cabinet for storage, level entry with a door that lifts open and retracts. The retractable opening allows for easy access to contents and keeps the door from being in the way.

Quantity: 17 each W32" x D14"
 17 each W40" x D14"

3. **PEDESTAL:** 3-Drawer Mobile File Cabinet Steel case pedestal cabinet with lock set and wheeled castors designed to allow the lockable mobile filing cabinet to fit underneath coordinating cubicle workstation desk.

Quantity: 17 each W16" x D22" X H27"

4. **PARTITION:** 2 Panels with Connector and End Cover Partition with fabric (bottom) and polycarbonate frost or clear (top) design.

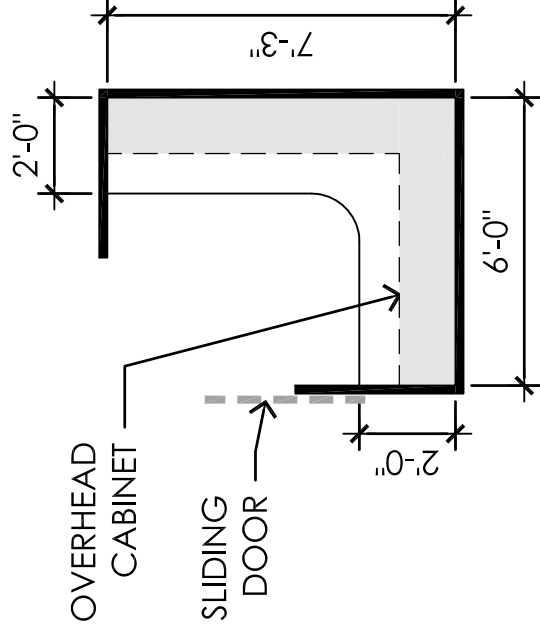
Quantity: 25 each W24" x H70"
 19 each W32" x H70"
 32 each W40 x H70"
 17 each W48" x H70"

5. **SLIDING SCREEN DOOR:** Polycarbonate frost or clear transparent screen sliding door with frame for cubicle workstations.

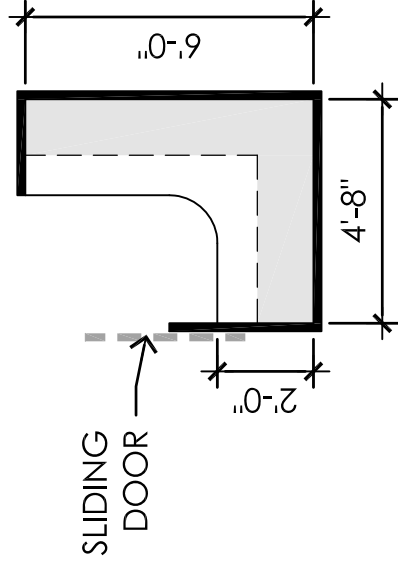
Quantity: 17 each W40" x H70"

6. **OFFICE CHAIR WITHOUT ARMREST:** Comfortable armless task chair with seat adjustment allows for maximum comfort, durable, textured upholstery to suit the cubicle workspace, scuff resistant, arched molded base and twin steel carpet casters.

Quantity: 5 each



TYPE - C1



TYPE - C2

NEW CUBICLE ARRANGEMENT

VENDOR BID FORM

IMPORTANT NOTE TO VENDOR:

THIS FORM IS REQUIRED TO BE SUBMITTED BY THE VENDOR. ANY BID SUBMITTED WITHOUT THIS FORM WILL NOT BE CONSIDERED FOR FURTHER EVALUATION.

NAME OF VENDOR: _____

I, _____, the undersigned due hereby submit my bid for IFB#GHURA-COCC-022-002 Disassembly, Purchase and Installation of Section 8 Workstations and certify that all requirements under this bid shall be adhered to.

BID ITEM #1: \$ _____

BID ITEM #2: \$ _____

Total Bid Price: \$ _____

PRINT FULL NAME: _____

SIGNATURE: _____

TITLE: _____

DATE: _____

CONTACT FOR CONTRACT ADMINISTRATION

IFB#GHURA-022-002-S8

**Disassembly, Purchase and Installation of Section 8
Workstations**

Name: _____

Title: _____

Telephone: _____

Email: _____

Fax: _____

Mailing Address:

General Terms and Conditions

IFB#GHURA-022-002-S8

Only those Boxes checked below are applicable to this bid.

1. **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.
2. **GENERAL INTENTION:** Unless otherwise specified it is the declared and acknowledged intention and meaning of these General Terms and Conditions for the bidder to provide the Guam Housing and Urban Renewal Authority with specified services or with materials, supplies or equipment completely assembled and ready for use. This solicitation is also subject to federal law and regulations in regards to public housing authorities pursuant to 5§ G.C. A.
3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Tax as well as all other taxes on Guam transactions. Specified information on taxes may be obtained from the Director of Revenue and Taxation.
4. **LICENSING:** Bidders are cautioned, that the Guam Housing and Urban Renewal Authority will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Taxation. Vendors are required to submit current business license with their bid.
5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with Section 6950.7 of the Guam Procurement Act (P. L. 16-124) and Section 1-104 of the Guam Procurement Regulations.
6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidder shall comply with all specifications and other requirements of the Solicitation.
7. **“ALL OR NONE” BIDS:** By checking this item, the Guam Housing and Urban Renewal Authority is requesting all of the bid items to be bidden or none at all. The Guam Housing and Urban Renewal Authority will not award on an itemized basis. Reference: Section 3-301.06 of the Guam Procurement Regulations.
- 7a. If the Guam Housing and Urban Renewal Authority does not require All or None Bids (Section 7 is not checked off), but the Bidder indicates on the Bid that it is an All or None Bid, then the Guam Housing and Urban Renewal Authority will deem the Bid submitted to be non-responsive.

8. **INDEPENDENT PRICE DETERMINATION:** The Bidder upon signing the invitation to Bid/proposal certifies that the prices in his or her Bid were derived at without collusion and acknowledge that collusion and anti-competitive practices are prohibited by law. Violation will be subject to the provision of Section 6981 of the Guam Procurement Act. Other existing civil criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 6981 of the Government of Code.

9. **BIDDER'S PRICES:** The Guam Housing and Urban Renewal Authority will consider not more than one (1) (Basic) item price and the Bidder shall explain fully each price if supplies, materials, equipment and/or specified services offered comply with specifications and the product's origin. Where basic Bid meet the minimum required specification, cost and other factors will be considered. Failure to meet this requirement will result in rejection of the Bid.

10. **BID ENVELOPE:** Envelope shall be sealed and marked with the Bidder's name, bid number, time, date and place of Bid Opening.

11. **BID BOND REQUIREMENTS:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by GHURA pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier's Check must be issued by any local surety or banking institution; licensed to do business on Guam; and made payable to the Guam Housing and Urban Renewal Authority in the amount of five percent (15%) of his or her highest total bid offer. Bid Guarantee will be a Bid Bond on Government Standard form BB-1. Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the Bid or fails to enter into contract within a prescribed time, such Bond will be forfeited to the Guam Housing and Urban Renewal Authority. Bids will be disqualified if not accompanied with a Bid Bond, Letter of Credit, Certified Check, or Cashier's Check. Bidder must include in his or her bid valid copies of a Power Authority from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters contact the Department of Revenue and Taxation. Failure to submit a valid Power Authority and Certificate of Authority on the surety is cause for rejection of Bid (GPR Section 3-202.03.3).

12. **PERFORMANCE BOND REQUIREMENT:** The Bidder may be required to furnish a Performance Bond on Government Standard Form BB-1 or standby irrevocable Letter of Credit or Certified Check or Cashier's Check payable to the Guam Housing and Urban Renewal Authority issued by any of the local Banks or Bonding institution in the amount equal to One hundred percent (100%) of the contract prices as security for the faithful performance and proper fulfillment of the contract. In the event that any of the provisions of this contract are violated by the contractor, the Executive Director of GHURA or the Chief Procurement Officer of GHURA shall serve written notice upon both the contractor and the Surety of its intention to terminate the contract. Unless satisfactory arrangement or correction is made within ten (10) days of such notice the contract shall cease and terminate upon the expiration of the ten (10) days. In event of any such termination, the Executive Director of GHURA or the Chief

Procurement of Officer of GHURA shall immediately serve notice thereof upon the Surety. The Surety shall have the right to take over and perform the contract provided. However, should the Surety do not commence performance thereof within ten (10) days from the date of the mailing of Notice of Termination, the Guam Housing and Urban Renewal Authority may take over and prosecute the same to complete the contract or re-contract the project with all incurred expenses for the account of the contractor. The contractor and his or her Surety shall be liable to Guam Housing and Urban Renewal Authority for any excess cost incurred the Guam Housing and Urban Renewal Authority (GPR Section 3.202.03.4).

13. **PERFORMANCE GUARANTEE:** Bidders, who are awarded a contract under this Solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Guam Housing and Urban Renewal Authority and to enforce Section 12 of these General Terms and Conditions. In addition, the Guam Housing and Urban Renewal Authority will hold the vendor liable and will enforce the requirements as set forth in Section 41 of these General Terms and Conditions.

14. **SURETY BONDS:** Bid and Performance Bonds coverage must be signed or countersigned in Guam by a foreign or alien Surety's resident general agent. The surety must be an insurance company, authorized by the Government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam. For Federal funded procurement projects, all surety companies that are licensed to do business in Guam may be required to be listed with the U. S. Treasury Department of the United States of America.

15. **COMPETENCY OF BIDDERS:** Bids will be considered only from such bidders who, in the opinion of the Guam Housing and Urban Renewal Authority can show evidence of their competency, financial ability, experience, equipment and facilities to render satisfactory service.

16. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Executive Director of GHURA or Chief Procurement Officer of GHURA reserves the right for securing from the bidder's information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions (GPR Section 3401).

17. **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:** In determining the lowest responsible and responsive bidder, the Executive Director of GHURA or Chief Procurement Officer of GHURA shall be guided by the following:

- 1) Price of items offered.
- 2) Genuine and quality of items offered.
- 3) The ability, capacity and skill of Bidder to perform.
- 4) Whether the Bidder can perform promptly or within a specified date.
- 5) The quality of performance of the Bidder with regards to awards previously made to him or her.

- 6) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
- 7) The sufficiency of the financial resources and ability of the Bidder to perform.
- 8) The ability of the Bidder to provide future maintenance and services for the subject of the award.
- 9) The compliance (responsiveness) with all of the conditions to the Solicitation.

18. **THE BIDS/PROPOSALS:** If the bids or proposals are for the same unit price or total amount in the whole or part, the Executive Director of GHURA or Chief Procurement Officer of GHURA has the authority to award the bid to any one of the bidders by drawing lots in public, or to reject all such bids (GPR Section 3-202.15.2)

19. **BRAND NAMES:** Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such reference is intended to be descriptive, but not restrictive and for the sole purpose of indicating to prospective bidders a description of the article or services that will be satisfactory. Bids on comparable or equal items will be considered provided the bidder clearly states in his or her bid the exact articles he or she is offering and how it differs from the original specification.

20. **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 which are considered appropriate. Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this Solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the Bid.

21. **SAMPLES:** Sample(s) of item(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 sample(s) should represent exactly what the Bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) does not show that the product(s) offered conform(s) to the specifications and other requirements of this Solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.

22. **LABORATORY TEST (UL Test):** Successful bidder is required to accompany delivery of his or her goods with a Laboratory Test Report, indicating that the product he or she is furnishing the Guam Housing and Urban Renewal Authority meets with the highest consumer safety specification. This report is on the bidder's account and must be from a certified Testing Association.

23. **AWARD, CANCELLATION & REJECTION:** Award shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the most advantageous to the

Guam Housing and Urban Renewal Authority, taking into consideration the evaluation set forth in this Solicitation. No other factors or criteria shall be used in the evaluation process. The right is reserved as the interest of the Guam Housing and Urban Renewal Authority may require waiving any minor irregularity in bids received. The Executive Director of GHURA or the Chief Procurement Officer of GHURA shall have the authority to award, cancel or reject bids in whole or in part for any one or more items if he or she determines it is in the public interest. Award issued to the lowest responsible and responsive bidder within the specified time for acceptance as indicated in the Solicitation, results in a binding contract without further action by either party. In case of an error in the extension of prices, unit price will govern. It is the policy of the Guam Housing and Urban Renewal Authority to award contracts to local bidders that qualify under this solicitation. The Guam Housing and Urban Renewal Authority reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award. No award shall be made under this Solicitation which shall require advance payment or irrevocable Letter of Credit from the Guam Housing and Urban Renewal Authority.

24. **MARKING:** Each outside container shall be marked with the Purchase Order number, item number, brief item description and quantity. Letter marking shall not be less than $\frac{3}{4}$ inches in height.

25. **SCHEDULE FOR DELIVERY:** Successful vendor (s) shall have the appliances on island and ready to deliver no later than forty-five (45) days after receipt of order. Successful bidder shall notify the Guam Housing and Urban Renewal Authority Buyer Supervisor II, telephone no. 475-1356 at least twenty-four (24) hours before delivery of any item under this Solicitation.

26. **BILL OF SALE:** Successful supplier shall render Bills of Sale for each item delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Guam Housing and Urban Renewal Authority in accordance with billing instructions as indicated on the Purchase Order.

27. **MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item under this contract to furnish a certificate from the manufacturing indicating that the goods meet the specifications. Failure to comply with this request will result in rejection of delivery.

28. **INSPECTION:** All supplies, materials, equipment or services delivered under this contract shall be subject to the inspection and/or test conducted by the Guam Housing and Urban Renewal Authority at destination. If in any case the supplies, materials, equipment or services are found to be defective in material, workmanship, performance or otherwise do not conform with the specification, the Guam Housing and Urban Renewal Authority shall have the right to reject the items or require that they be corrected. The number of days required for corrections will be determined by GHURA.

29. **MOTOR VEHICLE SAFETY REQUIREMENTS:** The Guam Housing and Urban Renewal Authority will only consider Bids on motor vehicles which comply with requirements of the National Traffic and Motor Vehicle Safety Act of 1966 (P. L. 89-563) and Clean Air Act as amended (P. L. 88-206) that are applicable to Guam. Bidder shall state if the equipment offered comply with these aforementioned Federal laws.

30. **SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.

31. **GUARANTEE:**
Guarantee of Vehicle Type of Equipment:

The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune-ups (change of spark plugs, contact points and condensers) and lubrication (change in engine and transmission oil). All parts and labor shall be at the expense of the Bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced or adjusted within six (6) working days after notice from the Guam Housing and Urban Renewal Authority and without cost to GHURA. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.

Guarantee of Other Type of Equipment:

The successful Bidder shall guarantee all other types of equipment offered, except those mentioned in 31a, above, against defective parts, workmanship and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to the Guam Housing and Urban Renewal Authority. Repairs, adjustments or replacements of defective parts shall be completed by the Contractor within six (6) working days after notice from GHURA. Compliance with this Section is a condition of this bid.

32. **REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The Bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Guam Housing and Urban Renewal Authority employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and Chapter 11 of the Guam Procurement Regulations.

33. **REPRESENTATION REGARDING CONTINGENT FEES:** The contractor represents that it has not retained a person to solicit or secure a GHURA contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).

34. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex or national origin.
35. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standards, provisions and stipulations of all pertinent Federal and/or local laws, rules and regulations relative to the performance of this contract and the furnishing of goods. Where there is a conflict between local or state procurement legislation and Federal regulations, then Federal regulations will have precedent over local or state ordinance.
36. **CHANGE ORDER:** Any change order issued relative to awards made under this Solicitation will be subject to and in accordance with the provisions of Section 6-101.03.1 of the Guam Procurement Regulations.
37. **STOP WORK ORDER:** 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.
38. **TERMINATION FOR CONVENIENCE:** Any termination order for the convenience of the Guam Housing and Urban Renewal Authority issued relative to awards made under this Solicitation will be subject to and in accordance with the provisions of Section 101.10 of the Guam Procurement Regulations.
39. **TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Guam Housing and Urban Renewal Authority that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from date of Purchase Order is acknowledged by vendor), then the contractor is in default. Default will be treated subject to and in accordance with the provisions of Section 6-101.08 of the Guam Procurement Requisitions.
40. **JUSTIFICATION FOR DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he or she is required to notify the Executive Director of GHURA or Chief Procurement Officer of GHURA of such delay. Notification shall be in writing and shall be received by the Executive Director of GHURA or Chief Procurement Officer of GHURA at least twenty-four (24) hours before the specified delivery date. Notification of delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Guam Housing and Urban Renewal Authority reserves the right to reject delay justification if, in the opinion of the Executive Director of GHURA or Chief Procurement Officer of GHURA, such justification is not adequate.
41. **LIQUIDATED DAMAGES:** When the Contractor is given notice of delay or nonperformance as specified in Paragraph 1 (Default) of the Termination for Default Clauses of

this contract and fails to cure in time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the Guam Housing and Urban Renewal Authority reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under paragraph 40 (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due GHURA. The contractor remains liable for damages caused other than by delay (GPR Section 6-101.09.1).

42. **PHYSICAL LIABILITY:** If it becomes necessary for the vendor, either as principal, agent or employee to enter upon the premises or property of the Guam Housing and Urban Renewal Authority in order to construct, erect, inspect, make delivery or remove property hereunder, the vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the Guam Housing and Urban Renewal Authority from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work and fines, penalties and loss incurred for or by reason of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Guam Housing and Urban Renewal Authority against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his or her employees and agents of the services covered by the Contract and the use, misuse or failure of any equipment used by the contractor or his or her employees or agents, and shall provide certificates of such insurance to the Guam Housing and Urban Renewal Authority when required.

43. **REQUIRED DOCUMENTS:** See page 5.

44. **RECEIPT, OPENING AND RECORDING OF BID:** Bids and modifications shall be publicly opened in the presence of one or more witnesses at the time, date and place designated in the invitation for bid. The name of each bidder, the bid price and such other information as is deemed appropriate by the Procurement Officer shall be read aloud and recorded or otherwise made available. The names and addresses of required witnesses shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be considered 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. Prices, makes and models or catalogue numbers of the item offered, deliveries and items of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary (Guam Procurement Regulation Section 3-202.12.2).

45. **CONFIDENTIAL DATA:** The Procurement Officer shall examine the bids to determine the validity of any request for nondisclosure of trade secrets and other proprietary data in writing. If the parties do not agree as to the disclosure of data, the Procurement Officer shall

inform the bidders in writing what portions of the bid will be disclosed and that, unless the bidders protest under Chapter 9 of the Guam Procurement Act (P. L. 16-124), the bids will be so disclosed. The bids shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data (Guam Procurement Regulation Section 3-202.12.3)

46. TYPE OF CONTRACT: GHURA shall use Firm Fixed Price Contract for this solicitation.

47. PUBLIC LAW - 28-98 – Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues. The bidder should be familiar with federal and local laws, codes, ordinances, and regulations, which, in any manner, affect those engaged or employed in the work, or the material or equipment, used in or upon the site, or in any way affect the conduct of the work. No misunderstanding or ignorance on the part of the bidder will in any way serve to modify the provision of the contract.

Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues. (§5253 of Title 5 Guam Code Annotated)

No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.

All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

48. CERTIFICATE OF INSURANCE: The successful vendor (s) must submit an Insurance Certificated indicating the insurance coverage requirement as indicated. Worker's Compensation, Automobile Liability (Minimum of \$500,000 combined single limit for owned and non-owned vehicles and Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury, property damage, personal injury and products and completed operations coverage.

"General Decision Number: GU20210001 01/01/2021

Superseded General Decision Number: GU20200001

State: Guam

Construction Types: Building, Heavy, Highway and Residential

Excludes any projects funded under the National Defense Authorization Act 2010 - Guam Realignment Fund - Defense Policy Review

County: Guam Statewide.

BUILDING, HEAVY, HIGHWAY AND RESIDENTIAL

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date
 0 01/01/2021

SUGU2020-001 03/05/2020

	Rates	Fringes
CARPENTER.....	\$ 15.48	
CEMENT MASON.....	\$ 14.92	
ELECTRICIAN.....	\$ 18.52	
Heavy Equipment Mechanic.....	\$ 18.32	
Heavy Equipment Operator.....	\$ 16.58	
IRONWORKER, REINFORCING.....	\$ 15.61	

IRONWORKER, STRUCTURAL.....\$ 14.90
 PAINTER.....\$ 12.86
 PIPEFITTER.....\$ 16.52
 PLASTERER.....\$ 22.89
 PLUMBER.....\$ 16.52
 REFRIGERATION MECHANIC
 (including Heating, Air
 Conditioning (HVAC) Mechanic
 work).....\$ 18.43
 SHEET METAL WORKER.....\$ 16.73

 WELDERS - Receive rate prescribed for craft performing
 operation to which welding is incidental.

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 Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
 for Federal Contractors applies to all contracts subject to the
 Davis-Bacon Act for which the contract is awarded (and any
 solicitation was issued) on or after January 1, 2017. If this
 contract is covered by the EO, the contractor must provide
 employees with 1 hour of paid sick leave for every 30 hours
 they work, up to 56 hours of paid sick leave each year.
 Employees must be permitted to use paid sick leave for their
 own illness, injury or other health-related needs, including
 preventive care; to assist a family member (or person who is
 like family to the employee) who is ill, injured, or has other
 health-related needs, including preventive care; or for reasons
 resulting from, or to assist a family member (or person who is
 like family to the employee) who is a victim of, domestic
 violence, sexual assault, or stalking. Additional information
 on contractor requirements and worker protections under the EO
 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within
 the scope of the classifications listed may be added after
 award only as provided in the labor standards contract clauses
 (29CFR 5.5 (a) (1) (ii)).

 The body of each wage determination lists the classification
 and wage rates that have been found to be prevailing for the
 cited type(s) of construction in the area covered by the wage
 determination. The classifications are listed in alphabetical
 order of ""identifiers"" that indicate whether the particular
 rate is a union rate (current union negotiated rate for local),
 a survey rate (weighted average rate) or a union average rate
 (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed
 in dotted lines beginning with characters other than ""SU"" or
 ""UAVG"" denotes that the union classification and rate were
 prevailing for that classification in the survey. Example:

PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

"

Guam Housing and Urban Renewal Authority
117 Bien Venida Avenue
Sinajana, GU 96910

BID BOND NO.: _____

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned _____

(Name of Principal)

as PRINCIPAL, and

SURETY

are held and firmly bound unto Guam Housing and Urban Renewal Authority, hereinafter called "GHURA", in the penal sum of _____

Dollars, (_____), lawful money of the United States, for the payment of which sum will and truly be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas, the Principal has submitted the accompanying bid, dated the _____, 20____, for the

NOW THEREFORE, if the principal shall not withdraw said bond within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after the said opening, and shall within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with Guam Housing and Urban Renewal Authority in accordance with the bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract; or in the event of the withdrawal of said bid within the period specified, or time specified, if the principal shall pay Guam Housing and Urban Renewal Authority, the difference between the amount specified in said bid and the amount for which Guam Housing and Urban Renewal Authority may procure the required work or supplies, or both, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this _____ day of _____ 20____, the name and corporate seal of each corporate party being hereto affixed and

these presents duly signed by its undersigned representatives, pursuant to authority of its governing body.

ATTEST:

Sole Proprietorship

(Individual Principal Signature)

(Business Address)

(Name of Individual Principal Above)

(Seal)

ATTESTED:

Corporation

(Corporate Principal Signature)

(Business Address)

(Name of Corporate Principal Above)

(Title)

Affix Corporate Seal

ATTEST:

Surety Company

(Corporate Surety Signature)

Corporate Surety Signature)

(Business Address)

Name of Corporate Surety)

(Title)

Affix Corporate Seal

(Power of Attorney for person signing for Surety Company must be attached to the Bond)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____

Secretary of the Corporation names as Principal in the within the bond; that
_____ " who signed the said bond on behalf of the

Principal was then _____ of said corporation; that I know his

signature, and his signature thereto is genuine; and that said bond was duly signed,

sealed, and attested to, for and *in* behalf of said corporation by authority of its governing

body.

(Corporate Seal)

AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS

CITY OF _____)
) SS.
ISLAND OF GUAM)

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that *[please check only one]*:

The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

The offeror is a corporation, partnership, joint venture, or association known as _____ *[please state name of offeror company]*, and the persons, companies, partners, or joint venturers who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
_____	_____	_____

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.

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 NON-COLLUSION

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 company or individual is [state name of company] _____.

2. The proposal for the solicitation identified above is genuine and not collusive or a sham. The offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any other offeror or person, to put in a sham proposal or to refrain from making an offer. The offeror has not in any manner, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the proposal price of offeror or of any other offeror, or to fix any overhead, profit or cost element of said proposal price, or of that of any other offeror, or to secure any advantage against the government of Guam or any other offeror, or to secure any advantage against the government of Guam or any person interested in the proposed contract. All statements in this affidavit and in the proposal are true to the best of the knowledge of the undersigned. This statement is made pursuant to 2 GAR Division 4 § 3126(b).

3. I make this statement 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 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 _____, _____.

DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

Procurement No.: _____

Name of Offeror Company: _____

I, _____ hereby **certify under penalty of perjury**:

(1) That I am _____ [*please select one: the offeror, a partner of the offeror, an officer of the offeror*] making the bid or proposal in the foregoing identified procurement;

(2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

§ 5801. Wage Determination Established.

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ("contractor") for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

§ 5802. Benefits.

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

(3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

(4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. [*INSTRUCTIONS - Please attach!*]

Signature

DISCLOSURE OF ORGANIZATIONAL CONFLICT OF INTEREST AFFIDAVIT

Type of Service Being Offered: _____
Name of Offeror Firm or Individual: _____

TERRITORY OF GUAM)
)
 SS.
HAGATNA GUAM)

_____ being first duly sworn, deposes and says:

- (a) That 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 a proposed contract and prospective contractor’s organizational, financial, contractual or other interest are such that:
 - (i) Award of the contract may result in an unfair competition advantage
 - (ii) The Contractor’s objectivity in performing the contract work may be impaired; or
 - (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this contract.
- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract 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 HA, the HA will terminate the Contract for default and Contractor must pay the HA all expenses paid out by the HA to the Contractor.
- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.
- (e) Are any of the Contractor’s immediate family member (Parents, Sisters, Sister-in-laws, Brothers, Brothers-in- Laws, Parents-in-Law, residing or is/are landlord in the Housing Authority’s Housing Choice Program (S8) or residing in the HA’s Public Housing. () Yes () No. If your answer is Yes, please indicate the type of Program and name of the immediate family member _____.
- (f) Offeror’s Signature

The Offeror hereby certifies that the information contained in this certification and representation is accurate, complete and current.

Signature of individual if proposer is a sole Proprietorship; Partner, if the proposer is a Partnership; Officer, if the proposer is a Corporation.

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____.

Notary Public
In and for the Territory of Guam
My Commission Expires: _____

THIS AFFIDAVIT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE RFQ/BID/PROPOSAL.

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:]

Certifications and Representations of Offerors Non-Construction Contract

Public reporting burden for this collection of information is estimated to average 5 minutes 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.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offers to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

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

- (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.

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

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

2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror 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 small business concern. "Women-owned," as used in this provision, means a small 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 enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned 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

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

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

- (1) Is the person in the bidder/offeror'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/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror'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/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

(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 a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of 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 HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

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 (exp. 1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

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 \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

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

- (d) 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 III, 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
 - (ii) 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.
- (ii) The prohibition does not apply as follows:

(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.

(ii) 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.

16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. 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.

18. 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.

19. 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.

20. Liens

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

21. 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 135, 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 135 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 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, 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 135. 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 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. 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.