

The Housing Authority of the City of South Bend (HASB) will accept Proposals for Snow Removal Services provided at our various Developments, Properties and Office locations, until 4:30 p.m. on November 10, 2022, at the HASB office located at 501 Alonzo Watson Drive, South Bend, IN. If delivered in person or by courier, the bid must be date and time stamped by the HASB receptionist by 4:30 p.m. Ordering Instructions: The bid specifications package can be accessed from our HASB’s website at [www.hasbonline.com](http://www.hasbonline.com/) under the procurement tab. There will be no pre-proposal bid meeting. Please submit questions in writing to Carolyn Archie, Procurement Specialist at [carchie@sbhaonline.com.](mailto:carchie@sbhaonline.com)

**Request for Proposals**

## For

**Snow Removal Services at Various Properties and Offices for**

**The Housing Authority City of South Bend RFP 2022-11-11-SR-001**

Notice: Contact with members of the HASB Board of Commissioners, or HASB officers and employees other than the contact person listed herein, by any prospective Proposer, after publication of the RFP and prior to the execution of a contract with the successful proposer(s) could result in disqualification of your proposal. In fairness to all prospective proposer(s) during the RFP process, if HASB meets in person with anyone representing a potential provider to these services to discuss the RFP, an addendum will be issued to address all questions to ensure no Proposer has a competitive advantage over another. This does not exclude meetings required to conduct business not related to the RFP, or possible personal presentations after written qualifications have been received and evaluated.

Published: October 16, 2022

GENERAL INFORMATION



## PURPOSES OF THIS REQUEST FOR PROPOSALS

The HASB will enter indefinite quantity contract(s) for a one (1) year period, which can be awarded to one or more proposers. With the company(s) that has the highest ordinal bid evaluation score(s) on the primary or any alternative grouping. The HASB may also extend any contract for an additional two (2) years.

**ATTACHMENTS**

The following attachments are herein incorporated by reference for all purposes as post of this “Snow Removal Proposal Solicitation and Scope of Work”:

1. Scope of Work
2. Proposed Rates
3. HUD 5369-B
4. HUD form 5370-C Part 1 & 2
5. Section 3 Preference Explanation
6. Section 3 Submittal Form
7. HUD 50070-Certification of Drug Free Workplace

**FORMAT OF BID**

No contract will be awarded without the following forms being completed:

* 1. Proof of Insurance
  2. Completion of Pricing Sheet/Bid Form
  3. Section 3 Compliance Form
  4. Section 3 Declaration Form (if applying for bonus points)
  5. Financials and/or lines of credit (when requested)
  6. List of at least three (3) references of work completed within the last two (2) years
  7. HUD Forms
  8. Company Profile
  9. Non-Collusive Affidavit
  10. Contractors must submit a City of South Bend license (if applicable)

At the time bids are opened, to be considered responsive, bids *must* contain the following:

* Proof of Insurance
* Equipment list
* Pricing Sheet/Bid Forms

**CONDITIONS**

The Housing Authority will not pay any cost incurred in the preparation or submission of any bid or any cost incurred in anticipation of a contract. The Bidder understands that the Executive

**CONDITIONS (continued)**



Director of the Housing Authority shall be the sole authority to legally commit the Housing Authority to any expenditure of public funds for this procurement, subject to approval by the Broad of Commissioners.

The Housing Authority reserves the right to award one or more contracts, to a single or multiple contracts after receipt of bids without further discussion. Therefore, it is emphasized that all bids should be submitted initially on the most favorable terms. The Housing Authority reserves the right to reject all bids and to waive any informality whenever such rejection or waiver is in the best interest of the Housing Authority.

This RFP in no way obligates the Housing Authority to award a contact. Contractor(s) shall have staff, qualified by training and experience, to perform the services required. All persons employed by the Contractor(s) in the performance of any work under this Agreement shall be agents and employees of Contractor(s) only. Neither Contractor(s) nor any employees or agents of Contractor(s) shall be deemed as employees of the HASB for any purpose whatsoever.

Contractor(s) is responsible for obtaining identification bags on all his/her employees. Under no circumstance will a crewmember be allowed to work at any development site(s) without identification on his/her person. Contractor’s personnel shall be neat and conduct all work in a professional manner with minimal disturbance to the Housing Authority. If any of the Contractor’s personnel are not satisfactory to the Housing Authority, Contractor(s) shall replace such with personnel with satisfactory replacements. The Contractor(s) shall coordinate the work with the Housing Authority as much as possible. Regular reports of progress shall be required.

Without invalidating this Agreement, the Housing Authority may at any time order extra work, alterations, additions to, or deductions from the work and the Agreement sum shall be adjusted accordingly. Any change or extra work resulting in additional cost must be made in advance and **approved in writing** by the Housing Authority’s Executive Director. All such extra work shall be executed in accordance with the terms and conditions of this Agreement. Contractors may appeal only deviations from laws, rules, regulations, or procedures. Disagreement with the evaluators’ judgment with the number of points scored is not appealable. The following Appeal Procedure applies to Contractors who wish to appeal a disqualification of Bid or award of contract:

Contractors shall submit a written appeal to the Executive Director. Appeals must be received by the Executive Director no later than 4:30 (EST) on the fifth day after the postmarked date of the Notice of Award/Non-Award. Send appeals to:

APPEAL OF BID ACTION

Attn: Executive Director 501 Alonzo Watson Dr. South Bend, IN 46601

The appeal must specify the basis for the appeal including the specific citation of law, rule, regulation, or procedure upon which the protest is based. The judgment used in scoring by individual evaluators is not grounds for appeal. Appeals not filed within the time specified herein or which fail to cite the specific law, rule, regulation, or procedure upon which the appeal is based shall be dismissed without further review.

**PERMITS, LAWS, AND REGULATIONS**

The Contractor(s) **will** secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of services. **A copy of the permit will be made available to HASB upon the contractor’s receipt of the permit.** Where the Housing Authority **chooses to** arrange for the issuance of all or part of these permits, fees, and licenses, without cost to the Contractor(s), the contract amount shall be reduced accordingly. The Contractor(s) shall observe and comply with all federal, state, county, and city laws, codes, ordinances, rules, and regulations in accomplishing the work. The service performed shall be in conformance with and meet all industry standards. The Contractor(s) shall agree that, in a suit and/or claim in mediation or arbitration to enforce the rights and/or obligations of a Contract under this Bid, should the HASB prevail in prosecution or defense of said suit and/or claim, the HASB shall be entitled to its reasonable attorney’s fees, court costs and other reasonable litigation expenses, including, but not limited to, expert fees, costs of exhibits, staff time in the preparation for and/or attendance at trial, investigation expenses, and travel expenses. The Contractor(s) shall agree to indemnify and keep, hold, and save harmless the Housing Authority from and against all liability, penalty, losses, damages, expenses suits and judgments arising from injuries on Housing Authority property premises during the term of the Contract to person or property of any nature.

**STATEMENT OF LIABILITY**

The Contractor’s responsibility for damages shall be as follows:

* The Contractor(s) shall be responsible for all losses, damages or injuries that occur because of his fault or negligence, as well as those losses, damages or injuries resulting from acts of his employees.
* The Contractor(s) shall carry all liability, workers’ compensation, and other types of insurance necessary to hold the Housing Authority free of liability for all actions of the Contractor(s) and/or his/her employees due to performance, equipment, or contract scope.
* The Contractor(s) shall list any additional insurance coverage it secures and shall provide Housing Authority with evidence of its designation of the Housing Authority as an additional insured on each of its policies. The insurance company shall directly notify the Housing Authority of any changes in the policies. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the HASB by the insurance company.



|  |  |
| --- | --- |
| Professional Liability | Required Limits |
| HASB and its affiliates must be named as an Additional Insured and be a Certificate Holder. This is required for vendors who render observational service to HASB such as appraisers, inspectors, attorneys, engineers, or consultants. | $1,000,000 |
| Business Automobile Liability | Required Limits |
| HASB and its affiliates must be names as additional insured and as the certificate holder. Must include both owned and unowned vehicles. | $1,000,000 combined single limit, per occurrence |
| Workers Compensation and Employer’s Liability | Required Limits |
| Workers’ Compensation coverage is Statutory and has no pre-set limits. Employer’s Liability limit is $500,000  A waiver of Subrogation in favor of HASB must be included in the Workers’ Compensation policy.  HASB and its affiliates must be named as a Certificate Holder. | Statutory  $1,000,000 |
| Commercial General Liability | Required Limits |
| This is required for any vendor who will be doing hands on work at HASB properties.  HASB and its affiliates must be name as an Additional Insured and as the Certificate Holder. | $1,000,000 per accident  $2,000,000 aggregate |

**LAPSE IN INSURANCE COVERAGE**

In the event Contractor(s) fails to maintain insurance as required by a resulting contract, the Contractor shall immediately cure such lapse in insurance coverage at the Contractor’s expense and pay HASB in full for all costs and expenses incurred by HASB under this Contract because of Contractor’s failure to maintain insurance required, including costs and reasonable attorney’s fees relating to HASB’s attempts to cure such lapse in insurance coverage. Such costs and attorney fees, not to exceed fifteen hundred and 00/100 dollars ($1,500.00), shall be automatically deducted from monies or payments owed to Contractors. Moreover, HASB shall retain from monies or payments owed to Contractor by HASB ten percent (10%) of the value of the Contract and place this retainage in an account to cover HASB’s potential exposure to liability during the period of the lapse. This retainage shall be held by HSAB until six (6) months after the term of the resulting contract has ended or has otherwise been terminated, cancelled,

or expired and shall be released if no claims are received or lawsuits filed against HASB for any matter that should have been covered by the required insurance.

**HASB’S RESERVATION OF RIGHTS**



HASB reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by HASB to be in its best interests.

HASB reserves the right not to award a contract pursuant to this RFP.

HASB reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon 14 days written notice to successful proposer(s).

HASB reserves the right to determine the days, hours, and locations that the successful proposer(s) shall provide the services called for in this RFP.

HASB reserves the right to retain all proposals submitted and not permit any proposal withdrawals for a period of 90 days after the deadline for receiving proposals without written consent from the Contract Administrator (CA)

HASB reserves the right to negotiate the fees proposed by all proposers. If such negotiations are not, in the opinion of the HASB successfully concluded within a reasonable timeframe, the HASB shall retain the right to end such negotiations.

HASB reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.

HASB shall have no obligation to compensate any proposer for any costs incurred in responding to this RFP.

HASB reserves the right to at any time during the RFP or contract process to prohibit any further participation by a proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein. Each prospective proposer further agrees that he/she will inform HASB’s ED in writing within five (5) days of the discovery of any item that is issued thereafter by HSAB that he/she feels needs to be addressed. Failure to abide by this timeframe shall relieve HASB, but not prospective proposer, of any responsibility pertaining to such issue.

HASB reserves the right, prior to award to revise, change, alter or amend any instructions, terms, conditions, and/or specifications identified within the RFP documents issued, within any attachment or drawing or within any addenda issued. All addenda will be posted on HASB’s website [www.hasbonline.com](http://www.hasbonline.com/). Such changes that are issued before the proposal submission deadline shall be binding upon all prospective proposers.

In the case of rejection of all proposals, HASB reserves the right to advertise for new proposals or to proceed to do the work otherwise, if in the judgment of HASB, the best interest of HASB will be promoted.

**HASB’S RESERVATION OF RIGHTS (continued)**



HASB reserves the right to, without any liability, cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties.

HASB reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to HASB, if:

* + 1. Funding is not available,
    2. Legal restrictions are placed upon the expenditure of monies for this category or services or supplies.

HASB reserves the right to make an award to more than one proposer based on ratings or to make an award with or without negotiations or Best and Final Offers (BAFO),

HASB reserves the right to require additional information from all proposers to determine level of responsibility. Such information shall be submitted in the form required by HASB within two

(2) days of written request.

HASB reserves the right to amend the contract any time prior to contract execution.

HASB reserves the right to contact any individuals, entities, or organizations that have had a business relationship with the proposer regardless of their inclusion in reference section of the proposal submittal.

In the event any resulting contract is prematurely terminated due to nonperformance and/or withdrawal by the Contractor, HASB reserves the right to seek monetary restitution (to include but not limited to withholding of monies owed) from the Contractor to cover costs for interim services and/or cover the difference of a high cost (difference between Contractor’s rate and new company’s rate) beginning the date of Contractor’s termination through the contract expiration date.

**COST OF SERVICES**

The Contractor(s) shall include in his/her bid the all-inclusive cost to be charged to the Housing Authority for the provision of Snow Removal as defined on the Scope of Work. It MUST accompany any bid *for that bid to be responsive*. Contractor(s) will provide the required chemical, supplies, tools, and equipment to fully comply with the Scope of Work listed in Attachment A.

Contractor(s) shall comply with all applicable federal, state, and local laws regarding no smoking on HASB properties.

Proposal Prices: Proposers are advised that the Proposal Fee shall be all inclusive and fully burdened by prosper to accomplish the work as specified in this RFP and any resulting contract.

**COST OF SERVICES (continued)**



Regulatory: Contractor(s) shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, and codes and obtain licenses or permits required to provide the services.

Contractor shall utilize Section 3 residents and businesses to perform the requirements under this proposal to the greatest extent feasible and shall document such efforts monthly. There is a 10-point bonus for hiring Section 3 residents on any contract resulting from this RFP and a 20- point bonus for a Section 3 qualified contractor. Contractors will be evaluated on their performance at achieving this goal and such evaluation shall be a factor in future awards.

**RESPONSIBILITY FOR SUBCONTRACTORS**

All requirements for the “Prime” contractor shall also apply to any subcontractors. It is the Prime Contractors’ responsibility to ensure the compliance by the subcontractors. Regardless of subcontracting, the Prime Contractor remains liable to HASB for the performance under this RFP or any resulting contract.

Contractor(s) shall perform criminal history checks and drug screening tests on all employees performing work under this RFP and any resulting contract and if requested provide summaries of the results to HASB. Prospective employees whose criminal history checks discloses a misdemeanor of felony conviction involving crimes of moral turpitude or harm to person or property shall not be used to perform work under this RFP or any resulting contract.

Contractor(s) is required to perform drug screening of all employees and to insure acceptable test results. Criminal history and drug screening checks will be completed at the sole expense of the Contractor(s).

Contractor(s) shall provide at its own expense all equipment, labor, materials, and tools to perform all services required under this RFP and any resulting contract.

If any employee of the Contractor(s) is deemed unacceptable by HASB, Contractor(s) shall immediately replace such personnel with a substitute acceptable to HASB.

**CONDITIONS OF PROPOSERS**

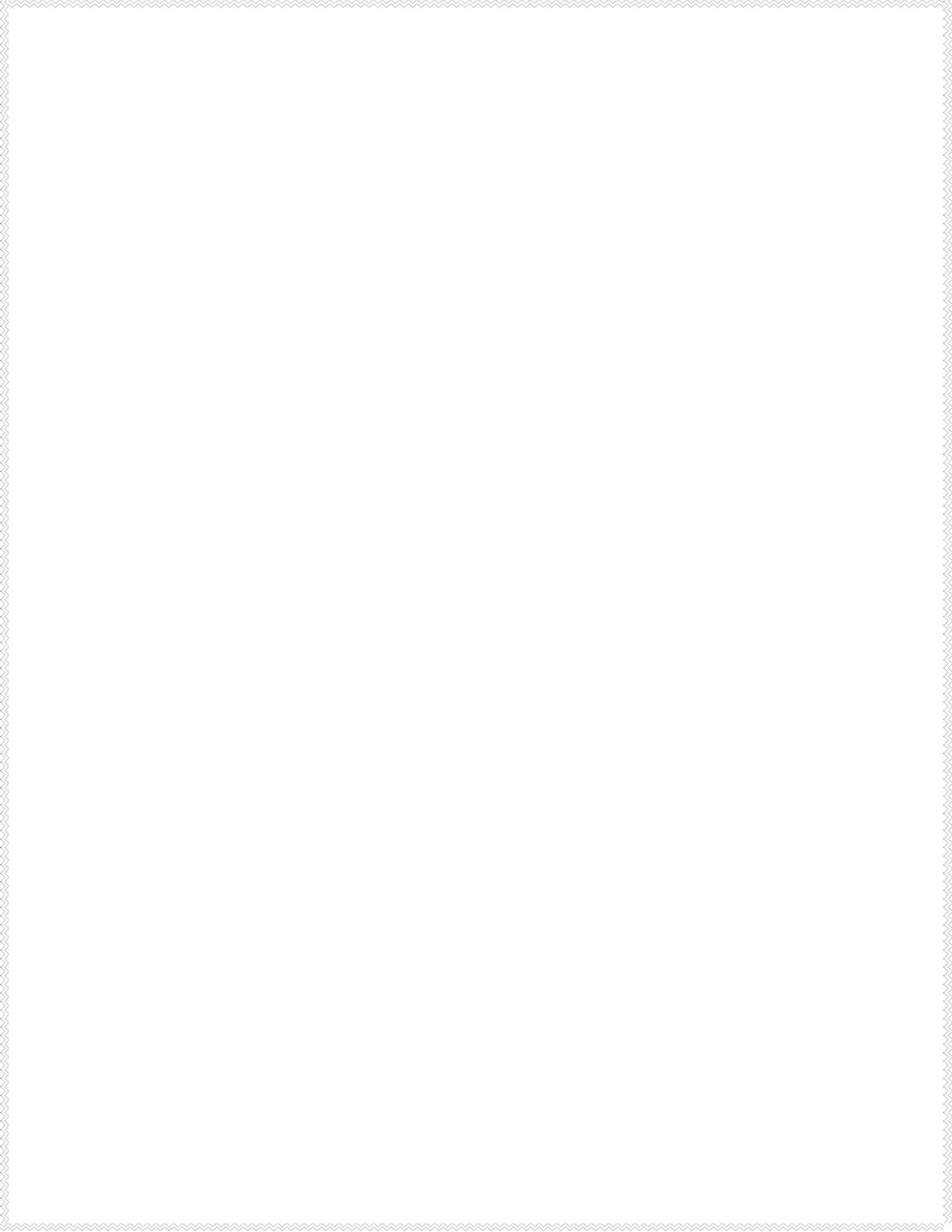
Prospective proposers will not be required to per-qualify to submit a proposal. However, all proposers will be required to submit adequate information showing that the proposer is qualified to perform the required work. Failure by the prospective proposer to provide the requested information may, at HASB’s discretion, eliminate that proposer from consideration, provided that all proposers were required to submit the same information.

**RFP FORMS, DOCUMENTS, SPECIFICATIONS AND DRAWINGS**

Prior to submitting a proposal in response to the RFP, it shall be each prospective proposer’s responsibility to examine carefully and, as may be required, properly complete all documents issued pursuant to this RFP.

**RFP FORMS, DOCUMENTS, SPECIFICATIONS AND DRAWINGS**

Unless otherwise instructed, specifications and drawings (if provided) do not purport to show all the exact details of the work. They are intended to illustrate the character and extent of the performance desired under the proposed contract and may be supplemented or revised from time to time.



Catalogs, brand names or manufacturer’s references where provided are descriptive only and indicate type and quality desired. Proposals on brands of like nature and quality will be considered unless specified otherwise. If proposing other than references, proposal submittal shall show manufacturer, brand or trade name, and other description of products offered. If other than brand(s) specified is offered, illustrations and complete description of products offered must be included in the proposal submittal. Failure to take exception to specifications or referenced data will require Contractor to furnish specified brand names, numbers, etc.

**SUBMISSIONS AND RECEIPT BY HASB TIME FOR RECEIVING PROPOSALS**

Proposals received prior to the proposal submittal deadline shall be securely kept, unopened,

by HASB. No proposal received after the designated dealing shall be considered.

Proposers are cautioned that any proposal submittal that is time-stamped as being received by HASB after the exact time set as the deadline for the receiving of proposals shall not be considered. Any such proposals inadvertently opened shall be ruled to be invalid. No responsibility will attach to HASB or any official or employee thereof, for the pre-opening of, or the failure to open a proposal addressed an identified.

A total of one (1) signature copy (marked “ORIGINAL”) and three (3) exact copies (marked “COPY”) shall be placed unfolded in a sealed envelope with proposer’s name and return address and addressed as follows:

Carolyn Archie

ATTN: Procurement Specialist 501 Alonzo Watson Drive South Bend, IN 46601

**BILLINGS & PAYMENTS**

The HASB will pay contracts on a Net 30-day basis. No payment will be made for work invoices that are not accompanied by a completed WH-347 and a finalized certificate of completion form or some type of work order of worked performed. An early payment (within 10 days) may be requested with a 10% discount to the HASB (this option is at the sole discretion of HASB).

**BILLING PROCEDURES**

All contractors will keep copies of timecards and paychecks, by address where the work was performed, for all employees used at HASB properties (digital is acceptable). Payroll audits of employer pay rates and classification will occur periodically. All contractors agree to make their employees available for such interviews. Should any irregularities not be able to be adequately explained to the HASB, the HASB SHALL refer any such unresolved irregularities to the appropriate Department of Labor office for further action.

**Exceptions to Specifications**:



A prospective proposer may take exception to any of the proposal documents, or any part of the information contained therein, by submitting, in writing to the HASB, at least seven (7) days prior to the proposal submission deadline, a complete and specific explanation as to that he/she is taking exception. Proposed alternate documents or information must also be included. HASB reserves the right to agree with the prospective proposer and issue a revision to the applicable RFP requirements or may reject the prospective proposer’s request.

When taking exception prospective proposers must propose services that meet the requirements of the RFP documents. Exceptions to the specification and/or approved “equal” requested may be discussed at the scheduled pre-proposal conference (if scheduled). All verbal instructions issued by the HASB officers not already listed within the RFP documents shall only become official when issued as addenda or as a written answer issued pursuant to receipt of a written question.

**PROPOSAL EVALUATION**

Proposal Opening Results: It is understood by all proposers/prospective proposers that the proposals are publicly opened, and the results will be a matter of public record. When HASB has concluded all evaluations has chosen final top-rated proposer(s), has completed the award and is ready to issue such results, HASB shall notify all proposers.

All proposal documents submitted by the proposers are generally a matter of public record unless information is deemed to be proprietary.

Evaluation: Each proposal submittal will be evaluated based upon the following information and criteria:

Initial Evaluation-Responsiveness: Each proposal received will first be evaluated for responsiveness (i.e., meeting the minimum requirements as stated in the RFP).

Evaluation Responsibility: HASB shall select a minimum of a three-person panel, using the criteria established below, to evaluate each of the proposals submitted in response to this RFP to determine the proposer(s)’ level of responsibility. HASB will consider capabilities or advantages that are clearly described in the proposal that may be confirmed by oral presentations, site visits, demonstrations, and references contacted by HASB. All proposal would be evaluated as to their overall value to HASB.

Restrictions: All persons having familial (including in-laws) and/pre-employment relationships (past or current) with principals and/or employees of a proposer will be excluded from participation on HASB’s evaluation. Similarly, all persons having ownership interest in and/or contract with a proposer will be excluded from participation on HASB’s evaluation panel.

|  |  |
| --- | --- |
| **Criteria** | **Points** |
| Past Performance/Prior | 25 |
| Price (total and by alternatives) | 75 |
| Section 3 Bonus | 2,4,6 |
| Total Score |  |



Competitive Range**:** Once a competitive range is established from the proposals submitted, HASB reserves the right to require Proposers within the competitive range to make a presentation to the evaluation committee. Presentations, if requested, shall be a factor in the award recommendation.

Irregular Proposal Submittal: A proposal shall be considered irregular for any one of the following reasons, any one or more of which may, at HASB’s discretion, be reason for rejection:

If the forms furnished by HASB are not used or are altered or if the proposed costs are not submitted as required and where provided.

If all requested completed attachments does not accompany the proposal submittal.

If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning or give the proposer submitting the same a competitive advantage over other proposers.

If the proposer(s) adds any provisions reserving the right to accept or reject any award or to enter into a contract pursuant to an award.

If the individual cost proposal items submitted by a specific proposer are unbalanced in the sense that the listed price of any cost item departs more than 25% from HASB’s cost estimate for that item.

Disqualification of Proposer(s): Any one or more of the following shall be considered as sufficient for the disqualification of a prospective proposer(s) and the rejection of his/her proposal:

Evidence of collusion among prospective proposers. Participants in such collusion will receive no recognition as Proposer or proposers for any future work with HASB until such participant shall have been reinstated as a qualified bidder or proposer. The names of all participants in such collusions shall be reported to HUD and any other inquiring governmental agency.

More than one proposal for the same work from an individual, firm, or corporation under the same or different name(s),

Unsatisfactory performance record as shown by past work for HASB or with any other local, state, or federal agency, judged from the standpoint of workmanship and progress.

Disqualification of Proposer(s):



Incomplete work, which in the judgment of HASB, might hinder or prevent prompt completion of additional work, if awarded.

Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.

Failure to comply with any qualification requirements of HASB.

Failure to list all subcontractors (if subcontractors are allowed by HASB) who will be employed by the successful proposer(s) to complete the work of the proposed contract.

As required by the RFP documents, failure of the successful proper to be properly license by the City, County and/or the State of Indiana and/or to be insured by a commercial general liability policy and/or worker’s compensation policy and/or business automobile liability policy, if applicable.

Any reason to be determined in good faith, to be in the best interest of HASB.

**Award of Proposal(s**): The successful proposer(s) shall be determined by the top-rated responsive and responsible proposer(s) as determined by the evaluation process and presentations detailed above and any further negotiations, provided his/her proposal is reasonable and within budget, he/she is able to deliver the specified items in a timely manner and it is, in the opinion of HASB, to the best interests if HASB to accept the proposal after preferences for Section 3 business concerns are considered. HASB reserves the right to award multiple contractors if it is determined to be in the best interest of HASB.

**Right to Protest**

Rights: Any prospective or actual proposer(s), offeror(s) or contractor(s) who is allegedly aggrieved in connection with the solicitation of a proposal or award of a contract, shall have the right to protest. Such right only applied to deviations from laws, rules, regulations, or procedures. Disagreements with the evaluators’ judgments as to the number of points scored are not reasons for an appeal. An alleged aggrieved protestant claiming this right is hereby informed that these regulations do not provide for administrative appeal as a matter of fight for that alleged aggrieved protestant.

Definition: An alleged aggrieved “protestant” is a prospective proposer or proposer who feels that he/she has been treated inequitably by HASB and wished HASB to correct the alleged inequitable condition or situation.

Eligibility: To be eligible to file a protest with HASB pertaining to an RFP or contract, the alleged aggrieved protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e., recipient of the RFP documents) when the alleged situation occurred. HASB has no obligation to consider a protest filed by any party that does not meet

these criteria.

Procedure: Any actual or prospective contractor(s) may protest the solicitation or award of a

contract for material violation of HASB’s procurement policy. Any protest against a HASB solicitation must be received before the due date for receipt Proposals or proposals and any protest against the award of a contract must be received within ten (10) calendar days after contract award of the protest will be not considered.



**DISPUTES UNDER THE CONTRACT**

Procedures: In the event that any matter, claim, or dispute arises between the parties, whether or not related to this RFP or any resulting contract, both parties shall be subject to nonbinding mediation if agreed to by both parties within thirty (30) days of either party making a request in writing. The parties further agree that if the matter, claim, or dispute is not settled during mediation, it shall thereafter be submitted to binding arbitration. The parties shall make a good faith attempt to mutually agree upon an arbitrator. If the parties cannot mutually agree upon an arbitrator after reasonable efforts have been exerted, then the matter, claim or dispute shall be submitted to the American Arbitration Association for final and binding arbitration. Unless extended by the arbitrator for good cause shown, the final arbitration hearing shall begin no later than two (2) months after selection of the arbitrator.

**ADDITIONAL CONSIDERATIONS**

Required Permits and Licenses: Unless otherwise stated in the RFP documents, all federal, state, or local permits and licenses which may be required to provide the services ensuing from any award of this RFP, whether or not they are known to either the HASB or the proposers at the time of the proposal submittal dealing or the award, shall be the sole responsibility of the successful proposer and all offers submitted by the proposer shall reflect all costs required by

the successful proposer to procure and provide such necessary permits or licenses.

Taxes: HASB as a governmental entity, is exempt from Indiana State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.

Government Standards: It is the responsibility of the prospective proposer to ensure that all items and services proposed conform to all local, state and federal law concerning safety (OSHA) and environmental control (EPA and Bexar County Pollution Regulations) and any other enacted ordinance, code, law or regulation. The successful proposer(s) shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law, or regulation. No time extensions shall be granted, or financial consideration given to the successful proposer(s) for time or monies lost due to violations of any such ordinance, code, law, or regulations that may occur.

Delivery: All costs submitted by the successful proposer(s) shall reflect the cost of delivering the proposed items and/or services to the locations specified within the RFP documents or within the Agreement. All costs in the proposal submittal shall be quoted as FOB Destination, Freight Prepaid, and allowed unless otherwise stated in this RFP.

The successful proposer agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before specified date constitutes an

Delivery (continued)

In the event of default by the successful proposer. Upon default, the successful proper agrees that HASB may, at its option, rescind the finalized contract under the termination clause herein and seek compensatory damages as provided by law.



Work on HASB property: If the successful proposer’s work under the contract involves operations on HASB premises, the successful proper(s) shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and shall immediately return said property to a condition equal to or better than the existing condition prior to the commencement of work at the sire at no cost to HASB.

Subcontractors: Unless otherwise stated within the RFP documents, the successful proposer may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the HASB. Also, any substitution of subcontractors must be approved in writing by HASB prior to their engagement.

Salaries and Expenses Relating to the Successful Proposers Employees: Unless otherwise stated within the RFP documents, the successful proposer(s) shall pay all salaries and expenses of, and all Federal, Social Security tax, Federal and State Unemployment tax, and any similar taxes relating to its employees used in the performance of the contract. The successful proposer(s) further agrees to comply with all Federal, State, and local wage and hour laws and all licensing

laws applicable to its employees or other personnel furnished under this agreement.

Independent Contractor: Unless otherwise stated within the RFP documents or the contract, the successful proposer is an independent contractor. Nothing herein shall create any association, agency, partnership, or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.

Wavier of Breach: A waiver of either party of any terms or conditions of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.

Time of the Essence: Time is of the essence as to each provision in which a timeframe for performance is provided in this RFP. Failure to meet these timeframes may be considered a material breach, and HASB may pursue compensatory and/or liquidated damages under the contract.

Limitation of Liability: In no event shall HASB be liable to the successful proposer for any indirect, incidental, consequential, or exemplary damages.

Public/Contracting Statutes. HASB is a governmental entity as that term is defined in the procurement statutes. HASB and his RFP and all resulting contracts are subject to federal, state, and local laws, rules, regulations, and policies relating to procurement, as applicable.

Termination: Any contract resulting from this RFP may be terminated under the following conditions: By mutual consent of both parties, and



Termination for Cause: As detailed within the attached HUD Forms.

HASB may terminate any and all contracts for default at any time in whole or in part, if the contractor fails to perform any of the provisions of any contract, or fails to pursue the work as to endanger performance in accordance with the terms of the RFP or any resulting contracts, and after receipt of written notice from HASB, fails to correct such failures within seven (7) days or such other period as HASB may authorize or require.

Upon receipt of a notice of termination issued from HASB, the Contractor shall immediately cease all activities under any contract resulting from this RFP, unless expressly directed otherwise by HASB in the notice of termination.

HASB may terminate any contract resulting from this RFP in whole or in part, if funding is reduced, or is not obtained and continued at levels sufficient to allow for the expenditure.

Termination for Convenience:

In the sole discretion of the Contracting Officer, HASB may terminate all contracts resulting from this RFP in whole or part upon fourteen days prior notice to the Contractor when it is determined to be in the best interest of HASB.

The rights and remedies of HASB provided under this section are not exclusive and are in addition to any other rights and remedies provided by law or under any contract.

In the event the resulting contract from this RFP is terminated for any reason, or upon its expiration, HASB shall retain ownership of all work products including deliverables, source and object code, microcode, software licenses, and documentation in whatever form that may exist. In addition to any other provision, the Contractor shall transfer title and deliver to HASB any partially completed work products, deliverables, source and object code, or documentation that the Contractor has produced or acquired in the performance of any resulting contract.

Examination and Retention of Contractor’s Records: HASB, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under all contracts executed as a result of this RP, have access to and the right to examine any of the Contractor’s directly pertinent books, documents, papers or other records involving transactions related to this contract for the purpose of making audits, examinations, excerpts and transcriptions.

Invoices (If applicable): Contractor(s) will only be allowed to invoice for the cost of services/goods in compliance with his/her proposal or best and final offer as accepted by HASB.

Invoices must contain a complete description of the work or service that was performed, the contract price for each service, the purchase order number, contract number (if applicable),

date of service, and address of service location or delivery address.

Contractor(s) must submit a separate invoice for each purchase order issued by HASB unless prior approval is obtained from HASB.



Applicable Statutes, Regulations and Orders: Contractors shall comply with all statutes, rules, regulations, executive orders affecting procurements by Housing Authorities including but not limited to:

Executive Order 11246

Executive Order 11061

Copeland “Anti-Kickback” Act (18 USC 874) Davis Bacon Act (40 USC 276s-276a-7)

Clean Air & Water Acts (42 USC 1857(h); 33 USC 1368) Contract Work Hours & Safety Standards Act (40 USC 327-330) Energy Policy & Conversation Act (PL 94-163, 89 STAT 871) Civil Rights Act of 1964, Title VI (PL 88-352)

Civil Rights Act of 1968, Title VIII (PL 90-284 Fair Housing Act()

Age Discrimination Act of 1975

Anti-Drug Act of 1988 (42 USC 11901 et. Seq.) HUD Information Bulletin 909-23 Immigration Reform & Control Act of 1986

Fair Labor Standards Act (29 USC 201, et. Seq.)

**Conflicting Conditions**:

In the event there is a conflict between the documents comprising this RFP and any resulting contracts, the Response. If a conflict exists between any state statute or federal law the most restrictive term shall apply.

Contract Form: HASB will not execute a contract on the successful proposer’s form. Contracts will

only be executed on HASB’s form. By submitting a proposal, the successful proposer agrees to

this condition. However, HASB will consider any contract clauses that the proposer wishes to

include therein, but failure of HASB to include such clauses does not give the successful proposer

the right to refuse to execute HASB’s contract form. It is the responsibility of each prospective

proposer to notify HASB, in writing, with the proposal submittal of any contract clauses that

he/she is not willing to include in the final executed contract. HASB will consider such clauses

and determine whether or not to amend the Contract.



Attachment 1

### (Page intentionally left blank)



Snow Removal: **SCOPE OF WORK**

The scope of work for this project involves snow removal from the locations identified in Attachment 1 of this RFP. Buildings and common area’s sidewalk and driveway shall be cleared of snow and sidewalks as indicated in the Invitation for Bids.

1. Equipment:

The Bid requests that Contractors provide a list of snow removal equipment available for hire, their capacity, and the names of contract personnel. The following fleet of how clearing equipment shall be dispatched during the snowstorms.

During excessive snow falls, which may require heavy equipment usage or dump trucks for snow relocation, **HASB approval is required**. The Contractor will be required to confirm per hour equipment rates pricing before plowing begins. The Contractor will be responsible for removing snow from all driveways and sidewalks identified in Attachment 1.

1. Driveways:

During show plowing operations, care shall be taken not to deposit removed snow in vehicle driveway approaches. Where snow plowing is done by a grader equipped with a snow gate, any spillage over the gate resulting in a drift more than 300mm (12 inches) shall be removed.

1. Sidewalks:

Sidewalks included in quote are to include all curb sides up to the individual address sidewalks. Services at 501 Alonzo Watson Drive main office requires parking lots and sidewalks to be cleared before 6:00 a.m.

* 1. Main office must be cleared Monday through Friday on an as needed basis.
  2. The entire 501 Alonzo Watson Drive, including the Quads, must be cleared by 7:00

a.m. ***(Note: Defined as all curb side walks, up to and including individual addresses, walks/porches, and common areas.)***

* 1. Sidewalk plowing in the residential areas shall commence once the storm or snowing subsides.
  2. Priority shall be given to sidewalks flanking arterial streets.
  3. Sidewalks adjacent to curbs shall be plowed with the streets.
  4. Concrete should be visible and free of snow and ice.

1. Parked Vehicles:

During snowplow operations, where snow has gathered between vehicles in parking lots, manual removal is required.

**NOTE: Contractors must present the HASB with their defined contingency (BACK UP) Plan for snow events that surpass the Contractors ability to respond within reasonable timeless. The contingency plan must be approved by the HASB before the award of Contract.**



Contract Form:

Attachment 1, Proposal Rate Sheet BID FORM 2022

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| 501 Alonzo Watson |  | 2-4 inches | 5-7 inches | 8-12 inches |
|  | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| 425 Alonzo Watson |  | 2-4 inches | 5-7 inches | 8-12 inches |
| Quads | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| LaSalle Landing |  | 2-4 inches | 5-7 inches | 8-12 inches |
| Community Center | Drive/Parking Lot |  |  |  |
| Public Housing | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| Laurel Court Apts. |  | 2-4 inches | 5-7 inches | 8-12 inches |
|  | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| Edison Gardens Apts. |  | 2-4 inches | 5-7 inches | 8-12 inches |
|  | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |



|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| Twyckenham Apts. |  | 2-4 inches | 5-7 inches | 8-12 inches |
|  | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| Haney Street Apts. |  | 2-4 inches | 5-7 inches | 8-12 inches |
|  | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| South Bend Apts. |  | 2-4 inches | 5-7 inches | 8-12 inches |
|  | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| Hilde Court Apts. |  | 2-4 inches | 5-7 inches | 8-12 inches |
|  | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| Harber Homes |  | 2-4 inches | 5-7 inches | 8-12 inches |
|  | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |

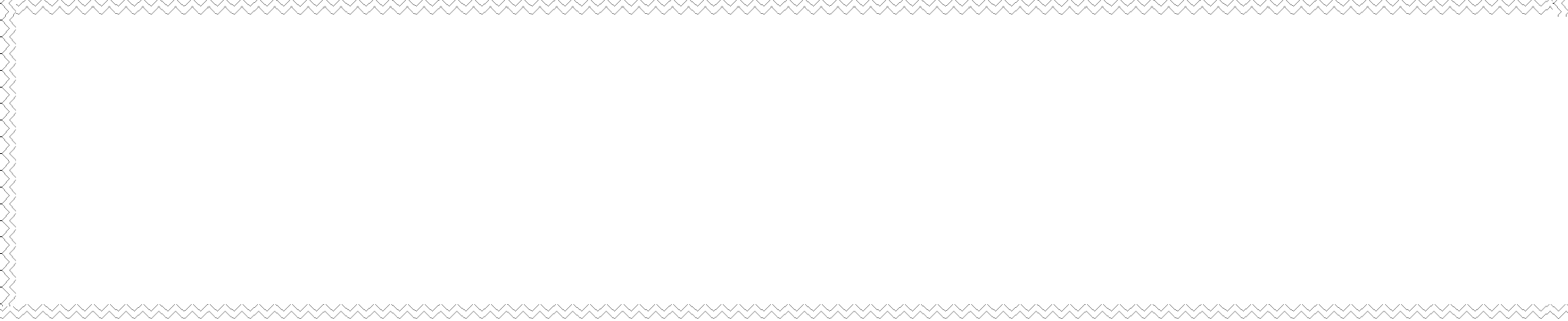
|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| Frances Street Apts. |  | 2-4 inches | 5-7 inches | 8-12 inches |
|  | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| Miner Street Apts. |  | 2-4 inches | 5-7 inches | 8-12 inches |
|  | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |



|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| Oak Park Apts. |  | 2-4 inches | 5-7 inches | 8-12 inches |
|  | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address | Specifics | Snow Accumulation | Show Accumulation | Show Accumulation |
|  |  | Cost of Services | Cost of Services | Cost of Services |
| 29th Street |  | 2-4 inches | 5-7 inches | 8-12 inches |
| 1301-1307 | Drive/Parking Lot |  |  |  |
|  | Sidewalks |  |  |  |
| Development Cost: | |  |  |  |



Attachment 2

### (Page intentionally left blank)

**1.0 Introduction. The purpose of this document is to, in simplified terms, explain to proposer’s major issues pertaining to the Section 3 Business Preference program required by the Agency’s funding source, the U.S. Department of Housing and Urban Development (HUD). Also, hereinafter, a Section 3 Business Preference will be referred to as “Preference.”**

* 1. **What is Section 3?**
  2. **Section 3 is a provision of the Housing and Urban Development Act of 1968, which recognizes that HUD funds are typically one of the largest sources of federal funding expended in communities, including those communities served by the Agency. Section 3 is intended to ensure that when a contractor has need to hire additional people as the result of receiving a contract from the South Bend Housing Authority (hereinafter, “the Agency”), preference must be given to low- and very lor income persons residing in St. Joseph Co., IN (Section 3 resident), or Section 3 business concerns.**
  3. **The requirements pertaining to Section 3 apply only to purchases and contracts the agency completed for work-the requirements of Section 3 DOES not apply to purchases or contracts the Agency completes solely for commodities or equipment; meaning, “no work provided, no Section 3 required.”**
  4. **Section 3 is race and gender neutral in that preferences are based on income-level and location.**
  5. **What does the term “Section 3 resident” mean?**
  6. **A “Section 3 resident is:**
     1. **A public housing resident of the Agency; or**
     2. **A low-or very-low resident of St. Joseph County, IN**
        1. **Low- and very low-income within St. Joseph County, IN is defined as residents within the following income levels for FY 2022 (Median Income**

**= $78,000):**

**(Table #1)**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Income Limit Category** | **(1)**  **Person** | **(2)**  **Persons** | **(3)**  **Persons** | **(4)**  **Persons** | **(5)**  **Persons** | **(6)**  **Persons** | **(7)**  **Persons** | **(8)**  **Persons** |
| **Very Low (50%)** | **$27,300** | **$31,200** | **$35,100** | **$39,000** | **$42,150** | **$45,250** | **$48,400** | **$51,500** |
| **Extremely Low (30%)** | **$16,400** | **$18,750** | **$23,030** | **$27,750** | **$32,470** | **$37,190** | **$41,910** | **$46,630** |
| **Low (80%)** | **$43,300** | **$49,950** | **$56,200** | **$62,400** | **$67,400** | **$72,400** | **$77,400** | **$82,400** |
| **Income Limit areas are based on FY 2022 Fair Market Rent (FMR) areas. For information on FMRs, Please see our associated FY**  **2022 Fair Market Rent documentation system.** | | | | | | | | |

**(Table #2)**

|  |  |  |
| --- | --- | --- |
| **Max Point Value** | **Factor Type** | **Factor Description** |
|  | **Objective** | **SECTION 3 BUSINESS PREFERENCE PARTICIPATION. (NOTE: A maximum of**  **15 points awarded).** |
| **15 points** |  | **Priority I, Category 1a. Business concerns that are 51 percent or more**  **owned by residents of the housing development or developments for which the Section 3-covered assistance is expended.** |
| **13 points** |  | **Priority II, Category 1b. Business concerns whose workforce includes 30 percent of residents of the housing development for which the Section 3- covered assistance is expended, or within three (3) years of the date of**  **first employment with the business concern, were residents of the Section 3-covered housing development.** |
| **11 points** |  | **Priority III, Category 2a. Business concerns that are 51 percent or more owned by residents or any other housing development or developments.** |
| **9 points** |  | **Priority IV, Category 2b. Business concerns whose workforce includes 30 percent of residents of any other public housing development or developments, or within three (3) years of the date of first employment**  **with the business concern, were “Section 3” residents of any other public housing development.** |
| **7 points** |  | **Priority V, Category 3. Business concerns participating in HUD Youth-build**  **programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended.** |
| **5 points** |  | **Priority VI, Category 4a. Business concerns that are 51 percent or more owned by Section 3 residents in the metropolitan area, or whose permanent, full-time workforce includes no less than 30 percent of Section 2 residents in the metropolitan area, or within three (3) years of**  **the date of employment with the business concern, were Section 3 residents in the metropolitan area.** |
| **3 points** |  | **Priority VII, Category 4b. Business concerns that subcontract more than**  **25 percent of the total amount of subcontracts to Section 3 business concerns.** |
|  | | |
| **15 points** |  | **Maximum Available Preference Points (Additional)** |
|  | | |

**6.1.2 It is possible that a contractor may demonstrate, to the Agency’s satisfaction that he/she has made a good faith and reasonable effort to comply with the requirements of Section 3, but it is not feasible to implement any portion of the Section 3 program. Such failure must be fully documented by the contractor and approved by the Agency or that contractor may be deemed not responsible by**

**the Agency and the contract may be, at the Agency’s discretion, not awarded or terminated.**

* 1. **Be aware that, as detailed within S 135.58, the following Section 3 Clause will be a part of every applicable contract the Agency executes, and when a contractor executes the contract, he/she is thereby agreeing to comply with the following:**

***SECTION 3 CLAUSE***

* 1. **The work to be performed under this contract is project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170 Iu. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project be awarded to business concerns which are in, or owned in substantial part by, persons residing in the area of the Section 3 covered project.**
  2. **The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Sectary of housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.**
  3. **The contractor will send to each labor organization or representative of workers with which s/he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers’ representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.**
  4. **The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of housing and Urban Development, 24 CFR, Part 135, the contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135 and will not let any subcontract unless**

**the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of this regulations.**

* 1. **Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through with Federal assistance tis provided and to such sanctions as are specified by 24 CFR, Part 135.**
  2. **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 contracted.**
  3. **With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Action (25 U.S.C. 450e) also applied 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 Indiana-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).**
  4. **As detailed within 24 CFR xx135, Appendix I*, Examples of Efforts to Office Training and Employment Opportunities to Section 3 Residents,* as a part of the contract award process, to satisfy the requirements of Section 3 successful proposer or Contractor will be able to denote the “efforts” his/her firm will formally commit to implement if he/she is awarded a contract:**
  5. **Entering into “first source” hiring agreements with organizations representing Section 3 residents.**
  6. **Sponsoring a HUD-certified “Step-up” employment and training program for Section 3 residents.**
  7. **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.**
  8. **Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and here 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 $135.34) reside.**

* 1. **Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and here to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For the Agency, post such advertising in 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 projects.**
  2. **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 the 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.**
  3. **Sponsoring (scheduling, advertising, financing, or providing in-kind services) a job informational meeting to be conducted by an Agency 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.**
  4. **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 in the neighborhood or service area in which a section 3 project is located.**
  5. **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.**
  6. **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 section 3 covered project.**
  7. **Contacting agencies administering HUD Youthbuild programs and requesting their assistance in recruiting HUD Youthbuild program participants for the Agency’s or contractor’s training and employment positions.**
  8. **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 Agency’s or contractor’s training and employment positions.**

* 1. **Advertising the jobs to be filled through the local media, such as communitytelevision networks, newspaper of general circulation, and radio advertising.**
  2. **Employing a job coordinator or contracting with a business concern that is licensed in the field of job replacement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the Agency, other recipients or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the Agency or contractor intends to fill.**
  3. **For the agency, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by section 2 assistance. (This type of employment is referred to as “force account labor” in HUD’s Indiana housingregulations. See 24 CFR $905.102, and $905.201(a)(6).)**
  4. **Where there are more qualified section 3 residents than there are positions to ne filled, maintaining a file of eligible qualified section 3 residents for future employment positions**
  5. **Undertaking job counseling, education, and related programs in association with local educational institutions.**
  6. **Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents previously hired for employment opportunities.**
  7. **After selection of proposers 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.**
  8. **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.**
  9. **As detailed within 24 CFR §135, Appendix II, *Examples of Efforts to Award Contracts to Section 3 Business Concerns*, as a part of the contract award process, to satisfy the requirements of Section 3 the successful proposer or Contractor will be able to denote the “efforts” his/her firm will formally commit to implement if he/she is awarded a contract:**
  10. **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).**
  11. **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.**
  12. **Contacting business assistance agencies, minority contractor’s associations, and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids of proposals for contracts for work in connection with section 3 covered assistance.**
  13. **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 Agency.**
  14. **For the Agency, 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.**
  15. **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 proposal invitations or request for proposals.**
  16. **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.**
  17. **Coordinating pre-proposal meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.**
  18. **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.**
  19. **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.**
  20. **Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.**
  21. **Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.**
  22. **Contacting agencies administering HUD Youthbuild programs and notifying these agencies of the contracting opportunities.**
  23. **Advertising the contracting opportunities through trade association papers and newsletter, and through the local media, such as community television networks, newspapers pf general circulation, and radio advertising.**
  24. **Developing a list of eligible section 3 business concerns.**
  25. **For the Agency, participating in the “Contracting with Resident-Owned Businesses” program provided under 24 CFR part 963.**
  26. **Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.**
  27. **Establishing numerical goals (number of awards and dollar amount of contracts) for award oof contracts to section 3 business concerns.**
  28. **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.**
  29. **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.**
  30. **Actively supporting joint ventures with section 3 business concerns.**
  31. **Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.**
  32. **Introduction. This form must be fully completed, accompanied by all required attachments, for any bidder claiming a Section 3 Business Preference (hereinafter, "Preference").**
  33. **This fully completed form and any attachments thereto, will become a part of any ensuing contract.**
  34. **Each bidder shall mark an "X" where provided following for all that apply to his/her claim of a Preference.**
  35. **The bidder shall provide as an attachment to this completed form a detailed work plan clearly explaining how each following "preference claim" will be accomplished. Failure on the part of the bidder to include any such required attachment fully explaining the claim of the bidder shall result in the Agency not considering the claim for a Preference (though the Agency may, if awarded, later require the bidder to submit the information to satisfy the Section 3 requirements of the ensuing contract).**
  36. **Current Section 3 Status. The undersigned bidder hereby claims that it is a Section 3 business concern and claims such preference in that he/she can provide evidence that (the bidder has attached justifying documentation for each item following marked with an "X"):**
  37. **It is 51% or more owned by a Section 3 resident(s):**

**[Table No. 1]**

|  |  |  |
| --- | --- | --- |
| **(1)**  **Section** | **(2)**  **Mark “X”\* if Included** | **(3)**  **Description** |
| **2.1.1** |  | **Agency resident lease** |
| **2.1.2** |  | **Evidence of participation in a public assistance program** |
| **2.1.3** |  | **Articles of Incorporation** |
| **2.1.4** |  | **Fictitious or Assumed Business Name Certificate** |
| **2.1.5** |  | **List of owners/stockholders and % of each** |
| **2.1.6** |  | **Latest Board minutes appointing officers** |
| **2.1.7** |  | **Organization chart with names and titles and brief functional statement** |
| **2.1.8** |  | **Partnership Agreement** |
| **2.1.9** |  | **Corporation Annual Report** |
|  | | |

* 1. **At least 30% of its full-time employees include persons that are currently Section 3 residents, or within 3 years of the date of first employment with the business concern were Section 3 residents:**
     1. **To justify this claim, please see the immediate-following:**

**[Table No. 2]**

|  |  |  |
| --- | --- | --- |
| **(1)**  **Classification** | **(2)**  **Total Number of Current Permanent Employees** | **(3)**  **Total Number of Section 3 Resident Employees** |
| **Trainees** |  |  |
| **Apprentices** |  |  |
| **Journeypersons** |  |  |
| **Laborers** |  |  |
| **Supervisory** |  |  |
| **Superintendent** |  |  |
| **Professional** |  |  |
| **Clerical** |  |  |
| **Other:** |  |  |
|  | | |

* + 1. **Attach a listing of all employees listed within column (3) above, including name and total annual income. Also attach proof of the income, such as a copy of the last tax return (please be sure to “black-out” all but the last 4 digits of the person(s) social security number), or other documentation showing receipt of public assistance.**
  1. **He/she has a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to a Section 3 business concern.**
     1. **To justify this claim, please see the immediate-following:**

**[Table No. 3]**

|  |  |  |
| --- | --- | --- |
| **(1)**  **Name of Section 3 Firm Receiving the Subcontract** | **(2)**  **Total Amount of Subcontract(s)** | **(3)**  **Percentage the Subcontract(s) is/are of the Total Proposed Contract Amount** |
|  | **$** | **%** |
|  | **$** | **%** |
|  | | |

* + 1. **Attach for each firm listed immediately above:**
       1. **A detailed description of the subcontracted activity; and**
       2. **A fully completed Profile of Firm form.**
       3. **Proof of the income of the ownership of the Section 3 firm receiving the subcontract, such as a copy of the last tax return for the owner(s) (please be sure to “black-out” all but the last 4 digits of the person(s) social security number).**

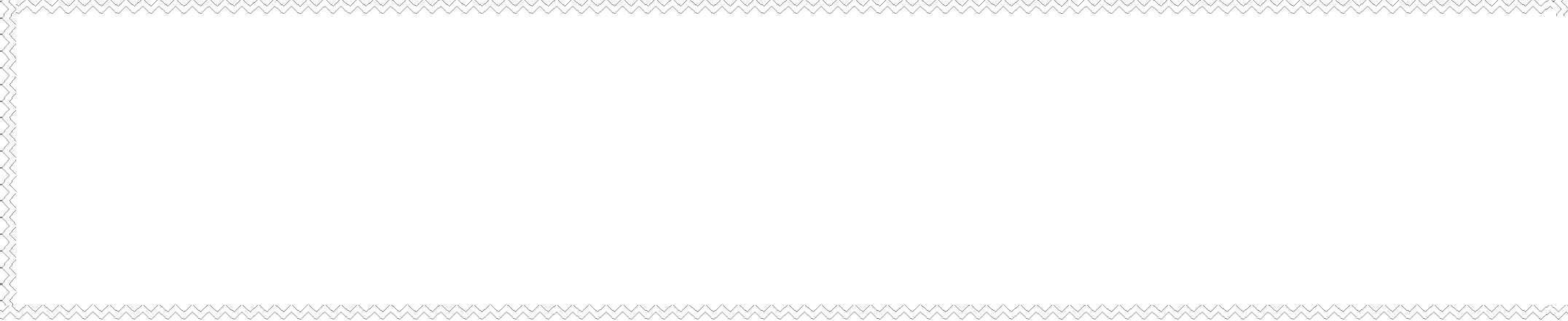
|  |  |  |  |
| --- | --- | --- | --- |
| **Priority Claim**  **(Mark “X”)** | **Max Point Value** | **Factor Type** | **Factor Description** |
|  |  | **Objective** | **SECTION 3 BUSINESS PREFERENCE PARTICIPATION. (NOTE:**  **A maximum of 15 points awarded).** |
|  | **15 points** |  | **Priority I, Category 1a. Business concerns that are 51 percent or more owned by residents of the housing**  **development or developments for which the Section 3- covered assistance is expended.** |
|  | **13 points** |  | **Priority II, Category 1b. Business concerns whose workforce includes 30 percent of residents of the housing development for which the Section 3-covered assistance is expended, or within three (3) years of the date of first**  **employment with the business concern, were residents of the Section 3-covered housing development.** |
|  | **11 points** |  | **Priority III, Category 2a. Business concerns that are 51**  **percent or more owned by residents or any other housing development or developments.** |
|  | **9 points** |  | **Priority IV, Category 2b. Business concerns whose workforce includes 30 percent of residents of any other public housing development or developments, or within three (3) years of the date of first employment with the**  **business concern, were “Section 3” residents of any other public housing development.** |
|  | **7 points** |  | **Priority V, Category 3. Business concerns participating in HUD Youth-build programs being carried out in the**  **metropolitan area in which the Section 3-covered assistance is expended.** |
|  | **5 points** |  | **Priority VI, Category 4a. Business concerns that are 51 percent or more owned by Section 3 residents in the metropolitan area, or whose permanent, full-time workforce includes no less than 30 percent of Section 2 residents in the metropolitan area, or within three (3) years**  **of the date of employment with the business concern, were Section 3 residents in the metropolitan area.** |
|  | **3 points** |  | **Priority VII, Category 4b. Business concerns that**  **subcontract more than 25 percent of the total amount of subcontracts to Section 3 business concerns.** |
|  |  | | |
|  | **15 points** |  | **Maximum Available Preference Points (Additional)** |
|  |  | | |

* 1. **The undersigned bidder hereby declares:**
  2. **The information within this completed form (and any attachments) is, to the best of his/her knowledge, true and accurate.**
  3. **He/she is aware that if the Agency discovers that any such information is not true and accurate, such shall allow the Agency to:**
     1. **NOT award the bidder a Preference; and**
     2. **If the Agency deems such is warranted (e.g. in the case of submitting information the bidder knows to be untrue), declare such bidder to be nonresponsive and not allow the bidder to receive an award.**
  4. **He/she is aware that if he/she receives and award as the result of this competitive solicitation, even though he/she may not receive a Preference from the Agency as a result of this submittal, he/she will still be required to, to the greatest extent feasible, implement a Section 3 Plan, including a commitment to interview and consider hiring Section 3 persons (most specifically, residents of the Agency) whenever the successful bidder has need to hire additional employees during the term of the ensuing contract.**

**The undersigned contractor hereby affirms that the foregoing is true and accurate and that he/she hereby agrees to comply as denoted herein.**

**Signature Date Printed Name Company**

*(Page intentionally left blank)*



Attachment 3

*(Page intentionally left blank)*

**General Conditions for Non-Construction Contracts**

Section I – (With or without Maintenance Work)

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

#### Office of Public and Indian Housing Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C.

20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

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

* 1. **Non-construction contracts** (*without* maintenance)

##### greater than $100,000 - use Section I;

* 1. **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

* 1. **Maintenance contracts** (including nonroutine maintenance), **greater than $100,000 – use Sections I and II**.

##### ====================================================

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

**====================================================**

1. **Definitions**

The following definitions are applicable to this contract:

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

##### Changes

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

proposal submitted before final payment of the contract.

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

##### Termination for Convenience and Default

* 1. The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and

(ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.

* 1. If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
  2. If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
  3. If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall been titled to payment as described in paragraph (b) above.
  4. Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

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

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

Section I - Page 1 of 6 form **HUD-5370-C** (10/2006)

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

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

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

##### Energy Efficiency

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

##### Disputes

* 1. All disputes arising under or relating to this contract, *except for disputes arising under clauses contained in Section III, Labor Standards Provisions*, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
  2. All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
  3. The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
  4. Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and

(iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.

* 1. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

##### Contract Termination; Debarment

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

##### Assignment of Contract

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

##### Certificate and Release

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

##### Organizational Conflicts of Interest

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

##### Inspection and Acceptance

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

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

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

##### Interest of Members of Congress

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

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

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

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

* 1. Definitions. As used in this clause:

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

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

* + 1. The awarding of any Federal contract;
    2. The making of any Federal grant;
    3. The making of any Federal loan;
    4. The entering into of any cooperative agreement; and,
    5. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

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

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

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

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

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

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

* 1. Prohibition.
     1. Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
     2. The prohibition does not apply as follows:
        1. Agency and legislative liaison by Own Employees.
           1. The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.
           2. For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
           3. The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

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

* + - * 1. The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

* + - * 1. Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.
      1. Professional and technical services.
         1. The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

1. A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
2. Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

* + - * 1. For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.
        2. Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
        3. Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

1. Selling activities by independent sales representatives.
2. The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:
   1. Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
   2. Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
3. Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.
4. Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
5. Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

##### Equal Employment Opportunity

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

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

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

##### Dissemination or Disclosure of Information

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

##### Contractor's Status

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

##### Other Contractors

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

##### Liens

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

1. **Training and Employment Opportunities for Residents in the Project Area** (Section 3, HUD Act of 1968; 24 CFR 135)
2. 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.
3. 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.
4. 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.

1. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
2. 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.
3. 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.

##### Procurement of Recovered Materials

1. In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
2. Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of

$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and

1. purchased a total of in excess of $10,000 of the item both under and outside that contract.

# 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.1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C.

20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

##### Applicability. This form HUD-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.

##### ====================================================

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

**====================================================**

1. **Minimum Wages**
   1. 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.
   2. (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.

##### 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.

##### Records

* 1. 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:

1. Name, address and Social Security Number;
2. Correct work classification or classifications;
3. Hourly rate or rates of monetary wages paid;
4. Rate or rates of any fringe benefits provided;
5. Number of daily and weekly hours worked;
6. Gross wages earned;
7. Any deductions made; and
8. Actual wages paid.
   1. 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.

##### Apprentices and Trainees

* 1. 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:

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

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;

1. A trainee program which has received prior approval, evidenced by formal certification by the

U.S. Department of Labor, ETA; or

1. A training/trainee program that has received prior approval by HUD.
   1. 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.
   2. 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.
   3. 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.
   4. 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.

##### Disputes concerning labor standards

* 1. 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).

1. 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).

1. 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 theviolations.
2. 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.
   1. 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.

##### 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.

* 1. **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.
  2. **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.

* 1. **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.

##### 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.

##### 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.