

# **Invitation for Bids**

## **No. IFB-19-978**

**Snow Removal, Salting and Sanding Services  
HAKC Developments**

*Issued By:*

**The Housing Authority of Kansas City, Missouri  
920 Main Street, Suite 701  
Kansas City, Missouri 64105**

**July 29, 2019**

**INVITATION FOR BIDS  
IFB-19-978**

**THE ABOVE NUMBER MUST APPEAR ON ALL RESPONSES AND RELATED CORRESPONDENCE.**

**REQUEST DATE: July 29, 2019**

**THIS IS NOT AN ORDER**

**Bids Due:**

**August 30, 2019; 2:00 p.m.  
HAKC Admin Office**

**Karen Pointer**

**Office of Procurement & Contracts**

**Pre-Bid Conference:**

**August 20, 2019 at 10:00 a.m.  
1301 Vine KC MO 64106**

**[kpointer@hakc.org](mailto:kpointer@hakc.org)**

**Ph. (816) 968-4203**

**Fax (816) 285-4012**

**PART ONE  
INTRODUCTION AND BID STRUCTURE**

1. The Housing Authority of Kansas City, Missouri is organized under the laws of the State of Missouri. It owns and operates over 1900 units of conventional public housing in multifamily and single-family sites through the city and provides rental assistance subsidies to approximately 7500 households under the Section 8 Housing Assistance Payment Program. The agency has an annual operating budget of \$20 million. Receives approximately \$3.5 million in annual Capitol Fund program allocations and maintains funding awards for the HOPE VI and Public Housing Development Programs. HAKC also funds and manages a variety of social service and economic development programs for its residents.
  
2. There will be a pre-bid conference for this project on August 20, 2019 at 10:00 a.m. beginning at 1301 Vine. The Project Manager – Stacy Landis may be contacted at [slandis@hakc.org](mailto:slandis@hakc.org) or 816-968-4267.

3. For the convenience of the bidder, this solicitation is structured as follows:

Part I Introduction and Bid Structure

Part II Scope of Work Description and Terms

Bid Forms (Pricing page)

Bid Documents

- a. Davis-Bacon Wage Determination
- b. Notarized Non-Collusive Affidavit**
- c. References (pertaining to similar projects)**
- d. Listing of Proposed Subcontractors**
- e. Statement of Qualifications**
- f. Notarized Release of Information**
- g. Joint Venture Questionnaire**
- h. Section 3 Requirements
- i. General Conditions for Non-Construction – HUD 5370-C
- j. Instructions to Offerors – HUD 5369
- k. Certifications and Representations of Offerors –HUD 5369-C**
- l. Sample Contract

**Bold** indicates forms required to be completed and returned with **every** bid submission. Failure to provide the indicated forms, may cause your submission to be removed from consideration for award.

**Failure to provide the indicated forms, may cause your submission to be removed from consideration for award.**

**NOTE FOR PROJECTS EXCEEDING \$50,000:** The bidder shall complete and submit his/her bid with the **FORM HUD-2530, “Previous Participation Certificate”**. If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certification by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

4. Sealed Bid Selection Criteria

A firm fixed-price contract (lump sum or unit price) is awarded to the lowest responsible bidder whose bid, conforming with all material terms and conditions of the invitation for bids, is the lowest in price.

## PART TWO

### 1. SCOPE OF WORK

The Housing Authority of Kansas City, Missouri (HAKC) is seeking bids to contract with qualified companies or individuals for **Snow Removal/Sanding/Salting** of parking lots, and other designated areas for eight (8) developments and three (3) Scattered Sites locations within the Kansas City, Missouri area.

**Contract to commence effective October 1, 2019 for an initial two (2) year term.**

### 2. TAXES

HAKC is a sales tax exempt entity. Copies of the sales tax exemption information will be provided to the successful bidder on request. The contractor shall not include in the bid amount, any taxes chargeable against the performance of the work.

### 3. PERMITS

Before starting work, the contractor shall obtain and pay for all necessary permits and licenses whether issued by the State, County, or City, and furnish proof of insurance as required, for all work under these specifications. The contractor shall be held responsible for all violations for any cause in connections with the work.

### 4. CHARACTER OF WORKMEN AND WORK

At all times, the contractor shall be responsible for the conduct and discipline of his employees and/or any subcontractor or persons employed by subcontractors. All workers must have sufficient knowledge, skill and experience to perform the work assigned to them properly.

### 5. ASSIGNMENT OF THE CONTRACT

The contractor shall not enter into any sub-contracts' or assign, transfer, convey or otherwise dispose of the ensuing contract, or any and all of its rights, title or interest, or its power to execute such contract to any person, company, or corporation without the written consent of HAKC.

### 6. PROVISIONS FOR CHANGES OR AMENDMENTS.

If any time HAKC desires to expand, alter, or terminate a portion of the scope of work, as defined herein, the contract will be amended to reflect these changes at costs/deductions acceptable to both parties. HAKC shall provide prior written notice to the contractor for any changes to the scope of work. The contractor shall not hold the Authority responsible for termination due to no fault of HAKC.

## 7. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires, to the greatest extent feasible, opportunities for job training and employment be given to lower income residents of the federally funded area, and contracts for work in connection with the Section 3 covered project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the Section 3 area. Section 3 requires that a recipient/contractor take affirmative steps to give preference to qualified Section 3 area residents and business concerns in providing training, employment and contracting in connection with Section 3 covered projects. As a recipient of HUD funding, HAKC maintains an aggressive Section 3 policy, which emphasizes employment of public housing residents, or other low-income residents on contracts let by the Authority and that affirmative efforts be taken to contract with Section 3 business concerns, which includes resident-owned businesses.

HAKC believes that Section 3 is an effective tool for advancing economic development and self-sufficiency opportunities for public housing residents. HAKC requires the contractor to emphasize resident hiring for new positions required because of this contract. See "Section 3 Program" attachment for additional information on compliance with Section 3 requirement.

## 8. INSURANCE, BONDING AND HOLD HARMLESS AGREEMENT

The contractor must carry insurance with respect to property and operations as set forth below. If applicable, Fidelity Bond requirements may be set prior to contract execution.

### *Liability/Bodily Injury*

#### General:

- a) Three million dollars (\$3,000,000) for all claims arising out of a single occurrence;
- b) Five hundred thousand dollars (\$500,000) for any person in a single accident or occurrence;

#### *Property Damage*

- c) Five hundred thousand dollars (\$500,000) for each occurrence.

#### Auto:

- d) Five hundred thousand dollars (\$500,000) each person
- e) Five hundred thousand dollars (\$500,000) each occurrence

#### *Property Damage*

- f) Five hundred thousand dollars (\$500,000) for each occurrence

#### Worker's Compensation

- g) Policy shall contain limits  $\geq$  the policy limits required by state or federal law, and not less than: Five hundred thousand dollars (\$500,000) per accident

In addition, the contractor agrees that it will indemnify and hold HAKC harmless for any acts, including acts of negligence, on the part of the contractor's agents or employees and from any and all claims on or about the premises resulting from the acts, including acts of negligence, of the contractor, its employees, or agents. The contractor shall investigate and furnish HAKC with full reports on all accidents, claims and potential claims for damages relating to the services provided under this contract, and will cooperate fully with HAKC and its' agents in connection with all claims.

**A bid submission of \$25,000.00 or higher must be accompanied by a negotiable bid guarantee of 5% of the amount of the bid.**

As a “public entity” seeking to enter into a written contract with a “Contractor” for a “public works” project as those terms are **defined in Section 107.170 RSMo.**, estimated to meet or exceed the sum of twenty five thousand (\$25,000.00) dollars, the HAKC must require the Contractor to furnish to HAKC a payment bond with good and sufficient sureties in the amount of **one hundred percent (100%)** of the total cost of the contract and such bond, among other conditions, shall be conditioned for the payment of any and all materials, incorporated, consumed, or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise. As an additional condition of the contract the Contractor shall also furnish to HAKC a performance bond with good and sufficient sureties in the amount of **one hundred per cent (100%)** of the total cost of the contract whereby said surety shall, among other things, insure for the completion of all work that is the subject of the contract. All bonds executed and furnished pursuant to this contract shall be deemed to contain the requirements and conditions set out within Section 107.170 RSMo., regardless of whether the same be set forth in said bond, or of any terms or provisions of the said bond to the contrary notwithstanding.

9. **PAYMENT**

The contractor shall invoice per the firm, fixed prices indicated on the Bid Form. The firm, fixed prices shall be legally binding for the entire term of the contract. When providing services, contractor must obtain the signature of the Property Manager or their designee, on the work order or receipt, to verify the service/work provided is complete, satisfactory and in accordance with the scope of work. Without this signature, payment cannot be processed. **Invoices/ Payment Certification Packets for contracts over \$2,000.00, which require Davis-Bacon wages, must have “Payroll Form WH-347” attached.**

**In addition, HAKC will not process any invoice(s) for payment until the required certified payrolls, citizenship status, Section 3 certifications, and all other evidentiary documentation is received.**

The contractor shall submit all requests for payment under this contract to:

[ap@hakc.org](mailto:ap@hakc.org)  
or Attn: Accounts Payable  
Housing Authority of Kansas City, MO  
920 Main Street, Suite 701  
KC MO 64105

10. **QUESTIONS**

Questions relating to the bid content or procedures for submission must be submitted in writing, by e-mail to:

Karen Pointer, [kpointer@hakc.org](mailto:kpointer@hakc.org) or phone 816-968-4203

## 11. SUBMISSION REQUIREMENTS

Sealed bids must be received at the offices of the Housing Authority of Kansas City, Missouri no later than **2:00 PM, August 30, 2019**. **Bids must be sent to the attention of Karen Pointer, Office of Procurement and Contracts, 920 Main Street, Suite 701, KCMO 64105**

Each response to this Invitation for Bids must include one original and be clearly identified as a response to the **Invitation for Bid No IFB-19-968**. Any submission received later than **2:00 PM, August 30, 2019** will not be accepted. The bidder is also responsible for demonstrating adequate staffing for managing multiple jobs within the periods specified herein.

When the contractor is declared the successful bidder, and at the time the contract is signed, he/she may be asked to certify that:

- a. Contractor is aware that Davis Bacon wages apply
- b. Contractor will, or will not, be required to hire additional staff
- c. Contractor will comply with, and provide documentation of US citizenship or legal status for all his/her employees

Failure to follow the instructions of this IFB may result in the elimination of your bid as being non-responsive. **Failure to sign your completed bid form will be cause for automatic rejection.**

HAKC reserves the right to consider historic information whether gained from the proposal, references, or any other source, in the evaluation process. HAKC also reserves the right to reject all bids/proposals, make no award, multiple or partial awards, and to waive any minor informality or irregularity in the bids/proposals received in response to this solicitation.

## 12. PROPOSED SCHEDULE

Pre Bid Conference: August 20, 2019 at 10:00 a.m.  
Location, starting at: 1301 Vine, KC MO 64106

Bids Due Date: August 30, 2019 by 2:00 p.m.

# Scope of Work

## Housing Authority of Kansas City

### **A. OVERVIEW:**

The Housing of Kansas City, Missouri (HAKC) is seeking bids for snow removal and/or sanding and salting of parking lots, and other designated areas for (9) housing developments and three scattered site locations within the Kansas City, Missouri area. The Contractor(s) shall provide all materials, labor, equipment and all other items required to satisfy the HAKC need for timely and professional snow & ice removal services as described herein. This IFB seeks pricing based on performed service per development on a per storm basis. Refer to the attached development or street layout drawings for identification of Highlighted areas to be serviced. Sanding and salting services may be included with snow removal or may be a separate operation.

### **B. DETAILED REQUIREMENTS:**

- I. During or upon the completion of snow or ice accumulation and at the discretion of the Property Manager the Contractor will be contacted by the HAKC to perform salt/sanding and/or plowing services as the circumstances require.
- II. Contractors are to perform all necessary actions to ensure that assigned parking lots, streets, fire lanes, handicap ramps and parking are serviced in such a manner that they are made safe and operable to vehicles and pedestrians at all times.
- III. The Contractor shall be available for contact on a twenty-four (24) hour day, seven (7) day a week basis, including holidays. Snow removal personnel and equipment shall be at contracted sites for snow removal within two (2) hours after notification by the HAKC.
- IV. The contractor must also provide multiple phone numbers with contact people which can be reached when equipment and/or personnel are called to work. Telephones must be answered twenty-four hours per day.
- V. At the time of notification to report, the Property Manager will direct whether the contractor is to plow snow only, or whether the Contractor is to salt and/or sand. Snow is to be removed down to the bare pavement unless a layer of ice is beneath the snow. In this instance, the Property Manager will direct the contractor to salt and/or sand after plowing the snow. The contractor is responsible for using adequate material for de-icing and sanding to meet this requirement. Call backs due to improper service or inadequate material usage will be the sole financial responsibility of the Contractor and not billable to the HAKC.
- VI. It is required that the contractor complete snow removal and surface treatment of the locations specified within 5 hours of notification.
- VII. Contractor's plow trucks shall be identified with the name of the contractors business on both sides of the truck.

- VIII. All materials must be applied per manufactures directions. Material selection and manufacture directions must be provided when requested.
- IX. The contractor is required to submit a detailed log, on company letter head describing the service that was performed such as:
- The description of the service performed
  - Temperature Hi and Low for service days.
  - Date service was performed
  - Snow/Ice start and stop times and amount of accumulation.
  - Service start and stop times.
  - Official log must be submitted and approved by the HAKC before service is performed.
  - Manger signature indicating that the work performed was done in a professional manner.
  - In order to process an invoice the log and invoice must have the Property Mangers signature and must be submitted together. Copies of the log and invoice will be left with the Property Manager.
- X. In the event of back-to-back runs, the contractor must obtain authorization before starting second run.

**C. PLOWING REQUIRMENTS**

- I. The contractor is responsible for locating fire lanes, handicap ramp entrances, handicap parking, curb cuts, parking lot drains and plant material. Snow shall not be stored in these areas. The storage of snow from a heavy snow should be, if possible, stored in the vicinity to an open drain or on the low side of the parking lot to reduce freezing run off.
- II. Parking spaces should be cleared to the curb and snow pushed in such a way to minimize the use of parking spaces for snow storage.
- III. Snow plow angle should be used in a way to prevent parked vehicles from being blocked by snow.
- IV. Parking lots occupied by vehicles during a snow storm shall have parking lot throughways and driveways cleared to allow for egress of vehicles. All empty parking spots are to be cleared while on site.
- V. The contractor is responsible for identifying sides with parking bumpers and to use caution while removing snow near then to prevent damage.

**D. DRIVER REQUIREMENTS**

- I. The contractor must supply a fully qualified, licensed and responsible driver for all equipment. The contractor must supply the name(s) of the driver(s) for each vehicle upon request.
- II. The HAKC reserves the right to reject and disqualify any driver with a history of poor performance or a driver that exhibits behavior which the HAKC believes will result or has resulted in unacceptable performance. The contractor will be immediately notified and shall make a replacement driver available within two (2) hours.

**D. DAMAGES**

- I. If the contractor or his subcontractor becomes involved in an accident with vehicle, pedestrian or property damage occurs, they must notify the Property Manager immediately.
- II. The contractor is responsible for damages to sod, shrubbery, trees and property which he/she caused while performing the services described in the contract.
- III. The contractor must repair all damage for which he/she is liable as determined by the HAKC.
- IV. Damages that cause a safety hazard must have temporarily repairs made immediately and permanent repairs within 48 hrs unless authorized otherwise.
- V. If repairs are not completed in a satisfactory and timely manner, the HAKC will have the right to make the necessary repairs and recover the cost from the contractor.

**E. MATERIAL SPREADERS:**

Contractor must have sufficient number of acceptable material spreaders capable of evenly distributing free flowing granular materials (such as road salt and/or treated sand).

**F. TEMPERATURE**

Salt should be increased or decreased based on pavement surface temperature and air temperature.

**G. REPORT TO THE PROPERTY MANAGER OR its REPRESENTATIVE IMMEDIATELY:**

- A. Notify the Property Manger when arriving on site.
- B. If equipment breaks down and will cause a delay in service.
- C. If any Facility cannot be plowed and reason why.
- D. If any damages or incidents occur while on the property.
- E. At the completion of service for approval.

## **H. PROPERTY LOCATIONS**

Properties to be serviced are listed below. Please refer to the Highlighted areas on the attached drawings for the specific areas that require service.

### *Developments:*

- Riverview Gardens: 299 Paseo
- Theron B. Watkins: 1301 Vine
- Wayne Minor Court: 1940 E 11<sup>th</sup> Street
- Pemberton Heights: 3710 E 51<sup>st</sup> Street
- Brush Creek Towers: 1800 Emanuel Cleaver Boulevard
- Dunbar Gardens: 3392 Colorado
- West Bluff: 1210 West Bluff
- Guinotte Manor: 1100 E 4<sup>th</sup> Street

### *Scattered Site locations:*

- North Scattered Sites: N. Cherry townhouses
- Central Scattered Sites: 4640 – 4681 Overton (Entire Overton U- shaped road is to be serviced).
- South Scattered Sites: 10774 – 10796 Hillcrest (Entire cul-de-sac).

## Davis Bacon Wage Decision

"General Decision Number: MO20190063 05/10/2019

Superseded General Decision Number: MO20180063

State: Missouri

Construction Type: Residential

County: Jackson County in Missouri.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 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 \$10.60 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 2019. 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](http://www.dol.gov/whd/govcontracts).

Modification Number    Publication Date

0            01/04/2019

1            05/10/2019

\* BRMO0015-023 04/01/2019

	Rates	Fringes
BRICKLAYER.....	\$ 36.04	20.28

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CARP0005-011 05/01/2018

	Rates	Fringes
CARPENTER.....	\$ 29.94	17.10

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ELEC0124-001 08/27/2018

	Rates	Fringes
ELECTRICIAN.....	\$ 39.45	22.51

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ENGI0101-031 04/01/2016

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
Backhoe/Excavator.....	\$ 37.63	15.97
Roller.....	\$ 37.63	15.97

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LABO0264-004 04/01/2014

	Rates	Fringes
LABORER		
Mason Tender - Brick.....	\$ 15.60	7.40

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PAIN0003-021 04/01/2017

	Rates	Fringes
PAINTER		
Brush and Roller.....	\$ 29.34	16.96

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PLUM0008-018 06/01/2018

	Rates	Fringes
PLUMBER.....	\$ 45.34	21.39

ROOF0020-009 06/01/2018

	Rates	Fringes
ROOFER.....	\$ 32.95	18.89

SFMO0314-004 01/01/2017

PORTION OF COUNTY WITHIN A 30 MILE RADIUS OF THE INTERSECTION OF PERSHING & BROADWAY IN KANSAS CITY, MO

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 36.74	19.92

SFMO0669-005 04/01/2017

REMAINDER OF COUNTY

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 34.79	15.84

SHEE0002-028 07/01/2011

	Rates	Fringes
SHEET METAL WORKER (Including HVAC Duct and HVAC System).....	\$ 27.37	8.14

SUMO2011-007 08/11/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 16.00	0.00
LABORER: Common or General.....	\$ 11.00	0.00

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

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](http://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.

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## 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).

**Page 1 of Bid Form  
IFB 19-968**

**Date:** \_\_\_\_\_

**FROM:** \_\_\_\_\_

Hereinafter called the "Bidder"

**TO:** Housing Authority of Kansas City, Missouri  
920 Main Street, Suite 701  
Kansas City, Missouri 64105  
Hereinafter called the "Owner"

The undersigned bidder for \_\_\_\_\_,  
located at \_\_\_\_\_, in accordance with the applicable specifications and related documents prepared by the Housing Authority of Kansas City, Missouri, and having familiarized itself with the local conditions effecting the cost of the Work at the place where the Work is to be done (if applicable) and with the Instructions to Bidders, Plans and Specifications, General and Supplementary Conditions, Special Conditions, Form of Agreement and other Contract Documents, and having examined the location of the proposed Work and considered the availability of labor and materials, hereby proposes and agrees to perform everything required to be performed, and to provide and furnish all labor, materials, necessary tools, expendable equipment, and all utility and transportation service necessary to perform and complete in a workmanlike and timely manner all the Work required for **Snow Removal/Salting/Sanding – HAKC Developments**, in accordance with the scope of work, all in strict conformance with the Instructions to Bidders and other Contract Documents (including Addendum Nos \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, the receipt of which is hereby acknowledged,), for the lump sum(s) hereinafter specified.

**MBE/WBE PARTICIPATION**

The bidder agrees to make every effort to carry out this MBE/WBE policy through award of subcontracts to minority/women's business enterprises to the fullest extent consistent with the efficient performance of this contract.

The undersigned Bidder proposes to perform the work with the following MBE/WBE participation level:

**MBE** Percentage Participation \_\_\_\_\_%

**WBE** Percentage Participation \_\_\_\_\_%

**All pages of this Bid Form must be:  
filled out completely, signed and returned.  
Failure to complete and submit all documents requested in  
this IFB may remove your bid from consideration.**

**Page 2 of Bid Form IFB 19-968  
(Initial Term)**

Respondents will submit a lump-sum price for each service, to be paid on a per development, per snowfall basis. This lump-sum price shall include all labor, materials and equipment required in the scope of work. Respondents are responsible for reviewing the work areas prior to submitting a bid. *More than one contract may be awarded as a result of this solicitation.*

- |  |          |
|--|----------|
| 1. Riverview Gardens – 299 Paseo                       |          |
| a. Snow Removal  | \$ _____ |
| b. Salting/Sanding Only                                | \$ _____ |
| 2. Brush Creek Towers – 1800 Emmanuel Cleaver II       |          |
| a. Snow Removal  | \$ _____ |
| b. Salting/Sanding Only                                | \$ _____ |
| 3. Dunbar Gardens – 3392 Colorado                      |          |
| a. Snow Removal  | \$ _____ |
| b. Salting/Sanding Only                                | \$ _____ |
| 4. TB Watkins/Clymer Center – 1301 Vine (9 lots)       |          |
| a. Snow Removal  | \$ _____ |
| b. Salting/Sanding Only                                | \$ _____ |
| 5. Pemberton Heights – 3710 E. 51 <sup>st</sup> Street |          |
| a. Snow Removal  | \$ _____ |
| b. Salting/Sanding Only                                | \$ _____ |
| 6. West Bluff – 1210 West Bluff                        |          |
| a. Snow Removal  | \$ _____ |
| b. Salting/Sanding Only                                |          |
| 7. Guinotte Manor – 1100 E. 4 <sup>th</sup> Street     |          |
| a. Snow Removal  | \$ _____ |
| b. Salting/Sanding Only                                | \$ _____ |
| 8. Wayne Miner – 1940 E. 11 <sup>th</sup> Street       |          |
| a. Snow Removal  | \$ _____ |
| b. Salting/Sanding Only                                | \$ _____ |
| 9. North Scattered Sites – N. Cherry Duplexes          |          |
| a. Snow Removal  | \$ _____ |
| b. Salting/Sanding Only                                | \$ _____ |
| 10. Central Scattered Sites – 4640 – 4681 Overton      |          |
| a. Snow Removal  | \$ _____ |
| b. Salting/Sanding Only                                | \$ _____ |
| 11. South Scattered Sites – 10774 – 10796 Hillcrest    |          |
| a. Snow Removal  | \$ _____ |
| b. Salting/Sanding Only                                | \$ _____ |

Additional plows, per development, per snowfall      \$ \_\_\_\_\_

***Failure to complete and submit all documents requested in paragraph 11, sections a through e and f may disqualify your bid.***

The authorized Signer of this document certifies that the organization and each of its principals are not suspended or debarred by the Federal government (as defined by 45 CFR 76).

Company: \_\_\_\_\_

Email Contact: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, and Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

**Page 3 of Bid Form IFB 19-968  
(Renewal Term)**

Respondents will submit a lump-sum price for each service, to be paid on a per development, per snowfall basis. This lump-sum price shall include all labor, materials and equipment required in the scope of work. Respondents are responsible for reviewing the work areas prior to submitting a bid. *More than one contract may be awarded as a result of this solicitation.*

- 1. Riverview Gardens – 299 Paseo
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_
  
- 2. Brush Creek Towers – 1800 Emmanuel Cleaver II
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_
  
- 3. Dunbar Gardens – 3392 Colorado
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_
  
- 4. TB Watkins/Clymer Center – 1301 Vine (9 lots)
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_
  
- 5. Pemberton Heights – 3710 E. 51<sup>st</sup> Street
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_
  
- 6. West Bluff – 1210 West Bluff
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_
  
- 7. Guinotte Manor – 1100 E. 4<sup>th</sup> Street
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_
  
- 8. Wayne Miner – 1940 E. 11<sup>th</sup> Street
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_
  
- 9. Chouteau Courts – 1220 Independence Avenue
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_
  
- 10. North Scattered Sites – N. Cherry Duplexes
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_
  
- 11. Central Scattered Sites – 4640 – 4681 Overton
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_
  
- 12. South Scattered Sites – 10774 – 10796 Hillcrest
  - a. Snow Removal \$ \_\_\_\_\_
  - b. Salting/Sanding Only \$ \_\_\_\_\_

Additional plows, per development, per snowfall \$ \_\_\_\_\_

***Failure to complete and submit all documents requested in paragraph 11, sections a through e and f may disqualify your bid.***

The authorized Signer of this document certifies that the organization and each of its principals are not suspended or debarred by the Federal government (as defined by 45 CFR 76).

Company: \_\_\_\_\_

Email Contact: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, and Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

## NON-COLLUSIVE AFFIDAVIT

\_\_\_\_\_ being first duly sworn, deposes and says:

That he is \_\_\_\_\_.  
(Partner, Officer of Firm, Corp., etc.)

The party making the foregoing proposal or bid and attests to the following:

1. That affiant employed no person, corporation, firm association or other organization, either directly or indirectly, to secure the public contract under whose services in connection with the construction of the public building or project or in securing the public contract were in the regular course of their duties for affiant; and
2. That no part of the contract price received by affiant was paid or will be paid to any person, or corporation, firm association, or other organization for soliciting the contract, other than the payment of their normal compensation to persons regularly employed by the affiant who services in connection with the construction of the public building or project were in the regular course of their duties for affiant: and
3. That such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix an overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Housing Authority of Kansas City, Missouri or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

\_\_\_\_\_  
(Name of Firm)

\_\_\_\_\_  
(Signature of Bidder)

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

\_\_\_\_\_  
NOTARY PUBLIC

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

**ATTACHMENT - 1**

**REFERENCE FORM**

**(Duplicate as needed – 3 Required\* for Similar Work)**

For: \_\_\_\_\_

Name of Reference: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Contract Value: \_\_\_\_\_

Dates of Contract: \_\_\_\_\_

Scope of Contract: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**THIS SPACE FOR HAKC USE ONLY**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**\*Failure to provide required references may result in removal from  
consideration for contract award\***

# GENERAL REFERENCES

## BANKS

<i>Name</i>	<i>Address</i>	<i>Phone</i>	<i>Account #</i>

## TRADE

<i>Name</i>	<i>Address</i>	<i>Phone</i>	<i>Account #</i>

## SUBCONTRACTORS

<i>Name</i>	<i>Address</i>	<i>Phone</i>	<i>Account #</i>





## STATEMENT OF QUALIFICATIONS

All questions must be answered in a clear and comprehensive manner. If necessary, questions may be answered on separate attached sheet(s). This document must be notarized by a notary public.

1. Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

2. Name of Owner(s): \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email: \_\_\_\_\_

3. Date Company was Established: \_\_\_\_\_

4. Are you a Sole Proprietorship?: \_\_\_\_\_

Partnership?: \_\_\_\_\_

Joint Venture?: \_\_\_\_\_

Corporation? \_\_\_\_\_

If a corporation, please enclose a copy of corporation papers and corporate seal.

5. How Many years have you been engaged in business under your present firm or trade name? \_\_\_\_\_

6. Give the name and address of any other contract firm under which the owners or partners have operated. Include dates:

NAME	ADDRESS	DATE

7. Current contracts: (Give name, address, phone number, amount of each contract, and appropriate anticipated date of starting and completion.)

NAME	ADDRESS	PHONE	AMOUNT	START	COMPLETE

8. General scope of work performed by your Company, (i.e., general contracting, specialty in any particular trade).

9. Are you minority owned? \_\_\_\_\_. If so, are you certified as an MBE/WBE with the City or State? \_\_\_\_\_. Section 3 certified? \_\_\_\_\_. If yes, please attach a copy of this certification. Resident owned business? \_\_\_\_\_.

10. If so, provide the information below:

NAME	% of OWNERSHIP	RACE	SEX	TITLE

11. Are you in compliance with the Kansas City, Missouri Human Relations Department? \_\_\_\_\_. (Attach a copy of Certificate of Compliance from the City.)

12. City of Kansas City, Missouri occupation License Number: \_\_\_\_\_.  
(Enclose a copy)

13. Have you ever failed to complete any work awarded to you? \_\_\_\_\_ If so, when, where and why?

14. Have you ever defaulted on a contract? \_\_\_\_\_ If so, when, where and why?

15. List the more important projects recently completed by your company, stating the approximate cost for each, and the month and year completed. Include the name, address and phone number of each party.

NAME	ADDRESS	PHONE	AMOUNT	START	COMPLETE

16. List name, address, background and experience of the principal members of your organization, including the officers (if needed, use additional sheets).

NAME	ADDRESS	BACKGROUND EXPERIENCE

17. Has the company ever been party to or involved in any action related to discrimination based upon race, nationality, sex, or religion? \_\_\_\_\_ If so, give full details:

18. Has the company ever caused a lien for material or mechanical work default payment to be placed against owner? \_\_\_\_\_ If so, when, where, why and resolution:

19. Social Security Number: \_\_\_\_\_

20. Federal I.D. Number: \_\_\_\_\_

21. Insurance Company: \_\_\_\_\_

Amount of Insurance: \_\_\_\_\_

Bonding Agent: \_\_\_\_\_

Amount of Bond: \_\_\_\_\_

**Attach a copy of the insurance certificate.**

**(At contract signing a copy of the insurance certificate showing the Housing Authority of Kansas City, Missouri as Additional Insured will be required)**

22. Are you certified by any other agencies? \_\_\_\_\_

Names of Agencies:

23. Sign the following statement to authorize the release of information to the HAKC for the purpose of verifying your references.



**JOINT VENTURE QUESTIONNAIRE**

The following questionnaire must be fully completed and submitted concurrently with the Contractor's Occupation Statement by all Contractors submitted as a joint venture.

Names of Firms involved in the Joint Venture: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

1. Specify the percent of Minority Business Enterprise/Women Business enterprise (MBE/WBE) ownership in terms of profit and loss sharing.
2. Describe the Capital Contributions by each Joint Venturer.
3. Describe the financial controls of the Joint Venture: Who will keep the books, how will expenses to be reimbursed what is the authority of each Joint Venturer to commit to obligate the others?
4. Explain the relationship of ownership, options for ownership or loans between the Joint Venturers.
5. How and by whom will the on-site work be supervised?
6. Who will be responsible for material purchases and how will the purchases be financed?
7. Who will provide the equipment, the estimated cost thereof and how will the equipment be financed?
8. How and from whom will bonding be acquired; insurance; name of company(s) providing bonding and insurance.
9. Describe the experience and business qualifications of each Joint Venturer.
10. Submit copies of any Joint Venture Agreement.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

# **Section 3**

## **Brochure**

## What is Section 3?

It is a means by which HUD fosters local economic development, neighborhood economic improvement, and individual self-sufficiency. Section 3 is the legal basis for providing jobs for residents and awarding contracts to businesses in areas receiving certain types of HUD financial assistance.

Under Section 3 of the HUD Act of 1968, wherever HUD financial assistance is expended for housing or community development, to the greatest extent feasible, economic opportunities will be given to Section 3 residents and businesses in that area.

## Section 3 Policy

Congress established the Section 3 policy to guarantee that the employment and other economic opportunities created by Federal financial assistance for housing and community development programs should, if possible, be directed toward low and very-low income persons, particularly those who are recipients of government assistance for housing.

## Who are Section 3 residents?

Section 3 residents are:

- Public Housing residents
- Low and very-low income persons who live in the metropolitan area or non-metropolitan county where a HUD-assisted project for housing or community development is located.

## Determining Income Levels

- Low income is defined as 80% or below the median income of that area
- Very-low income is defined as 50% or below the median income of that area
- Median incomes can be found using the **American Fact Finder** at [www.factfinder.census.gov/home/saff/main.html](http://www.factfinder.census.gov/home/saff/main.html)

## What is a Section 3 business & what types of economic opportunities are available under Section 3?

A business:

- That is at least 51 percent or more owned by Section 3 residents,
- Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents, or
- That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to a Section 3 business concern

Type of Opportunities:

- Job training
- Employment
- Contracts

Examples include:

<b>Administrative/ Management</b>	<b>Services</b>	<b>Construction</b>
accounting payroll research bookkeeping purchasing word processing	appliance repair florists marketing carpet installation janitorial photography catering landscaping printing computer/information manufacturing transportation	architecture bricklaying carpentry cement/masonry demolition drywall electrical elevator construction engineering fencing heating iron works machine operation painting plastering plumbing surveying tile setting

### **Who will award the economic opportunities?**

Recipients of HUD financial assistance and their contractors and subcontractors are required to provide economic opportunities, to the greatest extent possible, consistent with existing Federal, State, and local laws and regulations.

### **Who receives priority under Section 3?**

For training and employment:

- Persons in public and assisted housing
- Persons in the area where the HUD financial assistance is expended
- Participants in HUD Youthbuild programs
- Homeless persons

For contracting:

Businesses that meet the definition of a **Section 3 business owner**

### **How can businesses find Section 3 residents to work for them?**

Businesses can recruit in the neighborhood and public housing developments to inform residents about available training and job opportunities. Distributing flyers, posting signs, placing ads, and contacting resident organizations and local community development and employment agencies to locate potential workers are effective ways of acquiring jobs.

### **Are recipients, contractors and subcontractors required to provide long-term employment opportunities, and not simply seasonal or temporary employment?**

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very-low income person, including seasonal and temporary employment, as well as long-term jobs.

Employment goals are based on “new hires”, which are defined as full-time employees for permanent, temporary or seasonal employment opportunities.

Recipients and contractors are encouraged to provide long-term employment. At least 30 percent of the permanent, full-time employees hired should be Section 3 residents. After a Section 3 employee has been employed for 3 years, the employee may no longer be counted as a Section 3 employee to meet the 30 percent requirement. This requires recipients to continue hiring Section 3 residents when employment opportunities are available.

### **How can businesses and low income persons find out more about Section 3?**

Contact the Fair Housing and Equal Opportunity representative at your nearest HUD Field Office or the HUD Community Builder.

### **What if it appears an entity is not complying with Section 3?**

There is a complaint process. Section 3 residents, businesses, or a representative for either may file complaints if they believe a violation of Section 3 requirements has occurred where a HUD-funded project is planned or underway. Complaints will be investigated; if appropriate, voluntary resolutions will be sought. A complaint that cannot be resolved voluntarily may result in an administrative hearing.

### **Will HUD require compliance?**

Yes. HUD receives annual reports from recipients, monitors the performance of contractors and investigates complaints. HUD examines employment and contract records for evidence of actions taken to train and employ Section 3 residents and to award contracts to Section 3 businesses.

### **How can businesses or residents pursue an alleged violation of Section 3?**

You can file a written complaint with the **local HUD Field Office** or mail it to:

The Assistant Secretary for Fair Housing and Equal Opportunity  
ATTN: Office of Economic Opportunity  
U.S. Department of housing and Urban Development  
451 Seventh Street, S.W.,  
Room 5100  
Washington, D.C. 20410-2000

A written complaint should contain:

- Name and address of the person filing the complaint
- Name and address of subject of complaint (HUD recipient, contractor or subcontractor)
- Description of acts or omissions in alleged violation of Section 3
- Statement of corrective action sought i.e. training, employment or contracts

## **Section 3 Office (Kansas City, MO)**

### **Section 3 Office:**

The Section 3 Division is located in the Historic Lincoln Building, in the 18th and Vine District, 1601 E. 18th St., Suite 200, Kansas City, MO 64108. The **Section 3 Office** serves to regulate the City's federal requirements related to the **Section 3 HUD Act of 1968**, as amended. That acts intends to foster local and neighborhood economic development and to increase individual self-sufficiency. The Section 3 Office certifies businesses and individuals as Section 3 Business Enterprises or Section 3 Workers.

The City of Kansas City Missouri is responsible for administering more than \$9 million in Section 3 covered Community Development Block Grant (CDBG) funding. In 2006, Kansas City was the subject of a Section 3 Compliance Review, which resulted in a number of findings of noncompliance. Accordingly, Kansas City made Section 3 compliance a priority by

creating an Office of Section 3 Administration with its own Section 3 Coordinator.

This office works closely with the city's Contract Compliance Division, Office of Community Development, and potential Section 3 residents/ contractors. As a result, the city has developed aggressive and innovative strategies for complying with the requirements of Section 3 and has exceeded the numerical goals for contracting and employment opportunities found at 24 CFR § 135.30.

For more information please contact:

Section 3 Office  
816-513-6817  
[smallbiz@kcmo.org](mailto:smallbiz@kcmo.org)

or

Human Relations Department  
Phillip Yelder, Administrative Director  
City Hall, Fourth Floor  
414 E. 12<sup>th</sup> St., Kansas City, MO 64106  
Phone: 816-513-1836  
Fax: 816-513-1805

or

HAKC Section 3 Coordinator  
816-777-2901

#### Sec. 134.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- 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 agree 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.

G. With respect to work performed in connection with section 3 covered Indian housing regulations, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

H. I. **Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents**

- (1) Entering into "first source" hiring agreements with organizations representing Section 3 residents.
- (2) Sponsoring a HUD-certified "step-up" employment and training program for Section 3 residents.
- (3) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other Section 3 residents in the building trades.
- (4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in Sec. 134.34) reside.
- (5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the Section 3 covered project.
- (6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.
- (7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1

or category 2 persons reside or in the neighborhood or service area of the Section 3 covered project.

- (8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside and in the neighborhood or service area in which a Section 3 project is located.

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- (9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.
- (10) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the Section 3 covered project.
- (11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.
- (12) Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.
- (13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers or general circulation, and radio advertising.
- (14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the Section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified Section 3 residents with the training and employment positions that the HA or contractor intends to fill.
- (15) For an HA, employing Section 3 residents directly on either a permanent or a temporary basis to perform work generated by Section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian Housing regulations. See 24 CFR 905.102, and Sec. 905.201(a)(6).)
- (16) Where there are more qualified Section 3 residents than there are positions to be filled, maintaining a file of eligible qualified Section 3 residents for future employment positions.
- (17) Undertaking job counseling, education and related programs in association with local educational institutions.
- (18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of Section 3 residents previously hired for employment opportunities.
- (19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other Section 3 residents to be trained or employed on the Section 3 covered assistance.
- (20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

## **II. Examples of Efforts To Award Contracts to Section 3 Business Concerns**

- (1) Utilizing procurement procedures for Section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).
- (2) In determining the responsibility of potential contractors, consider their record of Section 3 compliance as evidenced by past actions and their current plans for the pending contract.
- (3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids or proposals for contracts for work in connection with Section 3 covered assistance.
- (4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.
- (5) For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.
- (6) Providing written notice to all known Section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the Section 3 business concerns to respond to the bid invitations or request for proposals.
- (7) Following up with Section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.
- (8) Coordinating pre-bid meetings at which Section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.
- (9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.  
[[Page 706]]
- (10) Advising Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- (11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.
- (12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by Section 3 business concerns.
- (13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.
- (14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
- (15) Developing a list of eligible Section 3 business concerns.
- (16) For Has, participating in the "Contracting with Resident-Owned Business" program provided under 24 CFR part 963.

- (17) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.
- (18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to Section 3 business concerns.
- (19) Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.
- (20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.
- (21) Actively supporting joint ventures with Section 3 business concerns.
- (22) Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

### **III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns**

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the “contracting party”) for implementing the Section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

- (1) Small Purchase Procedures. For Section 3 covered contracts aggregating no more than \$25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.
  - (i) Solicitation. (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:
    - the Section 3 covered contract to be awarded with sufficient specificity;
    - the time within which quotations must be submitted; and
    - the information that must be submitted with each quotation.(B) If the method described in paragraph (i) (A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when is has been unable to obtain at least three quotations.
  - (ii) Award. (A) Where the Section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation. (B) Where the Section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be

considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for Section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) Procurement by sealed bids (Invitation for Bids). Preference in the award of Section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

[[Page 707]]

- (i) Bids shall be solicited from all businesses (Section 3 business concerns, and non-Section 3 business concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid --
  - (A) Is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and
  - (B) Is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

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X = lesser of:	
When the lowest responsive bid is less than \$100,000.	10% of that bid or \$9,000
When the lowest responsive bid is:	
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of that bid, or \$25,000
At least \$500,000, but less than \$1 million	5% of that bid, or \$40,000
At least \$1 million, but less than \$2 million	4% of that bid, or \$60,000
At least \$2 million, but less than \$4 million	3% of that bid, or \$80,000
At least \$4 million, but less than \$7 million	2% of that bid, or \$105,000
\$7 million or more -----	1 ½ % of the lowest responsive bid, with no dollar limit.

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(ii) If no responsive bid by a Section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)). (i) For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CRF 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance ) to be used to rate proposals.

(ii) One of the evaluation factors shall address both the preference for Section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (Section 3 strategy), as disclosed in proposals submitted by all business concerns

(Section 3 and non-Section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for Section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the Section 3 strategy), the FRP shall require the disclosure of the contractor's Section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable Section 3 strategy. The contract award shall be made to the responsible firm (either Section 3 or non-Section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

# General Conditions for Non-Construction U.S. Department of Housing and Urban

## Contracts Development

Office of Public and Indian Housing

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

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 3/31/2020)

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:**

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

1) **Non-construction contracts** (*without* maintenance) contract as changed.

**greater than \$105,000 - use Section I;** (e) No services for which an additional cost or fee will be

2) **Maintenance contracts** (including nonroutine charged by the Contractor shall be furnished without the prior written maintenance as defined at 24 CFR 968.105) **greater than** consent of the HA.

**\$2,000 but not more than \$150,000 - use Section II;** and

3) **Maintenance contracts** (including nonroutine **3. Termination for Convenience and Default**

maintenance), **greater than \$150,000 – use Sections I**

**and II.** (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

**Section I - Clauses for All Non-Construction Contracts greater than \$150,000**

#### 1. Definitions

The following definitions are applicable to this contract:

(a) "Authority or Housing Authority (HA)" means the Housing Authority. this contract, whether completed or in process.

(b) "Contract" means the contract entered into between the (b) If the termination is for the convenience of the HA, the HA

shall be liable only for payment for services rendered 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 before the effective date of the termination.

(c) If the termination is due to the failure of the Contractor to Order, or other modification. fulfill its obligations under the contract (default), the HA may

(c) "Contractor" means the person or other entity entering into (i) require the Contractor to deliver to it, in the manner the contract with the Authority to perform all of the work and to the extent directed by the HA, any work as required under the contract. 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

(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. be, of amounts owed to the HA by the Contractor.

**2. Changes** (d) If, after termination for failure to fulfill contract obligations

(a) The HA may at any time, by written order, and without (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

notice to the sureties, if any, make changes within the titled to payment as described in paragraph (b) above.

general scope of this contract in the services to be performed or supplies to be delivered. (e) Any disputes with regard to this clause are expressly made

(b) If any such change causes an increase or decrease in the subject to the terms of clause titled Disputes herein.

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

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

(a) The HA, HUD, or Comptroller General of the United States, affected terms, and shall modify the contract accordingly.

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.

(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

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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, 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.

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

#### **9. Assignment of Contract**

performance of this contract; or, 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.

(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)**

##### **10. Certificate and Release**

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.

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.

##### **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.

##### **11. Organizational Conflicts of Interest**

(a) The Contractor warrants that to the best of its knowledge

##### **7. Disputes**

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 (a) All disputes arising under or relating to this contract, *except* are such that:

*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*

(i) Award of the contract may result in an unfair competitive advantage; or

(ii) The Contractor's objectivity in performing the contract clause.

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

(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. of the HA.

(d) Provided the Contractor has (i) given the notice within the (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

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 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.

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.

##### **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

**8. Contract Termination; Debarment** days so as to not impede the work of the Contractor. Any

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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 "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 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 government.

later date if extended by the HA. "Officer or employee of an agency" includes the following

(c) Failure by the Contractor to proceed with reasonable individuals who are employed by an agency:

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.

(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 13. **Interest of Members of Congress** 202, title 18, U.S.C.; and, 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.

(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 **14. Interest of Members, Officers, or Employees and Former** with respect to **Members, Officers, or Employees** expenditures specifically permitted by other Federal law.

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 "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.

project, shall, during his or her tenure, or for one year "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 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 person for 130 working days.

Federal actions: "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.

(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 (b) Prohibition.

modification of any Federal contract, grant, loan, or (i) Section 1352 of title 31, U.S.C. provides in part that no cooperative agreement. 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

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.

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:

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(1) Agency and legislative liaison by Own 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 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 consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of any covered Federal action: clause, "professional and technical services" shall be limited to advice and analysis directly applying any (1) Discussing with an agency (including professional or individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service technical discipline.

(c) Requirements imposed by or pursuant to law capabilities; and, 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

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use. documents.

(d) The following agency and legislative liaison activities are permitted where they are prior to (d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this formal solicitation of any covered Federal action: section are permitted under this clause.

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in initiation of a covered Federal action; 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

(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 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 subsequent amendments. sale, and service capabilities; and

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products permitted under this clause. or services for an agency's use.

(2) Professional and technical services. (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

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of- payment prohibited by this clause.

(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

(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 receiving that Federal action.

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 (ii) Any reasonable payment to a person, FAR Part 31 or the

relevant OMB Circulars. other than an officer or employee of a

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**16. Equal Employment Opportunity** 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.

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. **17. Dissemination or Disclosure of Information**

(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. 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**

including apprenticeship.

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.

(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,

**19. Other Contractors**

or national origin.

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.

(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, **20.**

**Liens**

as amended, and the rules, regulations, and orders of the Secretary of Labor. The Contractor is prohibited from placing a lien on HA's

property. This prohibition shall apply to (g) The Contractor shall furnish all information and reports all subcontractors.

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

**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 rules, regulations, and orders. 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 HUDassisted

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

(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 HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's otherwise provided by law.

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 (i) The Contractor shall include the terms and conditions of Part 135 regulations.

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 (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  
Section I - Page 5 of 6 form HUD-5370-C (01/2014)

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.

# General Conditions for Non-Construction U.S. Department of Housing and Urban

## Contracts Development

Office of Public and Indian Housing

Section II – (With Maintenance Work) Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 3/31/2020)

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

in the classification under this Contract from the first day on which work is performed in the classification.

### 2. Withholding of funds

1) Non-construction contracts (*without* maintenance) greater The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, than \$100,000 - use Section I;

2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) 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.

so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

### Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

#### 1. Minimum Wages

(a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics

performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily

#### 3. Records

(a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:

- (i) Name, address and Social Security Number;
- (ii) Correct work classification or classifications;
- (iii) Hourly rate or rates of monetary wages paid;
- (iv) Rate or rates of any fringe benefits provided;
- (v) Number of daily and weekly hours worked;
- (vi) Gross wages earned;
- (vii) Any deductions made; and
- (viii) Actual wages paid.

seen by the workers.

(b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

(b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:

(1) The work to be performed by the classification required is not performed by a classification in the **4. Apprentices wage determination; and Trainees**

(2) The classification is utilized in the area by the industry; and (a) Apprentices and trainees will be permitted to work at less

than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:

(i)

(3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination. A bona fide apprenticeship program registered

with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

(ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work Section II - Page 1 of 3 form HUD-5370-C (1/2014)

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A trainee program which has received prior approval, evidenced by formal certification by the

(ii)

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be

(ii) U.S. Department of Labor, ETA; or

(iii) A training/trainee program that has received prior approval by HUD.

(b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable (iii) classification.

(c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.

(d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. final.

(e) In the event OATELS, a state apprenticeship agency (b) Disputes arising out of the labor standards provisions of recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of

Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their **5. Disputes concerning labor standards** representatives.

(a) Disputes arising out of the labor standards provisions **6. Contract Work Hours and Safety Standards Act** contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

(a) **Overtime requirements.** No Contractor or subcontractor subcontractor(s).

contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of

(i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set 40 hours in such workweek.

(b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any

liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

**7. Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

**8. Non-Federal Prevailing Wage Rates**

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Section II - Page 3 of 3 form HUD-5370-C (1/2014)

# Instructions to Offerors

## Non-Construction

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### 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

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

### Office of Public and Indian Housing

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- (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.
- (a) 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.

### 3. 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 20<sup>th</sup> of the month must have been mailed by the 15<sup>th</sup>);
  - (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or by 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 the 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 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.
- ### 4. 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.

#### **5. 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.

#### **6. 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.

(As described in the HA's IFB/RFP)

# 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/offerors 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

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

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)

- |   |   |
|---|---|
| <input type="checkbox"/> Black Americans    | <input type="checkbox"/> Asian Pacific Americans  |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans   |
| <input type="checkbox"/> Native Americans   | <input type="checkbox"/> 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):

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**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.

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Signature & Date:

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Typed or Printed Name:

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Title:

**HUD-5369-C (8/93)**

Previous edition is obsolete page 2 of 2 ref. Handbook 7460.8

**THE FOLLOWING  
DOCUMENT  
IS A  
SAMPLE  
CONTRACT**

# SERVICE AGREEMENT

## Snow Removal/Sanding/Salting Services

**Contractor:** \_\_\_\_\_

**Agreement No.** \_\_\_\_\_

This **Agreement** is made this \_\_\_day of \_\_\_\_\_, 2019 by and between, the **Housing Authority of Kansas City, Missouri, (HAKC)**, a Missouri Municipal Corporation, created pursuant to RSMo. §99.040, having its principal place of business at **920 Main Street, Suite 701, Kansas City, Missouri, 64105**, and \_\_\_\_\_ having its principal place of business at \_\_\_\_\_.

### 1. **DEFINITIONS**

- 1.1 "HAKC" means the Housing Authority of Kansas City, Missouri, its Receiver, Special Master, Board, Commissioners, Directors, Managers and employees.
- 1.2 "HUD" means the U.S. Department of Housing and Urban Development.
- 1.3 "**Agreement**" means this **SERVICE AGREEMENT** dated \_\_\_\_\_ entered into between HAKC and Contractor. This **Agreement** also includes the following component parts/documents: 1) the **Proposal submitted by the Contractor**, in response to the solicitation, 2) the **Scope of Work**, 3) the Specifications, if any and 4) Form HUD 5369-C. "Agreement" also includes any written and signed changes to any of these documents, by Addendum, Change Order, or other written and signed modification.
- 1.4 "Contractor" means the person or other entity entering into this **Agreement** with HAKC to perform all of the Work required under this **Agreement**.
- 1.5 "Contracting Officer" means the authorized person who signed this **Agreement** for HAKC.
- 1.6 "Day" means a calendar day unless otherwise indicated.
- 1.7 "Default" means the failure of the Contractor's to fulfill the contract obligations.
- 1.8 "Services" means the promises, tasks, responsibilities, and duties that Contractor promises to perform and deliver to HAKC as set forth in this **Agreement** and specifically described in the **Invitation for Bid** and further described in Part two, **Scope of Work** and the **Contractor's Written Bid**.
- 1.9 "Work" means the Services performed by the Contractor pursuant to this **Agreement**.

### 2. **TERM OF AGREEMENT**

- 2.1 The term of this **Agreement** shall begin as of the date of the **Notice to Proceed and shall be for a period of** \_\_\_\_\_

### **3. SERVICES**

- 3.1** Pursuant to the terms of this **Agreement**, the Contractor shall perform the services as described in the **Scope of Work**, including all written amendments to the **Scope of Work** and the **Contractor's Written Proposal** incorporated herein by this reference.
- 3.2** Unless otherwise specified in the **Scope of Work**, the Contractor shall furnish all tools, material, labor, and equipment to perform the required services to be delivered under this **Agreement**. All work is to be completed free of defects in material, workmanship, and performed according to the **Scope of Work** and specifications, if any.
- 3.3** The Contractor is acting at all times as an independent contractor.
- 3.4** The Contractor shall exercise sound business judgment in performing under the terms of this **Agreement** and shall comply with all applicable federal laws, state laws, HUD regulations, and HAKC directives, and policies.

### **4. PRICING, BILLING AND PAYMENT**

- 4.1** HAKC agrees to pay, and Contractor agrees to accept as compensation for the performance of the Services and in accordance with the attached schedule of prices, a not-to-exceed amount of \_\_\_\_\_ **Dollars and 00/00, (\$0.00)**.
- 4.2** For purposes of billing for the performance of the Services performed under this **Agreement**, the Contractor shall submit an original and two (2) copies of each request for payment to HAKC's Director of Procurement. All requests for payment must contain the following information: Contractor's name, address, telephone number, and tax identification number, this **Agreement** number, description of the services performed and the signature of an authorized company official.
- 4.3** HAKC shall pay the Contractor within thirty (30) calendar days following receipt of the request(s) for payment, acceptance of the work, and all required documentation (i.e. all requests for payment must be signed by the Project Manager certifying acceptance of the work, payroll certifications for Davis Bacon projects, etc.).

### **5.0 PERSONNEL**

- 5.1** The contact person representing the Contractor shall be \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_. All communication between HAKC and the Contractor's personnel on the project shall be through **Mr.**\_\_\_\_\_. The Contractor shall not replace this contact person without the agreement of HAKC that the substitute person(s) is/are of equal or greater skill and experience. The contact person representing the HAKC shall be **Dale Williamson, Project Manager. Mr. Williamson can be reached at 816-000-0000.**
- 5.2** The Contractor shall be responsible for the conduct and discipline of his employees. Each person assigned to perform services under this **Agreement** must have sufficient knowledge, skill, and experience to perform properly the work assigned to them. Any employee, who does not perform his work in a skillful manner, appears to be incompetent, or acts in a disorderly or intemperate manner, shall be removed from the job by the Contractor's point of contact at the written request of HAKC. Such removal is not cause for an extension of time in which to complete the work.

5.3 The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by the Department of Labor Regulations found at 29 CFR 5.

5.4 The Contractor agrees to provide for HAKC's approval a list of subcontractors, if any, that will be used to perform the work. Said list of subcontractors shall be delivered to the HAKC prior to execution of this **Agreement**. However, regardless of HAKC's prior approval, Contractor shall be responsible for all actions and/or inactions by said subcontractors as they pertain to the Services performed under the terms of this **Agreement**.

6. **RECORD KEEPING**

The Contractor shall maintain at least one copy of any and all written changes, modifications, or amendments to the Scope of Work, the specifications, or this Agreement that may be agreed to by the parties. These documents shall be made available to the HAKC for inspection and copying upon the request of the HAKC.

7. **INSPECTION; ACCEPTANCE; LIENS**

7.1 The HAKC shall review, require correction, if necessary, and accept the work produced by the Contractor so long as the work is performed consistent with the terms of this **Agreement**. Such review(s) shall be carried out within thirty, (30), business days after submission of documents for approval so as not to impede the work of the Contractor.

7.2 The Contractor shall make any required corrections promptly and return a revised copy of the work to the HAKC within seven (7) calendar days of notification or a later date, if extended by the HAKC.

7.3 Failure by the Contractor to proceed with reasonable promptness and/or to make necessary corrections shall constitute a default under the terms of this **Agreement**.

7.4 The contractor is prohibited from placing a lien on the HAKC's property. This prohibition shall apply to all subcontractors.

8. **CHANGES**

8.1 HAKC may at any time, by written order agreed to by the Contractor, make changes within the **Scope of Work** of this **Agreement** in the services to be performed.

8.2 If any such change causes an increase or decrease in the prices charged, the maximum amount of the **Agreement**, or the time required for performance of any part of the work under this **Agreement**, whether or not changed by the order, or otherwise affects the conditions of this **Agreement**, the HAKC shall make an equitable adjustment in the maximum amount, the price(s), the delivery schedule, or other affected terms and shall modify the **Agreement** accordingly.

8.3 The Contractor must assert its rights to an equitable adjustment under this provision within thirty, (30) days from the date of receipt of the written order. However, if the HAKC decides that the facts justify it, the HAKC may receive and act upon a proposal submitted before final payment of the **Agreement**.

8.4 Failure to agree to any adjustment shall constitute a dispute under ¶12.0 Disputes. However, nothing in this provision shall excuse the Contractor from proceeding with the **Agreement**, as changed.

8.5 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 HAKC.

## 9. **CONTRACT MODIFICATIONS**

9.1 Only the Contracting Officer has authority to modify any term or condition of this **Agreement** on behalf of the HAKC. Any modifications shall be agreed to by the parties in writing and signed by the Contracting Officer. The Contractor specifically agrees and understands that no verbal modifications are allowed to this **Agreement**.

9.2 The HAKC may modify the **Agreement** unilaterally under the following circumstances: (1) pursuant to a specific authorization as stated in the **Agreement** (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in HAKC's address). All other modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

## 10. **DISSEMINATION OF INFORMATION; RETENTION OF RECORDS**

10.1 The Contractor hereby agrees that no information or material shall be disseminated or disclosed to the general public, the news media or any person or organization, without the prior expressed written approval of the HAKC.

10.2 The HAKC, HUD, or the Comptroller General of the United States, or any of their duly authorized representatives shall, for three (3) years after final payment under this **Agreement**, 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 **Agreement** for the purpose of performing audits, examinations, excerpts, and transcriptions.

10.3 The Contractor agrees to include in first-tier subcontracts a provision substantially the same as ¶10.2. "Subcontract", as used in this provision, means an agreement entered into between the Contractor and another entity to perform a portion of the Work required under the terms of this **Agreement**, excluding any such subcontracts.

a. The periods of access and examination in ¶10.2 and ¶10.3 for records relating to (1) appeals under ¶12.0 Disputes, (2) litigation or settlement of claims arising from the performance of services required under the terms of this **Agreement**, or (3) costs and expenses of this **Agreement** to which the HAKC, HUD, or the Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

## 11. **DISPUTES**

11.1 All disputes arising under or relating to this **Agreement**, including any claims for damages for the alleged breach thereof, which are not disposed of by agreement, shall be resolved under this provision.

- 11.2** All claims by the Contractor shall be made in writing and submitted to the HAKC. A claim by the HAKC against the Contractor shall be made by a written decision by the HAKC.
- 11.3** The HAKC shall, with reasonable promptness, but in no event in more than thirty, (30) days, render a decision concerning any claim hereunder. The Contractor has thirty days, (30), after receipt of the HAKC decision to notify the HAKC in writing that it takes exception to such decision. After that time period, the decision shall be final and conclusive.
- 11.4** Provided the Contractor has; 1.) Given the notice within the time stated in 2.) Accepted its claim relating to such decision from the final release, and 3.) Brought suit against the HAKC not later than one (1) year after receipt of final payment, or if final payment has not been made, not later than one (1) year after the Contractor has had a reasonable time to respond to a written request by the HAKC that it submit a final voucher and release, whichever is earlier, then HAKC's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- 11.5** The Contractor shall proceed diligently with the performance of the services required under this **Agreement**, pending final resolution of any request for relief, claim, appeal, or action arising under the **Agreement**, and shall comply with the decision of the HAKC.

## **12. TERMINATION AND DEFAULT**

- 12.1** This **Agreement** will terminate immediately if the Contractor becomes ineligible to contract with HUD, under applicable laws and regulations.
- 12.2** The HAKC may terminate this **Agreement** in whole, or in part, at the convenience of the HAKC or for the failure of the Contractor to fulfill its obligations by default. The HAKC shall terminate this **Agreement** by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected, unless the notice directs otherwise, and deliver to the HAKC all information, reports, papers, and other materials accumulated or generated in performing this **Agreement**, whether completed or in process.
- 12.3** If the termination is for the convenience of the HAKC, and is in whole, the HAKC shall be liable only for payment for services rendered before the effective date of the termination. If the termination is in part, the HAKC shall be liable for payment for services rendered before termination, and compensation for the remainder of the **Agreement** not terminated shall be equitably adjusted as agreed to by the parties at a rate not to exceed the ratio of the remaining services to the original **Agreement**.
- 12.4** If the termination is due to the failure of the Contractor to perform its obligations under this **Agreement** by default, the HAKC may require the Contractor to deliver, in the manner and to the extent directed by the HAKC, any work as described in ¶12.2(2). The Contractor's compensation shall be determined in accordance with ¶8.0 CHANGES TO SCOPE OF WORK. The HAKC may 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 HAKC in excess of the **Agreement** balance. HAKC may withhold payments to the

Contractor, for the purposes of set-off or partial payment, as the case may be, of amounts owed to the HAKC by the Contractor.

- 12.5** If, after termination for failure to fulfill its obligations by default, it is determined that the Contractor had not failed, said termination shall be deemed to have been for the convenience of the HAKC, and the Contractor shall be entitled to payment as described in ¶ 12.3.
- 12.6** Upon the termination of this **Agreement** for any reason, the Contractor shall be obligated to cooperate with the HAKC so that a smooth transition of responsibilities, including immediate delivery to the HAKC, or its designee, all files, papers and records related to the Contractor's performance of this **Agreement**.
- 12.7** Any disputes with regard to this clause are expressly subject to the terms of ¶12.0 Disputes.

**13. ORGANIZATIONAL CONFLICTS OF INTEREST**

- 13.1** 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, defined as a situation in which the nature of work under this Agreement and a the Contractor's organizational, financial, contractual or other interests are such that:

**14.1.1** Award of the **Agreement** may result in an unfair competitive advantage; or

**14.1.2** The Contractor's objectivity in performing the services required under the **Agreement** may be impaired.

- 13.2** The Contractor agrees that after award of this **Agreement**, it discovers an organizational conflict of interest the Contractor 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 HAKC may, however, terminate the **Agreement** for the convenience of the HAKC if it deems such termination is in the best interest of the HAKC.
- 13.3** In the event the Contractor was aware of an organizational conflict of interest before the award of this **Agreement** and intentionally did not disclose the conflict to the Contracting Officer, then HAKC may terminate this **Agreement** for default.
- 13.4** The provisions of these paragraphs shall be included in all subcontracts and consulting agreements, if any, wherein the work to be performed is similar to the service provided by the Contractor. The Contractor shall include in all such subcontracts and consulting agreements, any and all provisions necessary to eliminate or neutralize conflicts of interests.

**14. INDEMNIFY AND HOLD HARMLESS**

- 14.1** The Contractor agrees to indemnify and hold harmless the HAKC, it's directors, commissioners, officers, managers, and employees against any and all claims, demands, losses and liabilities (including attorney's fees, costs and expenses of defending against such claims) arising out of; 1.) Any act or omission by or on behalf of the Contractor outside the scope of this **Agreement**, and 2) Any act or omission determined to constitute negligence, recklessness, or willful misconduct by the Contractor or the Contractor's

agents, employees, representatives, and assigns in the performance of this **Agreement**.

**15. FORCE MAJEURE**

**15.1** Either party may be excused for any delays or default resulting from circumstances beyond its control, including without limitation, riot, war, fire, act of God or other casualty beyond its control.

**16. STANDARD OF CONDUCT; QUALIFICATIONS**

**16.1** The provisions of 24 Code of Federal Regulations 85 are applicable to this **Agreement** and govern the Contractor's standard of conduct and qualifications. A copy of this regulation is available upon request.

**17. ASSIGNMENT OF AGREEMENT**

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

**18. INTEREST OF MEMBERS OF CONGRESS**

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

**19. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES**

**19.1** No member, officer, or employee of the HAKC, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HAKC 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 (1) year thereafter, have any interest, direct or indirect, in this **Agreement** or the proceeds thereof.

**20. NONDISCRIMINATION**

**20.1** The Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The Contractor shall take affirmative action in this regard, posting such notice in conspicuous places and placing such notice in all solicitations or advertisements for employees. The Contractor shall advise each labor union with which it has an agreement, of the Contractor's commitment to nondiscrimination.

**21. SECTION 3**

**21.1** The work to be performed under this contract is subject to the requirement 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 to 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 housing assistance.

- 21.2** The parties to this contract agree to comply with HUD 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.
- 21.3** 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 a 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.
- 21.4** 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 the 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.
- 21.5** The Contractor will certify that any vacant employment positions, including training positions will be 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.
- 21.6** Noncompliance with HUD regulations in 24 CFR Part 135 may result in sanctions; termination of this contract for default and debarment or suspension from future HUD funded contracts.

## **22. OTHER REGULATORY REQUIREMENTS**

- 22.1** The following requirements (full text copies available from the HAKC contracting office) are incorporated by HAKC:
1. Executive Order 11246, Equal Employment Opportunity and 41 CFR 60 for contracts in excess of \$10,000.00
  2. Anti-Kickback Act 18 USC 874 and 29 CFR 3.

## **23. NOTICES**

- 23.1** Any notice, payment, demand or communication required or permitted to be given by any provision of this **Agreement** must be in writing and will be deemed to have been given when delivered, by whatever means, to the party designated to receive such notice, or on the date following the day sent by overnight courier, or on the third business day after the same is sent by United States Postal Service, postage and charges prepaid, directed to the addresses noted above, or to such other or additional addresses as either party might

designate by written notice to the other party. Electronic facsimile transmission is permitted, but only if a signed original is concurrently mailed first class in the United States postal service as provided herein.

## **24. COUNTERPARTS**

**24.1** This **Agreement** may be executed at different times and in any number of counterparts, each of which will be deemed an original document, but all of which will constitute a single document. This document will not be binding upon or constitute evidence of a contract between the parties until such time as a counterpart of this document has been executed, by both parties and a copy thereof delivered to the other party to this **Agreement**.

## **25. LIABILITY AND INSURANCE**

### **25.1 GENERAL COMPREHENSIVE LIABILITY**

The Contractor, at the Contractor's sole cost and expense, agrees to procure and maintain during the term of this **Agreement** or any extension thereof, General Comprehensive Liability Insurance naming the HAKC as an additional insured and certificate holder and protecting the HAKC from liability judgments, suits and claims, including, but not limited to, suits for bodily injury, personal injury, including false arrest, libel, slander, invasion of privacy and property damage arising out of the Contractor's provision of services under this **Agreement**. The Contractor shall provide the HAKC with a copy of the declaration page of the policy demonstrating that HAKC constitutes an additional insured at the time of execution of this **Agreement**.

For general liability coverage, the contractor shall provide the HAKC with a Certificate of Insurance that names the HAKC as an additional insured and shall carry the following insurance with respect to property and its operations.

#### Liability/Bodily Injury:

- a). Three million dollars (\$3,000,000.00) for all claims arising out of a single occurrence;
- b). Four hundred thousand dollars (\$500,000.00) for any person in a single accident or occurrence;

#### Property Damage:

- c). Five hundred thousand dollars (\$500,000.00) for each occurrence

## **26.2 AUTOMOBILE LIABILITY POLICY LIMITS**

The Contractor, at the Contractor's sole cost and expense, agrees to procure and maintain during the term of this **Agreement** or any extension thereof, Automobile Liability insurance. The required Automobile Insurance shall contain policy limits of not less than the following:

#### Bodily Injury:

- \$500,000 each person,
- \$500,000 each occurrence; and,

#### Property Damage:

\$500,000 each occurrence.

### **26.3 WORKER'S COMPENSATION COVERAGE**

The Contractor, at the Contractor's sole cost and expense, agrees to procure and maintain during the term of this **Agreement** or any extension thereof, Worker's Compensation Insurance. The Worker's Compensation Insurance shall contain policy limits equal to, or greater than, the policy limits required by state or federal law and not less than:

\$500,000 per accident;  
\$100,000 disease, policy limit;

### **26.4 NON-WAIVER OF SOVEREIGN IMMUNITY**

The HAKC is a public entity and political subdivision of the State of Missouri and is protected by the doctrine of sovereign immunity pursuant to Section 537.600 RSMo. The foregoing provisions requiring insurance coverage shall not be deemed a relinquishment or waiver of any kind of limitations of liability provided or available to HAKC under applicable state governmental immunities law. The purpose of this insurance does not include coverage for any liability or suit for damages, which is barred by the doctrines of sovereign or governmental immunity by whatever name, as set forth in RSMo 537.600, et. seq. This policy is not intended to act as a waiver of any defense available to the insured by statute or a common-law.

### **27. APPLICABLE LAW/RECEIVERSHIP COURT JURISDICTION**

**27.1** The laws of the State of Missouri and any applicable Federal statutes and regulations shall govern this **Agreement**. During the period of time that the HAKC operates under the supervision of the United States District Court, Western District of Missouri (Receivership Court) the Receivership Court shall have exclusive jurisdiction over all causes of action asserted by or against the HAKC which shall arise out of or relate to this **Agreement**. Once the HAKC is no longer operating under the supervision of the Receivership Court, then the parties agree that a court of competent jurisdiction in Jackson County, Missouri shall have exclusive jurisdiction over all causes of action asserted by or against the HAKC, which arise out of or relate to this **Agreement**.

### **28. ENTIRE AGREEMENT; SEVERABILITY**

**28.1** This **Agreement**, and the materials incorporated herein by reference, including any exhibits and attachments, constitutes the entire agreement between the parties. There are no agreements, understandings, warranties or representations between the parties except as set forth herein. No change or modification of this **Agreement** shall be valid unless in writing and signed by the Contracting Officer of the HAKC. If any provision of this **Agreement** is determined to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible which is legal, valid and enforceable.

### **29. INCORPORATION OF HUD FORM 5369-C and 5370-C**

**29.1** This **Agreement** shall also include HUD Forms 5369-C and 5370-C, attached hereto and incorporated herein by reference. In the event of a contradiction or inconsistency between any term or provision of this **Agreement** (or any of its component parts) and HUD Form

5369-C and 5370-C, the parties agree that HUD Form 5369-C and 5370-C, shall govern and control with respect to the subject term or provision.

**IN WITNESS WHEREOF, EACH PARTY HAS SIGNED OR CAUSED THIS INSTRUMENT TO BE SIGNED ON ITS BEHALF BY ITS DULY AUTHORIZED AGENT.**

**HOUSING AUTHORITY OF  
KANSAS CITY, MISSOURI**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: **Edwin T. Lowndes**

Title: **Executive Director**

Address: 920 Main Street, Suite 701  
Kansas City, Missouri 64105

CONTRACTOR: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Federal Tax I.D. Number: \_\_\_\_\_ - \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_