

**Request for Proposal**  
**No. RFP 20-1013**  
**Retail Lock Box Services**

**Issued By:**

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

**August 21, 2020**

**REQUEST FOR PROPOSALS**  
**RFP 20-1013**

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

**REQUEST DATE: August 21, 2020**

**THIS IS NOT AN ORDER**

**Proposals Due By:**

September 14, 2020 by 4:00 pm CST

Jeff Dunn

Contract Specialist

[jdunn@hakc.org](mailto:jdunn@hakc.org)

**Pre-Bid Conference:**

There will not be a pre-bid conference

Ph. (816) 968-4203

Fax (816) 285-4203

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## I. INTRODUCTION

A. This is a request for proposal (RFP) and is not an offer to contract. Instead, this RFP seeks to establish a common framework within which a contract may be reached between the Proposer and the Housing Authority of Kansas City, Missouri (HAKC). Further, this RFP and your firm's response will be the basis for and be incorporated into any legal contract between HAKC and the successful bidder. Proposals submitted in response to the RFP shall represent a firm offer to contract with the HAKC on the terms and conditions described in such proposals. Each representation of fact and promise of future performance therein will be incorporated into the contract as a warranty or covenant,

B. **Mission Statement of the Housing Authority of Kansas City:** The Mission of the Housing Authority of Kansas City, Missouri (HAKC) is to develop, rehabilitate and manage decent, safe and sanitary quality affordable housing in a manner that promotes equal opportunity, fair housing and the deconcentrating of race and poverty. In accomplishing this goal, HAKC is committed to maintaining its developments as affordable housing assets that can meet the needs of low-income households in the long term and serve as viable community resources promoting economic independence and self-sufficiency for its residents.

The Housing Authority of Kansas City, Missouri is a municipal corporation and political subdivision of the State of Missouri 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 Housing Choice Voucher program. The Authority has an annual operating budget of \$20 million

**Inquiries:** The intent of this RFP is to establish the general Scope of Services needed and to provide prospective Respondents with sufficient information to enable them to provide an acceptable response to this RFP. Every effort has been made to outline requirements, and to provide information in a format that is clear and concise. Nevertheless, questions may arise, or additional information may be needed. Questions and inquiries regarding this RFP must be submitted in writing to:

a. Jeff Dunn, Contract Specialist: [jdunn@hac.org](mailto:jdunn@hac.org) or [procurement@hac.org](mailto:procurement@hac.org)

b. All inquiries must be received no later than **5:00 p.m. CST, September 4, 2020.**

C. **Pre-bid Conference:** There will **not** be a pre-bid conference.

D. **Submission Deadline:** **paper** proposals must be received at the offices of HAKC **no later than 4:00 PM CDT, September 14, 2020.** Proposals must be addressed to the attention of Jeff Dunn, Office of Procurement and Contracts, Housing Authority of Kansas City, MO, 920 Main Street, Suite #701, Kansas City, MO 64105. Electronic submissions should be emailed to [jdunn@hac.org](mailto:jdunn@hac.org).

## II. SUBMISSION INSTRUCTIONS

**Sealed** proposals must be received at the offices of the Housing Authority of Kansas City, MO **no later than 4:00 PM CDT, September 14, 2020**. Proposals must be addressed to the attention of Jeff Dunn, Office of Procurement and Contracts, Housing Authority of Kansas City, MO, 920 Main Street, Suite #701, Kansas City, MO 64105.

Technical Proposals shall be in a sealed envelope and clearly marked "Retail Lock Box Services". Each response to this RFP must include **one (1) hard copy original, and five (5) bound copies** and be clearly identified as a response to the "Request for Proposals – RFP – 20-1013 – "Retail Lockbox Services". Electronic submissions should be sent to [jdunn@hac.org](mailto:jdunn@hac.org).

**One (1) Compensation Proposal shall be submitted in a sealed, separate envelope, marked "Compensation Proposal – RFQ-20-1013. Copies of Compensation Proposal are NOT to be included with Technical Proposal. For electronic submissions the Compensation Proposal should be a separate attachment. Electronic submissions should be sent to [jdunn@hac.org](mailto:jdunn@hac.org).**

**Electronic proposals** must be received by the Procurement Department **no later than 4:00 PM CDT, September 14, 2020**.

Submission can be **either** paper or electronic.

Any Submission received later than **4:00 p.m. CDT, September 14, 2020 will not be accepted**.

## III. EVALUATION CRITERIA

Proposals will be evaluated in accordance with the following criteria:

- 11.1 **Service Innovation: Customer service and product offerings – 20 pts**
- 11.2 **Quality Assurance: Strong policies and procedures to minimize processing errors and increase efficiency – 25 pts**
- 11.3 **Institutional Capability: Proven ability to deliver retail lockbox services – 25 pts**
- 11.4 **Pricing: Competitive marketplace prices for requested services – 30 pts**

### Questions and Information:

- a. List your schedule for post office pickups of retail lockbox mail for weekdays, weekends, and holidays. Include data on mechanisms used to track the performance of mail delivery standards.
- b. We provide our tenants with a postage paid return envelope. Would the postage paid return envelope still be available using you PO Box? If so, denote the fee. If not, describe

your alternative method in maintaining the postage paid return envelopes.

- c. Do you guarantee that all checks will be processed within a specific time after they are received at the bank? What are the cutoff times to guarantee fund availability and what happens if you fail to meet the deadline?
- d. Describe how returned checks are handled. How is HAKC notified of the returned item(s)? Do you offer on-line access to returned items, including images of the front and back of checks? If so, describe the service, including estimated costs.
- e. List your procedures for the control and processing of cash received in remittance envelopes. Is there dual control? Do you have security equipment within the lockbox area?
- f. How do you handle other correspondence, returned items, and any other items that may be received in the lockbox? How are they returned and its frequency?
- g. Do you offer imaging features in your lockbox services to capture payments and related information? If so, specify the types of media you support.
- h. How do you send the imaged information (e.g. CD, file transmission, WEB)? What accompanying documents do you include?
- i. Do you offer remote deposit capability that is integrated with the mail lockbox services for miscellaneous items at the main office?

#### **Technical & Transmission Capabilities:**

- a. We have the capability to add an optical character recognition (OCR) line to our remittance. Describe your procedures for the capture and transmission of remittance detail, for automated postings of accounts receivable records.
- b. If using image technology, describe what type of Courtesy Amount Read (CAR) or Intelligent Character Recognition (ICR) hardware and/or software is utilized. Describe the average percentage of characters recognized.
- c. List and describe all internal quality standards such as; encoding, misapplied payments, double postings, invalid account numbers, data transmission timeliness, data transmission accuracy, image quality, and other.
- d. Describe your data transmission capability and procedures to ensure that transmissions are received successfully and contain all remittance detail.
- e. Describe your daily balance information reporting and sample screens that show the information reports that can be obtained.
- f. What back up arrangements exist should the system fail?

#### **Implementation:**

- a. What is the average lead time for implementation? What are the critical factors that may

impact that lead time?

- b. Provide a detailed description of the implication process, including testing and a sample implementation schedule.
- c. Provide a copy of all agreements that will be required to initiate retail lockbox service.
- d. Describe the training provided by your bank for new services.

#### **Customer Service and Quality:**

- a. Will a specific customer service representative/account manager be assigned to handle this service? Describe the responsibilities of customer service personnel, including the chain of command for problem resolution.
- b. Are there established turnaround times for inquiries related to research and adjustments? Please specify.
- c. Is technical support for computer hardware, software, and communication problems provided?

#### **IV. EVALUATION AND SELECTION PROCESS**

The HAKC will consider a proposal non-responsive when critical information is lacking, or the submission represents a major deviation from the requirements of the RFP. Minor omissions or informalities may be waived at the sole option and discretion of the HAKC.

1. Responsive proposals will be evaluated in the following manner:

- a. An evaluation committee will review, rank-order and score all proposals individually on their technical merits and according to the criteria established in this RFP. The committee may contact respondent(s) if any clarification is needed on the proposal.
- b. Based on the rankings of the evaluation committee, respondents whose proposals are in the competitive range may be asked to participate in negotiations to discuss factors to ensure a mutual understanding of both HAKC's requirements and the bidder's proposal. Negotiations may be conducted either in person or by telephone.  
**However, HAKC may determine that negotiations are not necessary and make an award based on the initial proposals received in response to this solicitation.**
- c. If negotiations are to occur the HAKC will establish a date and time for negotiations. Once negotiations have concluded, HAKC may request Best and Final offers. Best and Final offers will be submitted only once unless the Director of Procurement and Contracts makes a written determination that is in HAKC's best interest to conduct additional negotiations or change HAKC's requirements and request another submission of best and final offers. After Best and Final offers are received, a final round of evaluations may occur.
- d. The responsible firm whose proposal is most advantageous to the HAKC may be recommended for award. If a contract is awarded, it will be awarded to the firm that

provides HAKC with the best value and service based on the evaluation criteria.

## **V. ADDITIONAL BIDDING REQUIREMENTS**

### **A. COMPLETE AND ACCURATE SUBMISSION**

A Respondent's failure to provide accurate information in response to this Request for Qualifications may disqualify the Respondent from further participation in the selection process.

Qualifications may be corrected, modified, or withdrawn, provided that the correction, modification, or request for withdrawal is made by the Respondent, in writing, and is received by HAKC; 920 Main Street, Suite 701, Kansas City, Missouri 64105; Attn: Jeff Dunn, Contract Specialist or by e-mail at [jdunn@hakc.org](mailto:jdunn@hakc.org), prior to the date and time designated in the RFP for final receipt of submissions. After such date and time, the Respondent may not change any provision of its proposal in a manner prejudicial to the interest of HAKC and/or fair competition.

### **B. CANCELLATION / WAIVER**

HAKC reserves the right to cancel this RFP or to reject, in whole or in part, any and all submissions received in response to this RFP upon its determination that such cancellation or rejection is in the best interest of HAKC. HAKC further reserves the right to waive any minor informality in any submissions received, if it is in the public interest to do so. The decision as to who shall receive a contract award, or whether or not an award shall be made as a result of this RFP, shall be at the absolute sole discretion of HAKC. In addition, multiple awards may be made.

### **C. KEY PERSONNEL**

The key personnel specified by the successful Respondent will be considered essential to the work to be performed by the successful Respondent. Prior to diverting any of the key personnel for any reason(s), the contractor shall notify HAKC in writing, at least thirty (30) calendar days in advance, and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract. The firm shall not change key personnel or hours to be devoted, before or after contract award, without written permission from HAKC.

### **D. PART OF CONTRACT**

The contents of the documents submitted by the successful Respondent may become part of any contract award at the sole discretion of HAKC.

### **E. NO COMPENSATION FOR RESPONSE**

Respondent will not be compensated for work or costs related to preparation and submission of this proposal. Respondents selected for further interviews and negotiations will be responsible for all expenses incurred during these processes.

### **F. AMENDMENT / ADDENDA**

HAKC will endeavor to provide copies of applicable amendments or addenda to all potential respondents who have received this Request for Qualifications. However, it will be the responsibility of each Respondent to make inquiry as to the existence and content of amendment or addenda, as the same shall become part of this RFP and all Respondents will be bound thereby, whether or not the amendment or addenda are actually received by the Respondent. The amendments or addenda

shall be posted on the HAKC website at <http://www.hakc.org/procurement.aspx>.

## **G. HAKC OPTIONS**

HAKC will consider as “non-responsive” any submission for which critical information is lacking, or any submission which represents a major deviation from the RFP. HAKC reserves the right to request additional information from any respondent after the submission deadline. HAKC also reserves the right to reject any and all, or parts of any and all proposals; to not award a contract; to re-advertise this RFP; postpone or cancel at any time the RFP process; to waive any irregularities in this RFP or in the responses received as a result of the RFP.

HAKC will reject the qualifications of any Respondent who is suspended and/or debarred by HUD from providing services to public housing authorities and reserves the right to reject the response of any Respondent who has previously failed to perform any contract properly for HAKC.

The determination of the criteria and process whereby submissions are evaluated and the decision as to whom shall receive a contract award shall be at the sole and absolute discretion of HAKC.

By submitting a response to this RFP, Respondent acknowledges and agrees to the following conditions:

- All submissions in response to this RFP become the property of HAKC. As such, all submissions are public records, subject to public review in compliance with HUD, State, and local laws. Submissions shall not be returned.
- No Respondent shall initiate contact with any member of the Board of Commissioners of the HAKC regarding this RFP until after completion of the selection process and execution of a contract. If any Respondent has any reason, not related to this RFP, to contact any of the above parties, they will be required to disclose to that party that they are a respondent in this solicitation. Failure to adhere to these requirements may result in disqualification from the solicitation.

Respondent shall not have employed or retained any company or person, other than a bona fide employee working solely for the Respondent to solicit or secure the execution of a contract with HAKC. Respondent certifies that they have not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Respondent, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of or the making of a contract from this solicitation.

## **VI. CONTRACTING REQUIREMENTS**

### **A. PROFESSIONAL LIABILITY INSURANCE**

The contractor must carry professional liability insurance with respect to the delivery of services. The contractor will agree to provide the HAKC with a copy of the certificate evidencing this insurance coverage and reflecting HAKC as an additional insured with respect to liability.

### **B. LAWS TO BE OBSERVED**

The contractor shall at all times observe and comply with all State and Local laws, ordinances and regulations of the State or City governments as related to the services described herein.



### **C. TAXES**

HAKC is a sales tax-exempt entity. At the successful respondent's request, copies of the sales tax exemption information will be provided. The contractor shall not include in the bid amount, any taxes chargeable against the performance of the work.

### **D. ASSIGNMENT OF THE CONTRACT**

The contractor shall not enter into any sub-contracts, retain consultants, or assign, transfer, convey or otherwise dispose of the ensuing contract, or any or 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.

### **E. PROVISION FOR CHANGES OR AMENDMENTS**

If at any time HAKC desires to expand, alter or terminate a portion of the Statement of Services, as defined herein, the contract will be amended to reflect these changes at costs/deductions acceptable to both parties. HAKC shall provide thirty (30) days prior written notice to the contractor for any changes to the Statement of work. The contractor shall not hold HAKC responsible for termination due to no fault of HAKC.

### **F. 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.

## VII. PAYMENT

Invoices for payment shall be submitted on a monthly basis in accordance with the agreement and to be considered complete must include:

- A. Date of Service
- B. Agreement #
- C. Description of Work Performed
- D. Name of Service Provider
- E. Cost

All original invoices must be sent to:

Accounts Payable  
Housing Authority of Kansas City, MO  
920 Main Street, Suite 701  
Kansas City, MO 64105  
816-968-4212

Electronic copies of invoices may also be sent to [ap@hkc.org](mailto:ap@hkc.org).

Payment for all services shall be Net 30 days from the date of receipt of a completed invoice

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 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
2. 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: \_\_\_\_\_

**REFERENCE FORM**  
(Duplicate as needed – **3 Required\***)

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\***



# 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>

## CLIENTS

<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 similar 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? \_\_\_\_\_. 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. Registration with Secretary of State of Missouri (Enclose a copy)

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

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

16. 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

17. 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

18. 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:

19. 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:

20. Social Security Number: \_\_\_\_\_

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

22. Insurance Company: \_\_\_\_\_

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

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

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

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

**At Contract Signing – verification of the HAKC as an Additional Insured is required.**

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

Names of Agencies:

24. Please sign the statement below to authorize the release of information to the HAKC for the purpose of verifying your references.

I hereby authorize the release of information to the Housing Authority of Kansas City, Missouri for the purpose of verifying my references.

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Date

# 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: \_\_\_\_\_

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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

# General Conditions for Non-Construction Contracts U.S. Department of Housing and Urban Development Office of Public and Indian Housing Section II – (With Maintenance Work) Office of Labor Relations OMB Approval No. 2577-0157 (exp. 12/31/2011)

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:**

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

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

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### 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 seen by the workers.
- (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 wage determination;
  - (2) The classification is utilized in the area by the industry; and
  - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

### 2. Withholding of funds

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, 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.

### 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.
- (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.

### 4. Apprentices and Trainees

- (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) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Section II - Page 1 of 3 form HUD-5370-C (10/2006)

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;

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the 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 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.
- (e) In the event OATELS, a state apprenticeship agency 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.

#### 5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions 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 subcontractor(s).
- (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 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).

- (ii) 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.

- (iii) 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 final.

- (b) Disputes arising out of the labor standards provisions of 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 representatives.

#### 6. Contract Work Hours and Safety Standards Act

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 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 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.

# Instructions to Offerors

## Non-Construction

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

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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 sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation; number, and the name and address of the offeror.
- (b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.
- (c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

#### 3. Amendments to Solicitations

- (a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (b) Offerors shall acknowledge receipt of any amendments to this solicitation by:
  - (1) Signing and returning the amendment
  - (2) Identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
  - (3) Letter or telegram, or
  - (4) Facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

#### 4. Explanation to Prospective Offerors

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

#### 5. Responsibility of Prospective Contractor

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

must –

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
  - (2) Have a satisfactory performance record;
  - (3) Have a satisfactory record of integrity and business ethics;
  - (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
  - (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.
- (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.
- #### 6. Late Submissions, Modifications, and Withdrawal of Offers
- (a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it –
    - (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 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 data 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.

## 7. Contract Award

- (a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.
- (b) The HA may:
  - (1) Reject any or all offers if such action is in the HA's interest,
  - (2) Accept other than the lowest offer,
  - (3) Waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.
- (c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

- (d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.
- (e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

## 8. Service of Protest

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

## 9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope. It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

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

Page 2 of form **HUD-5369-B** (8/93) ref. Handbook 7460.8  
Previous edition is obsolete

# 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.

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Previous edition is obsolete page 1 of 2 ref. Handbook 7460.8

**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.

\_\_\_\_\_  
Signature & Date:

\_\_\_\_\_  
Typed or Printed Name:

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

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

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

**THE FOLLOWING  
DOCUMENT  
IS A  
SAMPLE  
Professional Services Agreement  
with HAKC**

# PROFESSIONAL SERVICE AGREEMENT

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**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 St., 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 \_\_\_\_\_, 2019 entered into between HAKC and Professional. This **Agreement** also includes the following component parts/documents: 1) the **Proposal submitted by the Professional**, in response to the solicitation, 2) the **Scope of Work**, 3) the Specifications, if any and 4) Form HUD 5370-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** "Professional" means the person or other entity entering into this **Agreement** with HAKC to perform all of the Services of 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 Professional's to fulfill the contract obligations.
- 1.8** "Services" means the promises, tasks, responsibilities, and duties that Professional promises to perform and deliver to HAKC as set forth in this **Agreement** and specifically described in the **Request for Proposal** and further described in Part two, **Scope of Work** and the **Professional's Written Proposal**.
- 1.9** "Work" means the Services performed by the Professional 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 One (1) year – \_\_\_\_\_, 2019 to \_\_\_\_\_, 2019**. At the sole option of HAKC, this contract may be renewed for three, one year periods.

**3.0 SERVICES**

- 3.1** Pursuant to the terms of this **Agreement**, the Professional shall perform the services as described in the **Scope of Work**, including all written amendments to the **Scope of Work** and the **Professional's Written Proposal** incorporated herein by this reference.
- 3.2** Unless otherwise specified in the **Scope of Work**, the Professional 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 Professional is acting at all times as an independent Professional, not as an employee of HAKC.
- 3.4** The Professional 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 Professional 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, (\$ \_\_\_\_\_).

4.2 For purposes of billing for the performance of the Services performed under this **Agreement**, the Professional shall submit an original and two (2) copies of each request, on a monthly basis, for payment to HAKC's Office of Procurement and Contracts and a copy to be emailed to \_\_\_\_\_. All requests for payment must contain the following information: Professional's name, address, telephone number, tax identification number, this **Agreement** number, detailed description of the services performed broken down by property and the signature of an authorized company official.

4.3 HAKC shall pay the Professional within thirty (30) calendar days following receipt of the request(s) for payment.

#### 5.0 **PERSONNEL**

5.1 The contact person representing the Professional shall be \_\_\_\_\_, \_\_\_\_\_. All communication between HAKC and the Professional's personnel on the project shall be through \_\_\_\_\_. The Professional 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 \_\_\_\_\_, \_\_\_\_\_. **Mr. \_\_\_\_\_ can be reached at 816-\_\_\_\_\_ ( \_\_\_\_\_ @hac.org).**

5.2 The Professional shall be responsible for the conduct and discipline of his/her 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 Professional's point of contact at the written request of HAKC.

#### 6. **RECORD KEEPING**

**The Professional 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. **CHANGES**

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

7.2 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.

7.3 No services for which an additional cost or fee will be charged by the Professional shall be furnished without the prior written consent of the HAKC.

#### 8. **CONTRACT MODIFICATIONS**

8.1 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 Professional specifically agrees and understands that no verbal modifications are allowed to this **Agreement**.

8.2 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 Professional and the Contracting Officer.

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

9.1 The Professional 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.

9.2 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 Professional'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. DISPUTES**

- 10.1** 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.
- 10.2** All claims by the Professional shall be made in writing and submitted to the HAKC. A claim by the HAKC against the Professional shall be made by a written decision by the HAKC.
- 10.3** The HAKC shall, with reasonable promptness, but in no event in more than thirty, (30) days, render a decision concerning any claim hereunder. The Professional 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.
- 10.4** If the Professional takes exception to the HAKC's decision and the parties cannot arrive at a mutually acceptable resolution of the dispute, then the parties may agree to present the matter to mediation or other form of alternative dispute resolution. Otherwise either party may present the matter to the Jackson County Circuit Court for a decision.

**11. TERMINATION AND DEFAULT**

- 11.1** This **Agreement** will terminate immediately if the Professional becomes ineligible to contract with HUD, under applicable laws and regulations.
- 11.2** The HAKC may terminate this **Agreement** in whole, or in part, at the convenience of the HAKC or for the failure of the Professional to fulfill its obligations by default. The HAKC shall terminate this **Agreement** by delivering to the Professional a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Professional 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.
- 11.3** If the termination is for the convenience of the HAKC, the HAKC shall be liable only for payment for services rendered before the effective date of the termination.
- 11.4** If the termination is due to the failure of the Professional to perform its obligations under this **Agreement** by default, the HAKC may require the Professional to deliver, in the manner and to the extent directed by the HAKC, any work as described in ¶11.2. The Professional's compensation shall be determined in accordance with ¶10.0 DISPUTES and payment of the reasonable value of any services rendered through the date of termination. HAKC may withhold payments to the Professional, for the purposes of set-off or partial payment, as the case may be, of amounts owed to the HAKC by the professional, if any.
- 11.5** If, after termination for failure to fulfill its obligations by default, it is determined that the Professional had not failed, said termination shall be deemed to have been for the convenience of the HAKC, and the Professional shall be entitled to payment as described in ¶ 11.3.
- 11.6** Upon the termination of this **Agreement** for any reason, the Professional 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 Professional's performance of this **Agreement**.
- 11.7** Any disputes with regard to this clause are expressly subject to the terms of ¶10.0 Disputes.

**12. ORGANIZATIONAL CONFLICTS OF INTEREST**

- 12.1** The Professional 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 Professional's organizational, financial, contractual or other interests are such that:
- 12.1.1** Award of the **Agreement** may result in an unfair competitive advantage; or
- 12.1.2** The Professional's objectivity in performing the services required under the **Agreement** may be impaired.
- 12.2** The Professional agrees that after award of this **Agreement**, it discovers an organizational conflict of interest the Professional shall make an immediate and full disclosure in writing to the Contracting Officer, which shall include a description of the action, which the Professional 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.

- 12.3 In the event the Professional 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.
- 12.4 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 Professional. The Professional shall include in all such subcontracts and consulting agreements, any and all provisions necessary to eliminate or neutralize conflicts of interests.
13. **INDEMNIFY AND HOLD HARMLESS**
- 13.1 The Professional 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 Professional outside the scope of this **Agreement**, and 2) Any act or omission determined to constitute negligence, recklessness, or willful misconduct by the Professional or the Professional's agents, employees, representatives, and assigns in the performance of this **Agreement**.
14. **FORCE MAJEURE**
- 14.1 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.
15. **STANDARD OF CONDUCT; QUALIFICATIONS**
- 15.1 The provisions of 24 Code of Federal Regulations 85 are applicable to this **Agreement** and govern the Professional's standard of conduct and qualifications. A copy of this regulation is available upon request.
16. **ASSIGNMENT OF AGREEMENT**
- 16.1 The Professional 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 Professional is a partnership, this **Agreement** shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HAKC.
17. **INTEREST OF MEMBERS OF CONGRESS**
- 17.1 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.
18. **INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES**
- 18.1 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.
19. **NOTICES**
- 19.1 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.
20. **COUNTERPARTS**
- 20.1 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**.

**21. PROFESSIONAL LIABILITY INSURANCE**

The Professional, at the Professional's sole cost and expense, agrees to procure and maintain during the term of this **Agreement** or any extension thereof, Professional Liability Insurance Coverage. A copy of such coverage shall be provided to the HAKC.

**22. APPLICABLE LAW/RECEIVERSHIP COURT JURISDICTION**

**22.1** 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**.

**23. ENTIRE AGREEMENT; SEVERABILITY**

**23.1** 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.

**24. INCORPORATION OF HUD FORM 5370-C**

**This Agreement shall also include HUD Form 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 5370-C, the parties agree that HUD Form 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

PROFESSIONAL: \_\_\_\_\_

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

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

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

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

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

**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:**

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 innovative strategies for complying with the requirements of Section 3 and has exceeded the goals for contracting and employment opportunities found at 24 CFR § 135.30.

For more information please contact:

Section 3 Office  
Phone: 816-513-6817  
Fax: 816-513-6820

or

Diana Adorno-Boody  
([dboody@hafc.org](mailto:dboody@hafc.org)) 816-777-2904

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).

#### **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.  
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- (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 it 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:

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- (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:

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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 CFR 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.