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## **REQUEST FOR PROPOSALS**

### **CONCESSION LEASE - FOOD SERVICE AT 500 BROAD STREET**

**10-S-090**

**PART I of III**

### **SCOPE OF SERVICES**

**CONTRACTS DIVISION**

**SUBMISSION DATE  
OCTOBER 5, 2010  
BY 3:00PM**

| <b>Section</b> | <b>Description</b>                             | <b>Page</b> |
|----------------|------------------------------------------------|-------------|
|                | <b>Advertisement</b>                           | <b>4</b>    |
|                | <b>RFP Information at a Glance</b>             | <b>5</b>    |
| <b>1.0</b>     | <b>Introduction/Background</b>                 | <b>6</b>    |
| <b>2.0</b>     | <b>General Information</b>                     | <b>6</b>    |
| 2.1            | NHA Reservation of Rights                      | 6           |
| 2.2            | Vendor's Responsibilities – Contact with NHA   | 6           |
| 2.3            | Non-Curable Items                              | 8           |
| 2.4            | Proof of Business Registration                 | 8           |
| 2.5            | Causes for Rejecting Proposals                 | 8           |
| 2.6            | Method of Contract Award                       | 8           |
| 2.7            | Protest                                        | 8           |
| <b>3.0</b>     | <b>Intent and Scope of Services</b>            | <b>9</b>    |
| 3.1            | Intent of the Request for Proposals            | 9           |
| 3.2            | Scope of Services                              | 9           |
| 3.2.1          | Statement of Work                              | 9           |
| 3.2.2          | Use of Environmentally Friendly Products       | 12          |
| 3.3            | Vendor Personnel                               | 12          |
| 3.4            | Responsibility of NHA                          | 13          |
| 3.5            | NHA Reservation of Rights                      | 13          |
| 3.6            | Lease Concession General Terms                 | 14          |
| 3.6.1          | Term                                           | 14          |
| 3.6.2          | Monthly Lease/Rent                             | 14          |
| 3.6.3          | Percentage Rent                                | 14          |
| 3.6.4          | Minimum Annual Guarantee                       | 14          |
| 3.6.5          | Pricing Policy                                 | 14          |
| 3.6.6          | Customer Services                              | 15          |
| <b>4.0</b>     | <b>Description of Food Service Concessions</b> | <b>15</b>   |
| 4.1            | Concept, Menus, and Products                   | 15          |
| <b>5.0</b>     | <b>Retail Concessions</b>                      | <b>16</b>   |
| <b>6.0</b>     | <b>Additional Services</b>                     | <b>16</b>   |
| <b>7.0</b>     | <b>Proposal Format</b>                         | <b>16</b>   |
| 7.1            | Letter of Interest                             | 16          |
| 7.2            | Non-Curable Documents                          | 16          |
| 7.3            | Introduction                                   | 17          |
| 7.3.1          | Executive Summary                              | 17          |
| 7.3.2          | Qualifications Statement                       | 17          |
| 7.3.3          | Organization Structure/Key Personnel           | 18          |
| 7.3.4          | Financial Statement                            | 18          |
| 7.3.5          | Experience                                     | 19          |
| 7.3.6          | References                                     | 19          |
| 7.4            | Concept Development                            | 20          |

|             |                                              |           |
|-------------|----------------------------------------------|-----------|
| <b>7.5</b>  | <b>Work Plan/Project Approach</b>            | <b>20</b> |
| <b>7.6</b>  | <b>Operations and Maintenance Plan</b>       | <b>21</b> |
| <b>7.7</b>  | <b>Financial Projections</b>                 | <b>21</b> |
| <b>7.8</b>  | <b>Marketing and Promotions Plan</b>         | <b>22</b> |
| <b>7.9</b>  | <b>Rent Proposal</b>                         | <b>22</b> |
| <b>7.10</b> | <b>Other Required Submission Documents</b>   | <b>22</b> |
| <b>8.0</b>  | <b>General Instructions</b>                  | <b>23</b> |
| <b>8.1</b>  | <b>Questions</b>                             | <b>23</b> |
| <b>8.2</b>  | <b>Interpretation and Addenda</b>            | <b>24</b> |
| <b>8.3</b>  | <b>Discrepancies in Proposal</b>             | <b>24</b> |
| <b>9.0</b>  | <b>Evaluation and Selection Criteria</b>     | <b>24</b> |
| <b>10.0</b> | <b>Additional Information</b>                | <b>24</b> |
| <b>10.1</b> | <b>Insurance Requirement</b>                 | <b>24</b> |
| <b>10.2</b> | <b>EEO, Affirmative Action and Section 3</b> | <b>25</b> |
| <b>10.3</b> | <b>Americans with Disabilities</b>           | <b>27</b> |
| <b>10.4</b> | <b>Truth in Contracting</b>                  | <b>27</b> |
| <b>10.5</b> | <b>Causes for Termination</b>                | <b>28</b> |
| <b>10.6</b> | <b>Pay-to-Play</b>                           | <b>28</b> |
| <b>10.7</b> | <b>Prompt Payment Act</b>                    | <b>29</b> |
|             | <b>Attachment A – Staples Item List</b>      | <b>30</b> |
|             | <b>Concession Space Area Drawing</b>         | <b>31</b> |

**NEWARK HOUSING AUTHORITY  
500 BROAD STREET  
NEWARK, NEW JERSEY 07102**

**REQUEST FOR PROPOSAL**

**CONCESSION LEASE - FOOD SERVICE AT 500 BROAD STREET**

**RFP #10-S-090**

The Newark Housing Authority (NHA) is soliciting proposals from qualified food service companies for Concession Lease - Food Service at its administrative office located at 500 Broad Street Newark New Jersey. The company will be required to operate Monday through Friday except holidays. The contract term is for three (3) years with two (2) one (1) year options at the sole discretion of the Newark Housing Authority.

Interested and qualified companies who have demonstrated their ability with comparable work are invited to obtain a copy of the Scope of Services for this RFP from Antoinette Tillery, Newark Housing Authority, Contracts Division, 500 Broad Street, 5<sup>th</sup> Floor, Newark, New Jersey 07102, telephone: (973) 273-6528.

A pre-proposal conference is scheduled for Tuesday, September 21, 2010 at 10:00 a.m. at the address noted above. A site visit shall follow. **Attendance is not mandatory but is highly recommended to afford inspection of the facility and inspect all equipment prior to submitting a proposal.**

**An original and five (5) copies, plus one (1) electronic version of the proposal on either a CD or disk, using a Word or PDF file** of the response to this RFP shall be received no later than 3:00 p.m. on Tuesday, October 5, 2010, shall be submitted to:

**NEWARK HOUSING AUTHORITY  
Attn: Antoinette Tillery, Contracts Division  
500 Broad Street, 5<sup>th</sup> Floor  
Newark, New Jersey 07102**

All responses shall be clearly marked **"The Newark Housing Authority RFP #10-S-090, "CONCESSION LEASE - FOOD SERVICE at 500 Broad Street"**.

Respondents are required to comply with the requirements of NJSA 10:5-31 et seq. and NJAC 17:27 (PL 1975 c 127 Affirmative Action). All respondents must also comply with 24 CFR 85.36.

The NHA reserves the right to accept any and all proposals, or to waive any informalities on the proposals and the right to reject proposals. No proposal shall be withdrawn for a period of one hundred and twenty (120) days subsequent to the due date of the proposals, without the consent of the NHA.

**NEWARK HOUSING AUTHORITY  
KEITH D. KINARD  
EXECUTIVE DIRECTOR**

## RFP INFORMATION AT A GLANCE

|                                                                         |                                                                                                                                                                                                                                                                                                                |
|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NHA CONTACT PERSON                                                      | <b>Antoinette Tillery</b><br>Telephone: 973-273-6528<br>Email: <a href="mailto:atillery@newarkha.org">atillery@newarkha.org</a>                                                                                                                                                                                |
| PRE-PROPOSAL CONFERENCE                                                 | <b>Tuesday, September 21, 2010</b><br>TIME: 10:00 a.m.<br>Lower Level Executive Conference Room<br>500 Broad Street, Newark, NJ 07102                                                                                                                                                                          |
| HOW TO FULLY RESPOND TO THIS RFP BY SUBMITTING A PROPOSAL SUBMITTAL     | 1. As instructed within Section 5.0 of the RFP document, submit one original, <b>five (5)</b> "hard copies" and one CD/Disk of your proposal to the NHA Contracts & Procurement Division office;<br>2. As instructed within Section 2.3, any submissions not including the Non-Curable Items will be rejected. |
| QUESTIONS RELATED TO RFP PROPOSAL OPPORTUNITIES DUE, IN WRITING, TO NHA | <b>Friday, September 24, 2010</b><br>10:00 A.M.<br>Newark Housing Authority<br><b>Antoinette Tillery</b><br>500 Broad Street, 5 <sup>th</sup> Floor<br>Newark, NJ 07102                                                                                                                                        |
| RELEASE OF ANY REQUIRED ADDENDUM                                        | <b>Wednesday, September 29, 2010</b><br>Answers to written questions distributed by NHA.                                                                                                                                                                                                                       |
| PROPOSAL SUBMITAL RETURN & DEADLINE                                     | <b>Tuesday, October 5, 2010</b><br>3:00 p.m.<br>Newark Housing Authority<br>Contracts & Procurement Division<br>500 Broad Street, 5 <sup>th</sup> Floor<br>Newark, NJ 07102<br><br>The proposal must be received in-hand and time-stamped by the NHA by no later than 3:00 p.m. on this date.                  |

## **SECTION 1.0 INTRODUCTION / BACKGROUND**

The Housing Authority of the City of Newark is a governmental entity established under State Law in 1938, and formed under the United States Housing Act of 1937. Charged with providing affordable, decent, safe and sanitary housing for low-income persons, the NHA is the largest provider of affordable housing in the State of New Jersey.

## **SECTION 2.0 GENERAL INFORMATION**

### **2.1 NHA'S RESERVATION OF RIGHTS**

- The NHA 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 the NHA to be in its best interests.
- The NHA reserves the right not to award a contract pursuant to this RFP.
- The NHA reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon 10 days written notice to the successful proposer(s).
- The NHA reserves the right to determine the days, hours and locations that the successful proposer(s) shall provide the services called for in this RFP
- The NHA reserves the right to retain all proposals submitted and not permit withdrawal for a period of 120 days subsequent to the deadline for receiving proposals without the written consent of the NHA Director of Procurement & Contracts.
- The NHA 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.
- The NHA shall reserve the right to at any time during the RFP or contract processes to prohibit any further participation by a proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein.
- The NHA shall have no obligation to compensate any proposer for any costs incurred in responding to this RFP.
- The NHA reserves the right to award all or a portion of the award to one or more responsible responsive bidders.

### **2.2 VENDOR'S RESPONSIBILITIES – CONTACT WITH THE NHA**

It is the responsibility of the proposer to address all communication and correspondence pertaining to this RFP process to the designated Contract Coordinator, **Antoinette Tillery** or the Director of Procurement & Contracts, **Shari Hamilton**. Proposers must not make inquiry or communicate with any other NHA staff member or official (including members of the Board of Commissioners) pertaining to this RFP. Failure to abide by this requirement may be cause for the NHA to not consider a proposal submittal received from any proposer who has not abided by this directive.

### 2.3 NON-CURABLE ITEMS

The following requirements shall be considered mandatory items to be submitted at the time specified by the contracting unit for receipt of the proposal; the failure to submit any one of the mandatory items shall be deemed a fatal defect that shall render the proposal submission unresponsive and that cannot be cured by the governing body.

1. A statement of corporate ownership pursuant to NJSA 52:25-24.2
2. A listing of sub-consultants as required by NJSA 40A:11-16
3. A document for the respondent to acknowledge receipt of any notice or revisions or addenda to the advertisement or proposal documents, or if applicable, the respondent acknowledges same pursuant to NJSA 40A:11-23.2e

Each proposal form must give the full business address, business phone, fax, e-mail (if available), the contact person of the respondent, and be signed by an authorized representative as follows:

Partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing.

Corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the president, secretary or other person authorized to bind the corporation in the matter.

Sole-proprietorship shall be signed by the proprietor.

When requested, satisfactory evidence of the authority of the officer signing shall be furnished.

### 2.4 PROOF OF BUSINESS REGISTRATION

N.J.S.A. 52:32-44 requires that each respondent submit proof of business registration prior to contract award. Proof of registration shall be a copy of the respondent's Business Registration Certificate (BRC). A BRC is obtained from the New Jersey Division of Revenue. Information on obtaining a BRC is available on the internet at [www.nj.gov/njbgs](http://www.nj.gov/njbgs) or by phone at (609) 292-1730. Be advised, all sole-proprietors may not submit their application online and must leave time to process the application by postal service. A sample of the acceptable forms of proof of NJ Business Registration is contained in Part III of this RFP.

N.J.S.A. 52:32-44 imposes the following requirements on respondents and all sub-consultants that knowingly provide goods or perform services for a respondent fulfilling this contract: The respondent shall provide written notice to its sub-consultants and suppliers to submit proof of business registration to the respondent. If the proposal includes the use of named sub-consultants, the Business Registration Certificates for those sub-consultants must be submitted prior to contract award. If the selected respondent uses sub-consultants not part of the submission, prior to receipt of final payment from a contracting agency, the awardee must submit to the Newark Housing Authority an accurate list of all sub-consultants or attest that none was used. During the term of this contract, the respondent and its affiliates shall collect and remit, and shall notify all sub-consultants and their affiliates that they must collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use

Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into this State.

A respondent, sub-consultants or supplier who provides false business registration information or post award, fails to provide proof of business registration for added sub-consultants shall be liable to a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration not properly provided or maintained under a contract with a contracting agency. Information on the law and its requirements is available by calling (609) 292-1730.

## 2.5 CAUSES FOR REJECTING PROPOSALS

Proposals may be rejected for any of the following reasons:

1. Any non-curable defects pursuant to N.J.S.A. 40A: 11-23.2
2. All proposals pursuant to N.J.S.A. 40A: 11-13.2;
3. If more than one proposal is received from an individual, firm or partnership, corporation or association under the same name;
4. Multiple proposals from an agent representing competing respondents;
5. The proposal is inappropriately unbalanced;
6. The respondent is determined to possess, pursuant to N.J.S.A. 40A: 11-4b, Prior Negative Experience; or
7. If the successful respondent fails to enter into a contract within 21 days, Sundays and holidays excepted, or unless otherwise agreed upon by the parties to the contract to extend that time. In this case of failure, the NHA may accept the proposal of the next highest scored responsible respondent. (N.J.S.A. 40A: 11-24b).

A rejected proposal shall be **DEEMED** as **NO PROPOSAL**, and the proposal shall be returned to the respondent.

## 2.6 METHOD OF CONTRACT AWARD

1. The length of the contract shall be stated in the public notice and specifications. Pursuant to requirements of N.J.A.C. 5:30-5.1 et seq., any contract resulting from this proposal shall be subject to the availability and appropriation of sufficient funds annually.
2. The form of contract shall be submitted by the NHA to the successful respondent. Terms of the specifications/proposal package prevail. Respondent exceptions must be formally accepted by the NHA.

## 2.7 PROTESTS

The NHA's policy for Protests stipulates, "Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against

an award of a contract must be received within five calendar days after the award of a contract, or the protest shall not be considered. All protest shall be in writing, submitted to the Contracts Division, who shall issue a written decision on the matter." The Contracts Division may, after concurrence of the Chief Legal Officer and with approval of the Executive Director, at his or her discretion, suspend the procurement pending resolution of the protest if warranted by the facts presented.

## **SECTION 3.0 INTENT AND SCOPE OF SERVICES**

### **3.1 INTENT OF THE REQUEST FOR PROPOSAL**

The Newark Housing Authority (NHA) intends to partner with and enter into a lease/concession agreement for its refectory space located at its headquarters at 500 Broad Street, Newark, New Jersey, to a vendor prepared to operate and manage a cafeteria-style business open to the public. The NHA wishes to lease the lower-level space for daily operations during the work-week (Monday through Friday) except Holidays, during agreed upon working hours. A written lease shall be executed covering the leasing of the premises located in the building for food service and/or retail concession operations.

There is approximately 1,668 square feet of leasable concession/food service area with a qualified occupancy load capacity of up to 55 persons. A floor plan is attached as Exhibit A. The facility is currently equipped with a commercial refrigerator, a 4-burner electric range, electric grill, electric fryer, ventilation hood, fire-suppression system, a large buffet-style serving cart, a beverage cooler, tables, chairs, storage area, sink, faucets and various other related items; no additional equipment will be provided. All existing equipment is provided on an as-is basis condition. This facility is not and shall not be certified for the disbursement or sale of alcoholic beverages.

The NHA desires that the selected company provide menu selections complementary to the organization's wellness program.

### **3.2 SCOPE OF SERVICES**

The vendor is fully responsible for all costs associated with the management, operation and maintenance of the leased facility including but not limited to equipment, kitchen area, lounge area, storage area etc.

The vendor shall have the capability to fully operate the facility and provide the commodities, services, personnel, labor, and equipment provided by NHA as-is where-is (inclusive of maintenance and repair) necessary to provide food service for the occupants of 500 Broad Street and the public in accordance with the requirements of this RFP.

It shall be expressly understood that the NHA has no intention to install, operate, maintain or to manage the services referenced herein. The NHA shall not consider any offer for or any form of ownership as a result of the solicitation for this service. In an effort to establish a food and beverage service at the 500 Broad Street facility, the NHA shall provide the allotted space, the required utilities (water, heat and electricity, equipment ventilation and cooling etc.) connection

to the successful vendor to perform this service. For consideration for providing the allotted space and utilities, the vendor shall pay a monthly rent amount to NHA.

The successful vendor at its own expense shall perform all work/services required, including but not limited to: the operation and management of the cafeteria/concession, the installation of all equipment (prior approval by NHA required), repair and maintenance of all equipment to be utilized, the cleanliness and up-keep of the area. The successful vendor shall be responsible for and maintain sufficient supervision of the facility at all times. The vendor shall perform all work for providing this service pursuant to all applicable federal, state, county and municipal laws, rules, codes and regulations. The vendor shall be required to maintain the facility pursuant to all federal, state, county and municipal health standards and regulations governing the preparation, handling and transporting of food. The successful vendor shall be required to obtain and keep in effect all necessary licenses, permits and certifications. All licenses, permits and certifications shall be displayed as required by applicable Authorities standard in the industry.

### 3.2.1 STATEMENT OF WORK:

1. Vendor shall obtain and maintain current all necessary permits, licenses and health certifications for the operation of this service.
2. Vendor shall not operate or permit to be operated any other business of any kind, or any other equipment or vending machines proposed for this service without prior written consent from the NHA.
3. Vendor shall maintain an adequate staff of employees on duty at the facility for the timely preparation and efficient, prompt service of food.
4. Vendor access to the facility shall be between the hours of 6am and 4pm.
5. Vendor must provide the food and all necessary elements and materials to transport, prepare, handle, sell and distribute food products.
6. Vendor must maintain tables, chairs, work area, storage rooms, and equipment in a clean, sanitary manner (subject to periodic planned and unplanned inspection by authorized NHA personnel). Vendor shall also secure all trash in plastic garbage bags that shall be picked up and disposed of on a timely and regular basis.
7. Vendor shall establish and maintain reasonable menu pricing structure comparable and competitive to like size and quantity of items sold in the Greater Newark Area. All products offered must be approved by the NHA.
8. In collaboration with the NHA, Vendor shall take the steps necessary to facilitate inspection for approvals including those by City of Newark Health and Fire Departments.
9. Vendor shall coordinate with NHA designee on all necessary activities related to the use and operation of the premises.

10. Vendor shall be responsible for the handling of all foods and liquids using the highest sanitary methods and shall comply with all applicable health laws and regulations and codes.
11. Vendor shall ensure that all food products sold are fresh and shall comply with all federal, state, municipal health laws, standards and regulations governing the preparation, handling and transporting of food.
12. All food handlers must conform to all applicable sanitary regulations governing food handling and preparation, including but not limited to, the wearing of hats, head-covering(s) and sanitary gloves.
13. All food purchased by the vendor shall at minimum be in compliance with federal and state standards.
14. All food requiring refrigeration shall be delivered in refrigerated vehicles in accordance with federal, state, and municipal health standards and regulations governing the preparation, handling and transporting of food. They shall also be stored in a refrigerated appliance in accordance to federal, state, and municipal health standards and regulations governing the preparation, handling and transporting of food. All refrigerated and frozen food products must be monitored in accordance with the manufacturer's recommended temperature range at all times.
15. All prepared packaged foods e.g., milk, milk products and sandwiches shall be delivered fresh and shall clearly be marked with an expiration date to sale.
16. All food received, prepared, stored and served shall be in accordance with all federal, state, municipal health laws, standards and regulations governing the preparation, handling and transporting of food.
17. Vendor shall provide on the menu meals that shall be healthy in structure promoting healthy eating and living.
18. Vendor shall provide details of items other than food and beverage it wishes to sell i.e. newspaper, books, candy etc. cost of items shall not exceed like items sold in the Newark area.
19. Vendor shall have the approval of the NHA of the items to be sold and additional equipment, machinery and appliance to be utilized.
20. Vendor shall furnish, repair and maintain, at its sole expense all equipment necessary to provide the services required in this RFP.
21. If vending machines are used, the vendor shall establish and maintain a system of providing timely refunds to individuals in the event of loss monies through equipment malfunction.

22. Vendor shall replace any equipment or vending machines with a prolonged record of breakdown or malfunction. NHA's refrigeration equipment and machines storing food are to be repaired or replaced immediately in a manner not to interrupt the refrigeration of the stored food.
23. Vendor must provide periodic training to its employees on handling of food. Training subjects should include but not be limited to principles of food service sanitation, prevention of food borne illnesses, use and care of equipment and utensils, methods of serving and portion control.
24. No cigarettes or any kind of tobacco products may be sold on the premises.
25. No alcoholic products of any kind can be sold on the premises.
26. No lottery or lottery related games can be sold on the premises.
27. **All cost to start up the services proposed by the vendor shall be borne by the vendor.**

### 3.2.2 USE OF ENVIRONMENTALLY FRIENDLY PRODUCTS:

To the greatest extent possible, the Vendor shall use green products and processes. The Vendor shall take every precaution to ensure that if available, only safe and environmentally friendly products are used.

The use of such products shall have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose.

### 3.3 VENDOR PERSONNEL

1. Vendor is responsible for the conduct of its employees, its subcontractors, and its subcontractor's employees working at the facility.
2. All employees of the vendor shall represent themselves in a neat and professional appearance and shall conduct themselves in a professional and sanitary manner.
3. All employees of the vendor shall be polite and respectful to all persons utilizing the facility.
4. Vendor shall provide its policy on cell phone usage by staff during work hours. Policy is to be approved by NHA.
5. The vendor shall have a supervisor on the premises at all times for the coordination of all personnel, labor and complete control of the actions of its personnel at the facility.
6. Vendor shall supply standard food service attire bearing the vendor's name and/or logo (or other vendor identification) for all employees assigned to work at the facility. An employee assigned to work at the facility shall not be permitted to enter without either a uniform or identification badge.

7. The vendor, its employees, its subcontractor, and its subcontractor's employees shall observe and obey all security procedures in effect at the facility. Failure to adhere to security procedures shall result in removal of the offender from the premises and replacement with another employee.
8. NHA reserves the right to require replacement of any vendor, employee or subcontractor employee for failure to abide by the aforementioned standards. Such determination shall be made solely by NHA and shall not be subject to appeal. All such determinations shall be memorialized in writing by NHA to Vendor within thirty (30) days of request.

#### 3.4 RESPONSIBILITIES OF THE NHA

1. The NHA shall provide the space to be occupied for this service.
2. The NHA has equipment on the premises that may be utilized by the vendor.
3. The NHA shall furnish heat, all water lines, plumbing and electrical connections for the operation of equipment and machinery for this service. Final connections heating, cooling, ventilation etc. are to be made by the vendor.
4. The NHA shall make available lounge space adjacent to the cafeteria for patrons to eat, drink and to lounge.
5. Provide an area for storage shall be provided by NHA.

#### 3.5 NHA RESERVATION OF RIGHTS

1. Approve the menu/specification for prepared and packaged foods.
2. Approve additional equipment, machinery and appliances to be utilized for this service.
3. Right to inspect, at any time, the vendor's food preparation, packaged foods, storage area and the food containers and utensils used in the preparation of meals and other foods to determine the adequacy of the vendor's cleaning, sanitation and maintenance practices, as well as to sample foods for wholesomeness.
4. Right to access to the vendor's purchase records for foods and goods that are directly related to this service in an effort to determine compliance with the conditions specified herein.

### 3.6 LEASE CONCESSION GENERAL TERMS

#### 3.6.1 TERM

The term of the contract will be for a period of three (3) years with two (2) one (1) year options to renew at the sole discretion of the Authority, beginning on the date specified in the written Notice to Proceed issued by the Authority's Contracting Officer.

#### 3.6.2 MONTHLY LEASE/RENT

Vendor shall pay a monthly rent that is the greater of one twelfth (1/12) of the Minimum Annual Guarantee (MAG) or the established Percentage Rent due no later than the fifth (5<sup>th</sup>) of the following month.

#### 3.6.3 PERCENTAGE RENT

Vendor shall propose Percentage Rents as a percent of gross receipts that the Vendor will pay under the Lease Concession agreement in the event the percentage rent so calculated exceeds the Minimum Annual Guarantee (MAG). Vendors should offer a minimum percentage rent no lower than 3.5% for food service, and 10% for retail. Vendors are encouraged to propose percentage rents that increase with sales volume. Vendors shall be prepared to submit supporting information from an existing facility verifying that the proposed Percentage Rent can be supported while maintaining reasonable profitability and acceptable service and quality levels upon request during the evaluation process. Percentage rents will not be renegotiated during the term of the concession lease. Proposed percentage rent shall be completed on the Cost Proposal Form in Part 3, Bid Documents of this RFP

#### 3.6.4 MINIMUM ANNUAL GUARANTEE

The Vendor shall propose to pay the minimum amount of rent it will pay for the privilege of renting space for the operation of concession lease at the NHA. Minimum Annual Guarantee proposed by the Vendor shall be completed on the Cost Proposal Form in Part 3, Bid Documents of this RFP.

#### 3.6.5 PRICING POLICY

The following "Street Pricing Plus Policy" shall apply to the Concession Lease (food and or retail):

The selected vendor shall sell all food and beverage items for no more than 5% of the average prices charged in comparable facilities within the Greater Newark area for like size and quality products sold. All printed material shall be priced at no greater than the price listed on the inside or outside cover. Prices for certain identified staple items sold by the Vendor (See Attachment A) shall not exceed the price of items of like size and quality sold at comparable retail outlets within the Greater Newark area, while the prices for all other retail items not previously covered in this pricing policy may exceed the average price charged in the comparable outlets by up to 5%.

For each menu item listed in the proposal, Vendors shall designate three restaurants in the Greater Newark area that sell the item and are comparable in concept, size, and quality to the food service concessions proposed for the NHA. The comparable outlets designated by the

Selected Vendor must be valid comparables and will be used as the basis for price comparisons during the term of the Concession Lease to determine compliance with the Street Pricing Plus Policy. All restaurants to be used for price comparisons shall receive prior written approval by the NHA. If a Vendor has existing similar restaurants in the Newark area, then the price comparison shall be based on the prices charged in that location or the average prices charged among all locations (when there is more than one location).

During the term of the Concession Lease, the Selected Vendor shall at least biennially provide documentation to the NHA comparing prices it charges at each unit at the NHA with the prices charged by the designated comparable outlets to establish the Selected Vendor's compliance with the Street Pricing Plus Policy. The items used in the foregoing price comparisons shall be, by location, the five (5) menu items sold by the Selected Vendor having the highest dollar sales volume and another five menu items selected as having the highest number sold.

Additionally, no more than twice per year, the NHA may require the Selected Vendor to perform a price comparison of up to twenty items selected by the NHA. In the event that the NHA determines that the selected vendor is not in compliance with the Street Pricing Plus Policy, the NHA will give the selected vendor written notice thereof. If the selected vendor does not make appropriate adjustments to comply with the Street Pricing Plus Policy within three (3) days of such notice of non-compliance, sanctions may be imposed or the selected vendor shall be deemed to be in material breach of the Concession Lease and the Concession Lease shall be subjected to termination.

### **3.6.6 CUSTOMER SERVICES**

The Selected Vendor must accept at least 3 major credit/debit cards for a minimum of \$7.00 per transaction. Customer shall have the option of requesting "to-go" packaging for all food items sold in the restaurant at NHA. To-go packaging including all utensils and condiments shall be required.

## **SECTION 4.0 DESCRIPTION OF FOOD SERVICE CONCESSIONS**

### **4.1 CONCEPTS, MENUS, AND PRODUCTS**

The following are the minimum requirements that the Selected Vendor must provide in the facility. Vendors should consider proposing facility concepts and product lines, including Local Brands and National Brands, or local and nationally branded products that exceed these minimum requirements.

| ITEM      | CONCEPT                                                                                                                                                                                                    |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| BREAKFAST | Coffee Café. Offerings to include gourmet coffee, baked goods (suitable for breakfast, such as muffins and bagels, sandwiches, salads, yogurt, cereal, whole fruit, juice, soft drinks, and bottled water. |
| LUNCH     | Gourmet coffee, branded gourmet coffee, juice, soft drinks, and bottled water.<br><br>Café with Bar. Menu to include freshly prepared and made-to-order sandwiches,                                        |

|  |                                                                                                                                                                                                                          |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | salads and or salad bar, hot entrees, grilled items, snacks, baked goods, whole fruits, hot and cold beverages, juice, bottled water. Menu items must include healthy offerings, and low fat and low-carbohydrate items. |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Careful consideration should be given to ensuring that a majority of the menu selections can be prepared in a short amount of time. Preparing and packaging food items in advance, other than grab and go menu items is discouraged.

## **SECTION 5.0 RETAIL CONCESSIONS**

### **RETAIL PRODUCTS**

The following is a list of typical retail items that can be offered in conjunction with the retail concession. No more than 15% of the space shall be used for rental including any vending machinery.

- a. Newspapers
- b. Sundries
- c. Health aids
- d. Candy
- e. Water
- f. Snacks
- g. Convenience items

## **SECTION 6.0 ADDITIONAL SERVICES**

The NHA from time to time may require catering services for special events. The cost for catering shall be based on a fixed price for each requirement or other such unit pricing method agreed upon by both parties.

## **SECTION 7.0 PROPOSAL FORMAT**

The purpose of the Proposal is to demonstrate the qualifications, service level, and cost for lease/rental of allotted space for concession services, competency and capacity of the companies seeking to operate a cafeteria/concession at the NHA. The proposal should follow the format provided below and address all the points outlined as indicated:

### **7.1 LETTER OF INTEREST:**

This letter should include the name of the respondent, the location of the principal place of business, the type of business entity (e.g., corporation, partnership), and the state of organization. The name, telephone, email address, and facsimile number of the primary contact person must accompany the submission. The letter should summarize briefly that the Vendor shall execute a Concession Lease with respects to rents in the format outlined in the RFP or as

negotiated prior to award of the Concession Lease. Vendor may include other general information it desires to include as an introduction to the Proposal.

## 7.2 NON-CURABLE DOCUMENTS:

*Stockholders Disclosure Certification* - N.J.S.A. 52:25-24.2 provides that no corporation or partnership shall be awarded any contract for the performance of any work or the furnishing of any goods and services, unless, prior to the receipt of the bid or accompanying the bid of said corporation or partnership, the bidders shall submit a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own ten percent or more of its stock of any class, or of all individual partners in the partnership who own a ten percent or greater interest therein.

*Listing of sub-contractors and certification form* – A signed listing of all sub-contractors to be used and completion of certification form.

*Acknowledgement of Receipt of Addenda/Clarifications* – A document provided by the contracting agent in the bid plans, specifications or bid proposal documents for the bidder to acknowledge the bidder's receipt of any notice, revisions, addenda or clarifications to the advertisement or proposal documents. Document must be signed, sealed & notarized.

## 7.3 INTRODUCTION:

### 7.3.1 EXECUTIVE SUMMARY:

The Executive Summary or Introduction should provide a description of the scope of services to be performed and list all proposed sub-contractors, or contracts, if any. The summary should include a brief outline of the Vendor's key personnel expected to work on or provide technical assistance for this project, work plan, qualifications, organization structure, experience, and program goals. The Executive Summary shall include but is not limited the following:

### 7.3.2 QUALIFICATIONS STATEMENT:

The vendor must submit the following information relative to its, qualifications and experience:

1. Evidence of applicable/required licenses, certifications core competencies.
2. Evidence of registration as a food service business in the City of Newark.
3. Submit business license number.
4. Evidence of Insurability as outlined in Section 10.0.
5. Possess all the necessary federal, NJ State and local licenses, permits, certifications and to operate the facility.
6. Evidence of a minimum of five (5) years relevant experience.

### 7.3.3 ORGANIZATION STRUCTURE / KEY PERSONNEL

Vendor shall provide a detailed description of the process by which Vendor would organize, mobilize, coordinate and deliver the required services. The information provided should include, but need not be limited to, the following:

1. Brief history of company (ies), including size and any specialty areas. Note any changes in company name(s) and ownership structures(s) joint venture partnership(s), and any other names under which the company (ies) has been doing business. Describe current operations as they exist today;
2. Provide descriptions of the organization's operations most relevant to those being proposed, including the following,
  - a. Average sales per transaction,
  - b. Minimum annual guarantee obligations,
  - c. Percentage rent obligations,
  - d. Actual rent paid,
  - e. Term of lease (including commencement and expiration dates).
  - f. Also provide the names, addresses and telephone numbers of the landlords and property managers for each of these operations.
3. Provide resumes of key personnel;
4. Particular expertise or involvement in the industry;
5. Provide description of Vendor's and Joint Venture Partner's proposed organization inclusive of the following:

|                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| If a corporation, attach the Articles of incorporation, and list the names, addresses and shares of all persons or entities owning 10% or more of the Vendor's voting stock.                                                                        |
| If an LLC, attach the Articles of Organization and list the name and address of each member.                                                                                                                                                        |
| If a partnership, attach a copy of the Partnership Agreement, and list the name, address and share of each partner.                                                                                                                                 |
| If a joint venture, list date of organization, attach a copy of the joint venture agreement, indicate if the joint venture has done business in New Jersey and where, and list the name, address and share of each joint venture.                   |
| If sole proprietorship, list all business names under which such proprietor has done business during the last five (5) years, address(es), how long in business, social security number, and state whether authorized to do business in New Jersey. |

### 7.3.4 FINANCIAL STATEMENT

Vendor and joint venture partner if any shall demonstrate its financial stability by the submission of audited financial statements, annual reports, or such other information as is reasonably acceptable to the NHA.

The following financial information for the Vendor and any joint venture or affiliate entities submitting proposals shall be accepted by the NHA:

1. Partnerships/Individuals: Balance sheet and income statements for the last two (2) fiscal years prepared in accordance with generally accepted accounting principals (GAAP,

reflecting the current financial condition of the partners and individuals submitting the Proposal. The two (2) most recent completed IRS tax returns.

2. Public Corporations: Previous two (2) year's annual report for the proposing entity.
3. Private Corporations: Previous two (2) year's CPA-prepared and certified financial statements.
4. A statement declaring whether Vendor has ever declared bankruptcy, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court and the status of each occurrence.
5. Names, addresses, and telephone numbers of at least three credit references, including at least one (1) banking reference. The vendor's bank reference shall include contact name, title, location, and telephone number of person who can attest to the financial holdings of the company.

### 7.3.5 EXPERIENCE

Vendor shall submit written and/or graphic evidence of not less than three (3) significant projects that Vendor has completed in the past five (5) years that are similar in scope to the services described in this RFP. Vendor should not include previous engagements with the NHA as experience.

The vendor shall also include to the following:

1. Demonstrate experience with managing and operating similar facility of comparable size;
2. Program aligned with key components of NHA's wellness initiative;
3. Exhibit ability to prepare food and beverages according to proper food handling and health industry standards;
4. State, Federal, and Municipality experience;
5. Indicate capability to provide sufficient, competent, knowledgeable, certified and fit personnel;
6. Outline ability to provide all equipment, machinery and other items necessary to provide services;
7. Provide experience on joint venture partner.

### 7.3.6 REFERENCES

Provide current references from at least three (3) organizations or clients that can address your specific capabilities as they relate to the requirements of the RFP. Include the following for references:

1. List of municipal or government organization currently represented and for what type(s) of service (provide contact names and telephone numbers);
2. Contact names and telephone numbers of clients in the State of New Jersey with whom organization has had a working relationship;

3. Provide reference information on joint venture partner(s);

#### 7.4 CONCEPT DEVELOPMENT:

Vendors shall submit the following information in sufficient detail to clearly define the proposed concepts and to allow them to be distinguished from those of other proposers.

Food and Beverage:

1. Specific concept descriptions and how they would be incorporated into the NHA Wellness Program.
2. Proposed Restaurant/Concession name, theme/decor.
3. Menus, the price ranges for each menu item. Specifically indicate which menu items will be pre-packaged for grab and go service and how those items will be packaged for the customers.
4. A description of any unique attributes of the proposed concepts.
5. List of any logoed or branded merchandise that will be sold and the process for those items.
6. Incorporation of NHA Wellness Program.

Retail:

1. Merchandise mix, including a list of proposed merchandise (including the number of newspapers) and the price ranges for each type of merchandise item.
2. A description of any unique attributes of the proposed concepts.
3. Retail Proposals- A floor plan of the unit (not concept) should be provided, indicating locations for product lines.
4. Vendors shall submit a financial plan.

Include for Food/Beverage and Retail:

1. Estimated working capital support.
2. Sources of funding.

#### 7.5 WORK PLAN/PROJECT APPROACH:

Provide a description of the work plan proposed to carry out the major tasks needed to implement the services required bring the proposed project to completion. It should provide a detailed outline of the approach and not simply reiterate the Scope of Work described in this RFP. Include in the plan the following:

1. Submit a proposed café theme and business plan to operate the facility, market the establishment, obtain customers, and stimulate growth; include timeline for activities (where appropriate);
2. Demonstrate access to or employment of licensed or registered dietician, professional nutritionist to advise on health and dietary aspects of the menu;
3. Provide a copy of food handling procedures including who is responsible for insuring implementation and training;

4. Describe your company's training programs for staff that would support this program,
5. Include the person (s) who would be responsible for training, delivery, evaluation and sustainability;
6. Provide statement of best practices in the area of "going green" and the use of environmentally friendly products with specific examples of how these practices will be incorporated into the Concession Lease operations;
7. Provide routine cleaning and preventive maintenance plan for all equipment to assure an attractive appearance and prevent operating problems;
8. Submit a waste management and disposal plan including a cleaning plan for facility;
9. Provide a copy of your safety program;
10. Demonstrate a commitment to working with NHA residents through training programs, internships, and/or employing NHA residents;
11. Submit joint venture partner's role in providing required services;
12. Provide a detailed narrative and or rationale for your proposed pricing structure for menu items;
13. Submit a proposed sample menu including estimated pricing – include health conscious elements in menu;

#### 7.6 OPERATIONS AND MAINTENANCE PLAN:

Proposer shall submit an operation and maintenance plan containing sufficient information to evaluate the plan for daily and ongoing operations, including but not limited to maintenance, delivery and trash removal, inventory stocking and storage, pest control, janitorial service, grease trap cleaning and grease waste handling and removal, and cash control system. For deliveries and trash removal, indicate the times of day such tasks are designated to occur, the staffing levels at those times to ensure continued operations in the concession location. For ongoing maintenance and cleaning clearly identify responsible personnel. Describe how maintenance issues will be addressed.

#### 7.7 FINANCIAL PROJECTIONS:

Vendors shall submit a financial proforma indicating the following for each year of the lease:

1. Anticipated gross sales by concession.
2. Expenses by line item.
3. General and administrative costs.
4. Rent.

Vendors shall include in this section data and information indicating the expected rent to be paid for each lease year and demonstrating that the Percentage Rent, as proposed, can be supported by the projected revenue stream without sacrificing the quality or service of the

operations. Proformas shall be evaluated for reasonableness, demonstrated understanding of the proposed concession lease, viability of the proposed operations and financial offer, and ability to fund the operation.

#### 7.8     MARKETING AND PROMOTION PLANS:

Vendors shall submit sufficient information to allow evaluation of the marketing and promotions plan for its proposed concessions.

- Describe the analysis conducted.
- Describe the research to be used to monitor customer satisfaction, concepts, menus, and product lines selected for the program.
- Describe your corporate customer service philosophy.

#### 7.9     RENT PROPOSAL:

The food service concession Rent Proposal shall include the following:

1. Monthly Lease Rent as outlined in subsection 3.3.2, or,
2. Proposed Percentage Rent as outlined 3.3.3,
3. Minimum Guarantee as outlined in 3.3.4,
4. Pricing policy as outlined in 3.3.5.

#### 7.10    OTHER REQUIRED SUBMISSION DOCUMENTS:

Each vendor is required to submit, in addition to those listed in items 8.1-8.8, the documents included in the *Submission Documents* package. These include:

- RFP Checklist
- Evaluation Form
- Lease/Concession Proposal --- (form included five (5) copies sealed envelope)
- Affirmative Action Compliance Notice
- Affidavit of Non-Collusion
- Affidavit of Non-Default
- Drug Free Work Place Certification
- Debarment Statement – submit notarized statement, on the firm's letterhead, that the respondent or partner are not debarred, suspended or otherwise prohibited from professional practice by any Federal, State or Local agency.
- Liens, suits or judgments – submit notarized statement on the firm's letterhead, indicating a description of any disputes, suites, judgments and liens during the past two years.

- HUD Form 5369-C: Certifications and Representations of Offerors
- HUD Form 2530: Previous Participation Certification
- Business Registration Certificate – N.J.S.A. 52:32-44 requires that each vendor submit proof of business registration prior to contract award. Proof of registration shall be a copy of the vendor's Business Registration Certificate (BRC). If the proposal includes the use of named sub-contractors, the Business Registration Certificates for those sub-contractors must also be submitted prior to contract award.
- Section 3 Opportunity Plan
- Joint venture agreement (if applicable).

## **SECTION 8.0 GENERAL INSTRUCTIONS**

Proposal Submission deadline is Tuesday, October 5, 2010 at 3:00 p.m. It is the Vendor's responsibility that proposals are presented to the owner at the time and at the place designated. Proposals may be hand delivered or mailed; however, the owner disclaims any responsibility for proposals forwarded by regular or overnight mail. If the proposal is sent by express mail service, the designation above must also appear on the outside of the express mail envelope. Proposals received after the designated time and date will be returned unopened.

Vendors are asked to submit an original and five (5) copies, plus one (1) electronic version of the proposal on either a CD or disk, using a Word or PDF file addressed to NEWARK HOUSING AUTHORITY - CONTRACTS DIVISION; bearing the name and address of the respondent written on the face of the package, and clearly marked "PROPOSAL" with the RFP title and proposal #.

### **8.1 QUESTIONS**

All questions and requests for information must be addressed in writing to Director of Procurement & Contracts, Shari Hamilton. The deadline for receipt of questions pertaining to this proposal will be Friday September 24, 2010 by 10:00 a.m. All communications pertaining to this RFP shall be addressed to Contracts Division, 500 Broad Street, 5th Floor, Newark, N.J. 07102 or by facsimile 973-273-6479.

The Director of Procurement & Contracts will respond to all such inquiries in writing by addendum to all prospective proposers (i.e. firms or individuals that have obtained the RFP Documents). During the RFP solicitation process, the NHA will NOT conduct any ex parte (a substantive conversation—"substantive" meaning, when decisions pertaining to the RFP are made—between the NHA and a prospective proposer when other prospective proposers are not present) conversations that may give one prospective proposer an advantage over other prospective proposers.

## 8.2 INTERPRETATION AND ADDENDA:

The Vendor should rely only on representations, statements or explanations, contained in this RFP, any documents that the Authority has provided the Vendor, which are referred to in this RFP, and in such formal written addenda as are issued by the Authority prior to the Proposal Submission Deadline.

## 8.3 DESCREPANCIES IN PROPOSALS

If the amount shown in words and its equivalent in figures do not agree, the written words shall be binding. Ditto marks are not considered writing or printing and shall not be used.

In the event that there is a discrepancy between the individual rates and the extended totals, the rate prices shall prevail. In the event there is an error of the summation of the extended totals, the computation by the owner of the extended totals shall govern.

## **SECTION 9.0 EVALUATION AND SELECTION CRITERIA**

All proposals will be evaluated through consideration of several evaluation factors. The Respondents will be scored on a one hundred (100) point scale. The “**Evaluation Committee**” will review and score Respondents’ proposals in accordance with the following evaluation criteria as set below.

| <b>SELECTION CRITERIA`</b>                                              | <b>SCORE</b> |
|-------------------------------------------------------------------------|--------------|
| Background, experience, credentials, and past performance – Section 7.3 | 25           |
| Concept Development – Section 7.4                                       | 15           |
| Work Plan/Project approach, operations – Sections 7.5 & 7.6             | 30           |
| Financial Projections, Marketing - Sections 7.7 & 7.8                   | 25           |
| M/WBE & Section 3 Plan – Section 10.2                                   | 5            |
| <b>OVERALL SCORE</b>                                                    |              |

The NHA will make an award to the responsible Respondent whose offer conforms to the solicitation and is most advantageous to the NHA (i.e. that which represents the best value to the NHA), cost or price and other factors considered.

## **SECTION 10.0 ADDITIONAL INFORMATION**

### 10.1 INSURANCE REQUIREMENTS

Before commencing of services under this project, the Vendor shall furnish to the Authority certificates of insurance showing that the following insurance is in force, stating policy numbers, dates of expiration, limits of liability, deductibles, and aggregate amounts payable hereunder. Certificates of insurance must contain a 30-day cancellation clause and a brief description of the work to be performed. The Authority shall be named additionally insured in the Comprehensive General Liability Insurance policy.

- a. Worker's Compensation and Employer's Liability Insurance according to the laws of the state in which the Development Team's services are to be performed.
- b. Professional Liability Insurance covering claims made at any time prior, during, or subsequent to completion of the Respondent's services with a limit of not less than \$1,000,000 with a deductible not more than \$10,000.
- c. Comprehensive General Liability Insurance (bodily injury and property damage coverage) covering claims made at any time prior, during, or subsequent to completion of the Respondent's services with a limit of not less than \$2,000,000 with a deductible not more than \$10,000.
- d. Comprehensive Automobile Liability Insurance covering non-owned and hired vehicles, as well as for owned vehicles for bodily injury and property damage with a combined single limit of no less than \$1,000,000.00 (each accident) per occurrence.
- e. Where an amendment to the policies is required as a result of a contract with the Authority, the amendment shall be made prior to the signing of said contract.

The Vendor shall require each of the sub-contractors to furnish them with certificates of insurance evidencing current policies in force stating policy numbers, dates of expiration, limits of liability, deductibles, and aggregate amounts payable there under. This shall be submitted for review and approval prior to commencement of the sub-consultant's activities. Certificates of insurance are to be forwarded to the Authority upon receipt.

#### 10.2 EQUAL EMPLOYMENT OPPORTUNITY, AFFIRMATIVE ACTION STATEMENT AND SECTION 3 CLAUSE

The goal of the Affirmative Action Program is thirty percent (30%) of the dollar value of the total contract awards and purchases during the fiscal year. The Respondent's commitment to Affirmative Action and Minority Business Enterprises shall be demonstrated by submittal of evidence indicating:

1. An active Affirmative Action Program, hiring practices, minorities in upper management positions and/or minority ownership.
2. The utilization of minority owned businesses as subcontractors or Joint Venture partners.
3. SECTION 3 CLAUSE:
  - A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended March 17, 1999, 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 who are recipients of HUD assistance for housing, and with this contract.
  - B. The parties to this contract agree to comply with HUD's regulations in 24

CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

- C. The Respondent 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 Respondent's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Respondent 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 finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Respondent will not subcontract with any sub-consultant where the Respondent has notice or knowledge that the sub-consultant has been found in violation of the regulations in 24 CFR Part 135.
- E. The Respondent will certify that any vacant employment positions, including training positions, that are filled (1) after the Respondent 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 Respondent's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

4. MANDATORY AFFIRMATIVE ACTION CERTIFICATION (The following are mandatory requirements of this proposal and contract.)

For Goods and Services: no firm may be issued a contract unless it complies with the affirmative action provisions of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1 et seq.

Each contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- i. A photocopy of a valid letter that the contractor is operating under an existing Federally approved or sanctioned affirmative action program (good for one year from the date of the letter); or
- ii. A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4; or
- iii. A photocopy of an Employee Information Report (Form AA 302) provided by the Division and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

The Respondent's submission will be rejected as non-responsive if either one of the required documents is not submitted in the specified time frame.

10.3 AMERICANS WITH DISABILITIES ACT OF 1990

Discrimination on the basis of disability in contracting for the purchase of goods and services is prohibited. Respondents are required to read Americans with Disabilities language that is included as Appendix A of the sample contract and agree that the provisions of Title II of the Act are made a part of the contract. The contractor is obligated to comply with the Act and to hold the owner harmless.

10.4 TRUTH IN CONTRACTING

Respondents should be aware of the following statutes that represent "Truth in Contracting" laws:

- N.J.S.A. 2C:21-34, et seq. governs false claims and representations by bidders. It is a serious crime for the bidder to knowingly submit a false claim and/or knowingly make material misrepresentation.
- N.J.S.A. 2C:27-10 provides that a person commits a crime if said person offers a benefit to a public servant for an official act performed or to be performed by a public servant, which is a violation of official duty.
- N.J.S.A. 2C:27-11 provides that a bidder commits a crime if said person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant.

Respondents should consult the statutes or legal counsel for further information.

## 10.5 TERMINATION OF CONTRACT

1. If, through any cause, the Respondent shall fail to fulfill in a timely and proper manner obligations under the contract or if the Respondent shall violate any of the requirements of the contract, the NHA shall there upon have the right to terminate the contract by giving written notice to the Respondent of such termination and specifying the effective date of termination. Such termination shall relieve the NHA of any obligation for balances to the contractor of any sum or sums set forth in the contract. The NHA will pay only for goods and services accepted prior to termination.
2. Notwithstanding the above, the Respondent shall not be relieved of liability to the NHA for damages sustained by the owner by virtue of any breach of the contract by the Respondent and the NHA may withhold any payments to the Respondent for the purpose of compensation until such time as the exact amount of the damage due the NHA from the Respondent is determined.
3. The Respondent agrees to indemnify and hold the owner harmless from any liability to sub-consultants/suppliers concerning payment for work performed or goods supplied arising out of the lawful termination of the contract by the NHA under this provision.
4. In case of default by the Respondent, the NHA may procure the goods or services from other sources and hold the Respondent responsible for any excess cost.
5. Continuation of the terms of the contract beyond the fiscal year is contingent on availability of funds in the following year's budget. In the event of unavailability of such funds, the NHA reserves the right to cancel the contract.
6. ACQUISITION, MERGER, SALE AND/OR TRANSFER OF BUSINESS, ETC. It is understood by all parties that if, during the life of the contract, the Respondent disposes of his/her business concern by acquisition, merger, sale and or/transfer or by any means convey his/her interest(s) to another party; all obligations are transferred to that new party. In this event, the new owner(s) will be required to submit all documentation/legal instruments that were required in the original proposal/contract. Any change shall be approved by the NHA. The Respondent will not assign any interest in the contract and shall not transfer any interest in the same without the prior written consent of the NHA. The NHA may terminate the contract for convenience by providing 60 calendar days advanced notice to the Respondent.

## 10.6 PAY TO PLAY

Starting in January, 2007, business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of \$50,000 from public entities in a calendar year.

Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

10.7 PROMPT PAYMENT ACT N.J.S.A. 2A:30A-1 et seq.

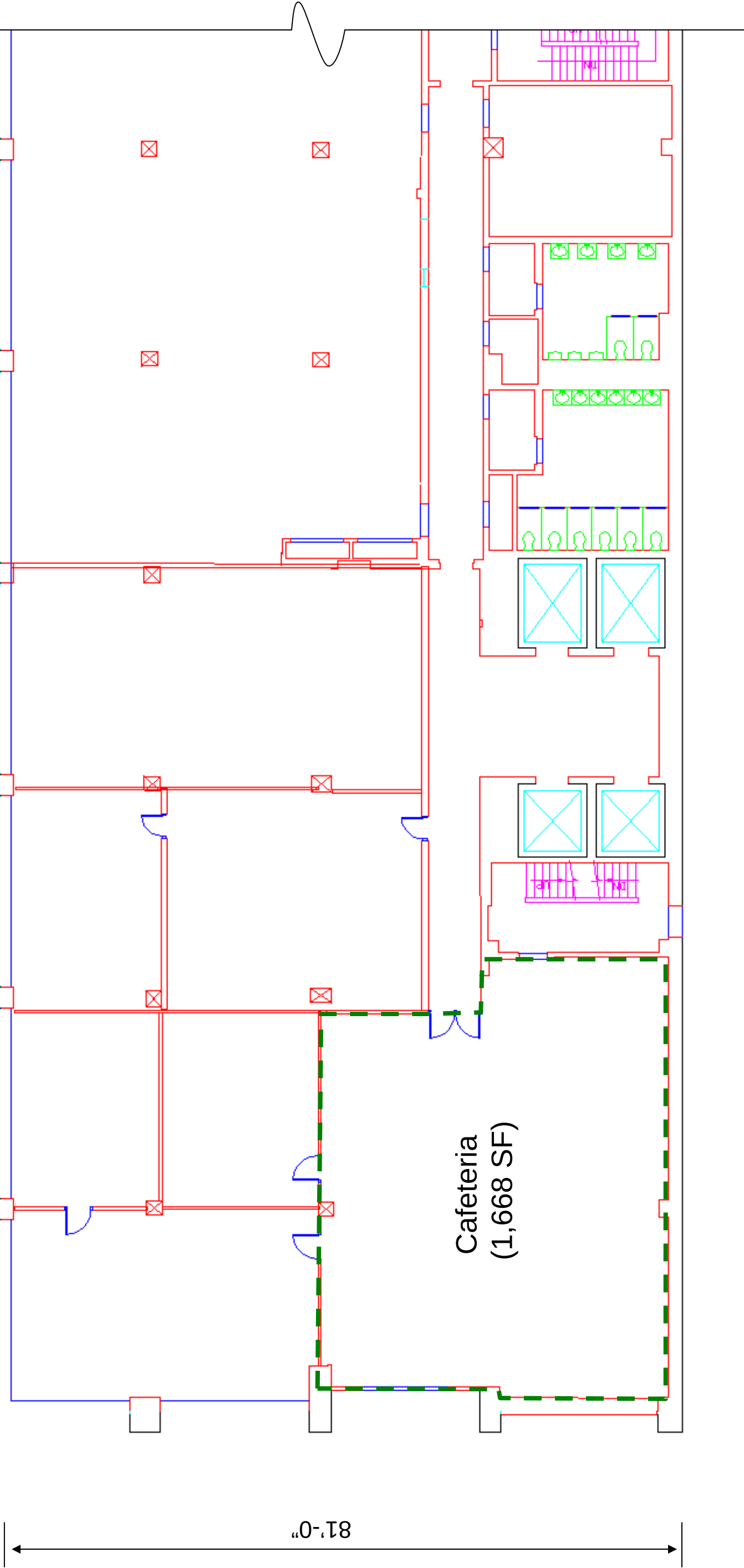
The award of this contract is subject to approval of the Newark Housing Authority Board of Commissioners and the continuing availability of funds after approval. This also includes any payment as a result of litigation of any dispute flowing from the award of this contract. Further, any change orders amounting to more than 20% must be approved by action of the Board of Commissioners.

## ATTACHMENT A – STAPLES ITEMS LIST

This is a representative listing not meant to be exhaustive.

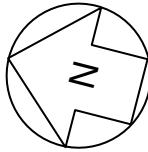
- Newspapers.
- Convenience items: lotions, hand sanitizer, tissue.
- Over the counter medicines and remedies, aspirin, ibuprofen/acetaminophen items (Tylenol, Motrin, etc.) lip balm, antacids, cold remedies, and cough medicine.
- Single-serving sizes of candy, cookies, crackers, and nuts/fruit and nut mix.
- Bottled water.

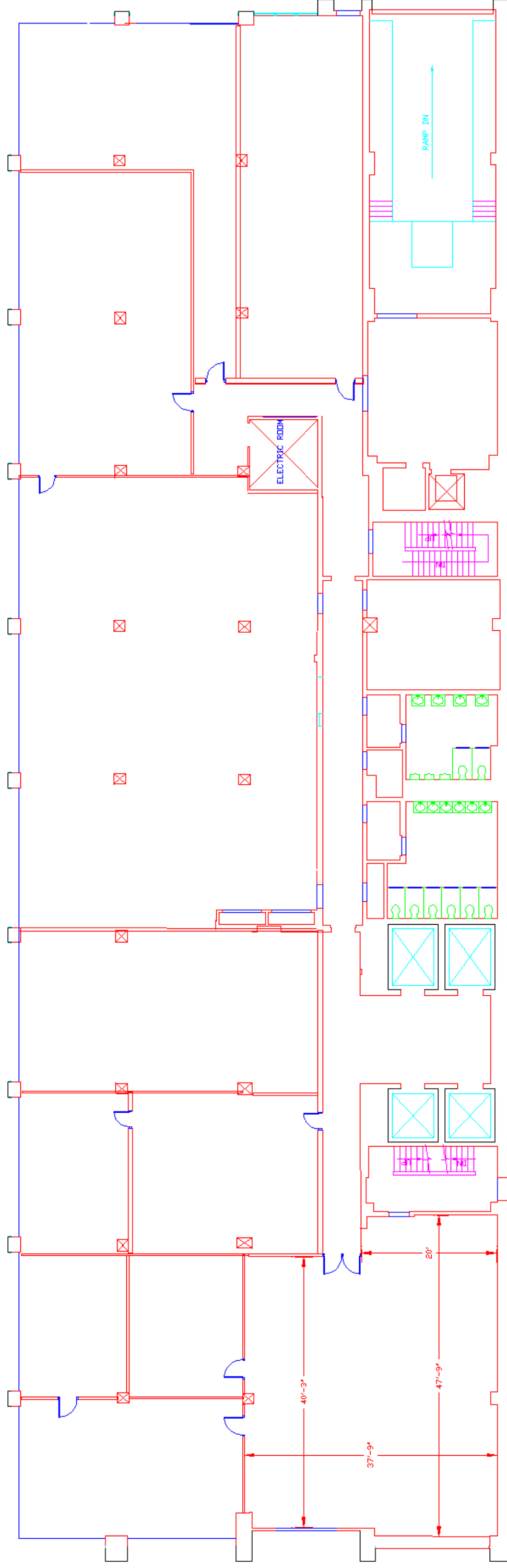
BRIDGE STREET



SW Basement Cafeteria Area (1,668 SF)

N.T.S.

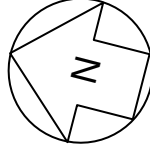




NEWARK HOUSING AUTHORITY  
500 BROAD STREET  
BASEMENT PLAN  
2010-05-18 MOD/ADP

## SW Basement Cafeteria Area (1,668 SF)

N.T.S.



SHEET 2 OF 2



*Executive Director*  
KEITH D. KINARD

*Chairperson*  
MODIA BUTLER

*Board of Commissioners*  
GLORIA CARTWRIGHT  
LENIN CRUZ  
RASHARD CASEY  
ANGELLA PALMER  
NANCY PEREZ

## **REQUEST FOR PROPOSALS**

### **LEASE/CONCESSION OF CAFETERIA SPACE AT 500 BROAD STREET**

**RFP #10-S-090**

**PART II of III**

### **STANDARD DOCUMENTS**

**CONTRACTS DIVISION**

**SUBMISSION DATE  
OCTOBER 5, 2010  
BY 3:00PM**

**NEWARK HOUSING AUTHORITY**  
**LEASE/CONCESSION OF CAFETERIA SPACE**  
**AT 500 BROAD**

**10-S-090**

**PART II**

**STANDARD DOCUMENTS**

**INDEX**

| <b>Section</b> | <b>Description</b>                                              | <b>Page</b> |
|----------------|-----------------------------------------------------------------|-------------|
| <b>1.0</b>     | <b>SAMPLE CONTRACT</b>                                          | <b>3</b>    |
| <b>2.0</b>     | <b>INSTRUCTIONS TO OFFERORS (HUD 5369-B)</b>                    | <b>5</b>    |
| <b>3.0</b>     | <b>GENERAL CONDITIONS FOR NON-CONSTRUCTION<br/>(HUD 5370-C)</b> | <b>8</b>    |
| <b>4.0</b>     | <b>24 CFR 86.36 (CODE OF FEDERAL REGULATIONS)</b>               | <b>15</b>   |

# **PART II**

## **SECTION 1**

### **SAMPLE CONTRACT**

**TO BE PROVIDED VIA  
ADDENDUM**

# **PART II**

## **SECTION 2**

### **INSTRUCTIONS TO OFFERORS (HUD 5369-B)**

# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **7. Contract Award**

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

(b) The HA may

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

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

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

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

## **8. Service of Protest**

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

## **9. Offer Submission**

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

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

[Describe bid or proposal preparation instructions here:]

## **PART II**

### **SECTION 3**

#### **GENERAL CONDITIONS FOR NON-CONSTRUCTION (HUD 5370-C)**

# 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. 11/30/2008)

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

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

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

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

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

proposal submitted before final payment of the contract.

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

#### 3. Termination for Convenience and Default

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

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

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

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

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

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

## 6. Energy Efficiency

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

## 7. Disputes

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

## 8. Contract Termination; Debarment

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

## 9. Assignment of Contract

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

## 10. Certificate and Release

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

## 11. Organizational Conflicts of Interest

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

## 12. Inspection and Acceptance

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

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

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

### 13. Interest of Members of Congress

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

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

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

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

- (a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

- (b) Prohibition.

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

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

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

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

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

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

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

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

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

(2) Professional and technical services.

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

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

(ii) Any reasonable payment to a person, other than an officer or employee of a

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

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

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

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

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

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## 16. Equal Employment Opportunity

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

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

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

## 17. Dissemination or Disclosure of Information

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

## 18. Contractor's Status

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

## 19. Other Contractors

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

## 20. Liens

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

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

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

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

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

## **22. Procurement of Recovered Materials**

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

## **PART II**

### **SECTION 4**

**24 CFR 85.36**  
**(Code of Federal Regulations)**

[Code of Federal Regulations]

[Title 24, Volume 1]

[Revised as of April 1, 2010]

From the U.S. Government Printing Office via GPO Access

[CITE: 24CFR85.36]

[Page 504-510]

## TITLE 24--HOUSING AND URBAN DEVELOPMENT

### PART 85 ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL

#### Subpart C Post-Award Requirements

##### Sec. 85.36 Procurement.

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements

[[Page 505]]

for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be

given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for

the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only--

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle

and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to

qualify to do business,

- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except

[[Page 506]]

in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E)

services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to

make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific

features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and

all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed. (1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 85.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing

them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the

lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such

[[Page 507]]

discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type

contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures

for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of

fair and reasonable compensation. The method, where price is not used as

a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation

of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and

minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits,

which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

[[Page 508]]

(f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation

document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ``brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract

or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review

in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets

these standards in order for its system

[[Page 509]]

to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A

grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ``bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ``performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ``payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ``Equal Employment Opportunity,' ' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ``Anti-Kickback' ' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).

(All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts

awarded by grantees and subgrantees in excess of \$2000, and in excess of

\$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining

[[Page 510]]

to patent rights with respect to any discovery or invention which arises

or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or

requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368),

Executive

Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

[53 FR 8068, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]



*Executive Director*  
KEITH D. KINARD

*Chairperson*  
MODIA BUTLER

*Board of Commissioners*  
GLORIA CARTWRIGHT  
LENIN CRUZ  
RASHARD CASEY  
ANGELLA PALMER  
NANCY PEREZ

## **REQUEST FOR PROPOSALS**

# **CONCESSION LEASE - FOOD SERVICE AT 500 BROAD STREET**

**RFP #10-S-090**

**PART III of III**

## **SUBMISSION DOCUMENTS**

**CONTRACTS DIVISION**

**SUBMISSION DATE  
OCTOBER 5, 2010  
BY 3:00PM**

## CHECKLIST

(PLEASE CHECK OFF EACH ITEM)

| MANDATORY SUBMITTAL REQUIREMENTS                                                                                                                           | YES | NO |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| CHECKLIST (COMPLETED)                                                                                                                                      |     |    |
| 1. LETTER OF INTEREST                                                                                                                                      |     |    |
| 2. NON-CURABLE ITEMS                                                                                                                                       |     |    |
| • Stockholder Disclosure Certification ( <i>provided within</i> )                                                                                          |     |    |
| • Listing of Sub-consultants and Certification Form ( <i>provided within</i> )                                                                             |     |    |
| • Acknowledgement of Addenda/Clarifications ( <i>provided within</i> )                                                                                     |     |    |
| • Business Registration Certificate(s) for Respondent Firm and all Named Subconsultants ( <i>sample provided – only those documents will be accepted</i> ) |     |    |
| 3. EXECUTIVE SUMMARY/INTRODUCTION                                                                                                                          |     |    |
| 4. QUALIFICATIONS STATEMENT                                                                                                                                |     |    |
| 5. ORGANIZATIONAL STRUCTURE                                                                                                                                |     |    |
| 6. EXPERIENCE                                                                                                                                              |     |    |
| 7. REFERENCES                                                                                                                                              |     |    |
| 8. WORK PLAN/PROJECT APPROACH                                                                                                                              |     |    |
| 9. FINANCIAL STATEMENT                                                                                                                                     |     |    |
| 10. OTHER REQUIRED SUBMISSION DOCUMENTS                                                                                                                    |     |    |
| • Evaluation form ( <i>provided within</i> )                                                                                                               |     |    |
| • Cost Proposal ( <i>provided within</i> )                                                                                                                 |     |    |
| • Affirmative Action Documents ( <i>provided within</i> )                                                                                                  |     |    |
| • Affidavit of Non-Collusion ( <i>provided within</i> )                                                                                                    |     |    |
| • Affidavit of Non-Default ( <i>provided within</i> )                                                                                                      |     |    |
| • Drug Free Work Place Certification ( <i>provided within</i> )                                                                                            |     |    |
| • Debarment Statement                                                                                                                                      |     |    |
| • Liens, Suits and Judgments                                                                                                                               |     |    |
| • Copy of Joint Venture Agreement (if applicable)                                                                                                          |     |    |
| • Previous Participation Certification, HUD 2530 ( <i>provided within</i> )                                                                                |     |    |
| • HUD Form 5369-C ( <i>provided within</i> )                                                                                                               |     |    |

## EVALUATION FORM

Description of Work: CONCESSION LEASE - FOOD SERVICE  
AT 500 BROAD STREET

RFP #10-S-090

FIRM NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP CD: \_\_\_\_\_

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

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

FEDERAL EMPLOYEE  
IDENTIFICATION NUMBER \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

| SELECTION CRITERIA`                                                     | SCORE |
|-------------------------------------------------------------------------|-------|
| Background, experience, credentials, and past performance – Section 8.3 | 25    |
| Concept Development – Section 8.4                                       | 15    |
| Work Plan/Project approach, operations – Sections 8.5 & 8.6             | 30    |
| Financial Projections, Marketing                                        | 25    |
| M/WBE & Section 3 Plan                                                  | 5     |
| OVERALL SCORE                                                           | 100   |

The NHA will make an award to the responsible Respondent whose offer conforms to the solicitation and is most advantageous to the NHA (i.e. that which represents the best value to the NHA), cost or price and other factors considered.

Evaluated by: \_\_\_\_\_

\*\*\*\*\*NON-CURABLE ITEM\*\*\*\*\*

**STOCKHOLDER DISCLOSURE CERTIFICATION**  
**This Statement Shall Be Included with Bid Submission**

**Name of Business** \_\_\_\_\_

I certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

**OR**

I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

**Check the box that represents the type of business organization:**

Partnership

Corporation

Sole Proprietorship

Limited Partnership

Limited Liability Corporation

Limited Liability Partnership

Subchapter S Corporation

**Sign and notarize the form below, and, if necessary, complete the stockholder list below.**

**Stockholders:**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

Sworn to and subscribed before me this  
day

of \_\_\_\_\_,2010

\_\_\_\_\_  
(Affiant)

\_\_\_\_\_  
(Print name & title of affiant)

\_\_\_\_\_  
Notary Public

**\*\*\*\*\*NON-CURABLE ITEM\*\*\*\*\***

**SUB-CONSULTANT LISTING**

**Please list the names of all sub-consultants to be used on this project. (Add additional sheets where necessary). The sub-consultant certification form must be completed for each firm listed.**

All sub-consultants designated by the respondent shall be capable of doing the work and must have adequate financial resources and experience to perform the work specified. Information regarding the work experience of the designated sub-consultant shall also be provided with the bid. Specifically, the respondent shall include a listing of all relevant jobs performed by the sub-consultant within the past two (2) years.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_

\_\_\_\_\_ **The Respondent firm will not be using any subcontractors.**

***THIS FORM TO BE SIGNED AND SUBMITTED BY THE RESPONDENT FIRM***

\_\_\_\_\_  
Name of Lead Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Title

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010

(CORPORATE SEAL)

\_\_\_\_\_  
Notary Public

\*\*\*\*\*NON-CURABLE ITEM\*\*\*\*\*

**SUB-CONSULTANT CERTIFICATION FORM**

All sub-consultants designated by the respondent shall be capable of doing the work and must have adequate financial resources and experience to perform the work specified. Information regarding the work experience of the designated sub-consultant shall also be provided with the bid. Specifically, the respondent shall include a listing of all relevant jobs performed by the sub-consultant within the past two (2) years.

Please print the following information legibly. **NOTE:** Provide this information on additional sheets, as required, in accordance with the following format.

How many years has sub-consultant been engaged in this particular field? \_\_\_\_ years.

Sub-consultant

Firm Name

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

Contact Person

\_\_\_\_\_

Telephone #

\_\_\_\_\_

Facsimile #

\_\_\_\_\_

Trade

\_\_\_\_\_

State License #

\_\_\_\_\_

***THIS FORM TO BE SIGNED AND SUBMITTED BY THE SUB-CONSULTANT***

\_\_\_\_\_  
Name of Lead Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Title

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2010

(CORPORATE SEAL)

\_\_\_\_\_  
Notary Public

Provide a list of relevant contracts (company/firm) completed by sub-consultants within the last two (2) years. **DO NOT INCLUDE WORK WITH THE HOUSING AUTHORITY OF THE CITY OF NEWARK.**

(This form may be duplicated.)

1.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Telephone #

\_\_\_\_\_  
Completion Date

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Contract Amount

2.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Telephone #

\_\_\_\_\_  
Completion Date

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Contract Amount

3.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Telephone #

\_\_\_\_\_  
Completion Date

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Contract Amount

**\*\*\*\*\*NON-CURABLE ITEM\*\*\*\*\***

**ACKNOWLEDGMENT OF RECEIPT OF ADDENDA/CLARIFICATION**

The undersigned hereby acknowledges receipt of the following Addenda/Clarification:

| <u>Addendum/Clarification<br/>Number</u> | <u>Dated</u> | <u>Acknowledge Receipt<br/>(initial)</u> |
|------------------------------------------|--------------|------------------------------------------|
| _____                                    | _____        | _____                                    |
| _____                                    | _____        | _____                                    |
| _____                                    | _____        | _____                                    |
| _____                                    | _____        | _____                                    |

**No addenda/clarification was received:**

Acknowledged for: \_\_\_\_\_  
(Name of Respondent Firm)

By: \_\_\_\_\_  
(Signature of Authorized Representative)

Name: \_\_\_\_\_  
(Print or Type)

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

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

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2010

\_\_\_\_\_

Notary Public

**\*\*NOTE: THIS DOCUMENT MUST BE COMPLETED WHETHER OR NOT AN  
ADDENDA/CLARIFICATION WAS ISSUED.**

**SAMPLE**

**BUSINESS REGISTRATION CERTIFICATES (only these forms will be accepted!)**

| STATE OF NEW JERSEY<br>BUSINESS REGISTRATION CERTIFICATE<br>FOR STATE AGENCY AND CASINO SERVICE CONTRACTORS |                                           | DEPARTMENT OF TREASURY<br>DIVISION OF REVENUE<br>PO BOX 252<br>TRENTON, N.J. 08646-0252 |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------|-----------------------------------------------------------------------------------------|
| TAXPAYER NAME:<br><b>TAX REGISTRATION TEST ACCOUNT</b>                                                      | TRADE NAME:<br><b>CLIENT REGISTRATION</b> |                                                                                         |
| TAXPAYER IDENTIFICATION#:<br><b>970-097-382/500</b>                                                         | SEQUENCE NUMBER:<br><b>0107530</b>        |                                                                                         |
| ADDRESS:<br><b>847 ROEBLING AVE<br/>TRENTON NJ 08611</b>                                                    | ISSUANCE DATE:<br><b>07/14/04</b>         |                                                                                         |
| EFFECTIVE DATE:<br><b>01/01/01</b>                                                                          |                                           |                                                                                         |
| FORM-BRC(08-01)                                                                                             |                                           |                                                                                         |

*John S. Tully*  
Acting Director

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.

| STATE OF NEW JERSEY<br>BUSINESS REGISTRATION CERTIFICATE |                                       |
|----------------------------------------------------------|---------------------------------------|
| Taxpayer Name:                                           | TAX REG TEST ACCOUNT                  |
| Trade Name:                                              |                                       |
| Address:                                                 | 847 ROEBLING AVE<br>TRENTON, NJ 08611 |
| Certificate Number:                                      | 1093907                               |
| Date of Issuance:                                        | October 14, 2004                      |
| For Office Use Only:                                     |                                       |
|                                                          | 20041014112823533                     |

## **COST PROPOSAL**

**RFP #10-S-090**

### **CONCESSION LEASE - FOOD SERVICE AT 500 BROAD STREET**

The Vendor agrees to the term of the CONCESSION LEASE at 500 Broad Street pursuant to the terms and conditions as specified in the RFP. As a result of an award the Vendor hereby proposes to pay monthly to the Authority the greater of items 1 or 2 below:

**1. One twelfth (1/12) of the Minimum Annual Guarantee (MAG) as follows:**

| <b>CONTRACT PERIOD</b>        | <b>PROPOSED<br/>MAG</b> | <b>TOTAL MAG X12</b> |
|-------------------------------|-------------------------|----------------------|
| <b>BASE PERIOD YEAR 1</b>     | \$                      | \$                   |
| <b>OPTION PERIOD 1 YEAR 2</b> | \$                      | \$                   |
| <b>OPTION PERIOD 2 YEAR 3</b> | \$                      | \$                   |
|                               | <b>TOTAL COST</b>       | \$                   |

**OR**

**2. The below stated percentages of gross receipts for CONCESSION LEASE location and categories shown.**

| <b>CONTRACT PERIOD</b>        | <b>CATEGORY</b> | <b>PROPOSED<br/>PERCENTAGE<br/>RENT IN<br/>NUMBER<br/>FORMAT</b> | <b>PROPOSED<br/>PERCENTAGE<br/>RENT IN WORDS</b> |
|-------------------------------|-----------------|------------------------------------------------------------------|--------------------------------------------------|
| <b>BASE PERIOD YEAR 1</b>     | <b>FOOD</b>     | _____ %                                                          | _____ %                                          |
| <b>BASE PERIOD YEAR 1</b>     | <b>RETAIL</b>   | _____ %                                                          | _____ %                                          |
| <b>OPTION PERIOD 1 YEAR 2</b> | <b>FOOD</b>     | _____ %                                                          | _____ %                                          |
| <b>OPTION PERIOD 1 YEAR 2</b> | <b>RETAIL</b>   | _____ %                                                          | _____ %                                          |
| <b>OPTION PERIOD 2 YEAR 3</b> | <b>FOOD</b>     | _____ %                                                          | _____ %                                          |
| <b>OPTION PERIOD 2 YEAR 3</b> | <b>RETAIL</b>   | _____ %                                                          | _____ %                                          |

## **COST PROPOSAL**

**RFP #10-S-090**

### **CONCESSION LEASE - FOOD SERVICE AT 500 BROAD STREET**

- 3. VENDOR \_\_\_\_\_ DID \_\_\_\_\_ DID NOT ATTEND PRE-PROPOSAL  
CONFERENCE HELD ON TUESDAY, SEPTEMBER 21, 2010 at 10:00 a.m.**

|                  |  |
|------------------|--|
| BUSINESS NAME    |  |
| BUSINESS ADDRESS |  |
| TELEPHONE NUMBER |  |
| FAX NUMBER       |  |
| E-MAIL ADDRESS   |  |

Company Representative Name Printed: \_\_\_\_\_

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

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

**AFFIRMATIVE ACTION COMPLIANCE NOTICE**  
**N.J.S.A. 10:5-31 and N.J.A.C. 17:27**

**GOODS AND SERVICES CONTRACTS**  
**(INCLUDING PROFESSIONAL SERVICES)**

This form is a summary of the successful bidder's requirement to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27.

The successful bidder shall submit to the public agency, after notification of award but prior to execution of this contract, one of the following three documents as forms of evidence:

(a) A photocopy of a valid letter that the contractor is operating under an existing Federally approved or sanctioned affirmative action program (good for one year from the date of the letter);

OR

(b) A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4;

OR

(c) A photocopy of an Employee Information Report (Form AA302) provided by the Division and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

The successful vendor may obtain the Affirmative Action Employee Information Report (AA302) from the contracting unit during normal business hours.

The successful vendor(s) must submit the copies of the AA302 Report to the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts (Division). The Public Agency copy is submitted to the public agency, and the vendor copy is retained by the vendor.

The undersigned vendor certifies that he/she is aware of the commitment to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27 and agrees to furnish the required forms of evidence.

The undersigned vendor further understands that his/her bid shall be rejected as non-responsive if said contractor fails to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27.

COMPANY: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

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

DATE: \_\_\_\_\_

# AFFIDAVIT OF MINORITY BUSINESS

## ENTERPRISE PARTICIPATION

STATE OF \_\_\_\_\_ :  
COUNTY OF \_\_\_\_\_ : SS

The undersigned, being duly sworn according to law, deposes and states:

That I am the party making the foregoing proposal or bid and that said party will comply with the requirements of the HUD Section 3 and Minority Business Enterprise Participation Programs of the Housing Authority of the City of Newark as provided in Section 21 of the Special Conditions and in the furtherance thereof, the party agrees to obtain at least thirty percent (30%) of the goods and services to be provided under this proposal or bid from qualified HUD Section 3 and minority business enterprises and that if awarded a contract the bidder intends to acquire the stated percentages of goods and service to be supplied hereunder as hereafter described from the following HUD Section 3/minority business enterprise:

| Name, Address & Phone No. of<br>Minority Business Enterprise | Percent of Bid<br>Dollar Value | Product or Service |
|--------------------------------------------------------------|--------------------------------|--------------------|
|--------------------------------------------------------------|--------------------------------|--------------------|

I understand that nothing herein obligates the Housing Authority of the City of Newark to approve of said Minority Business Enterprise as a supplier or subcontractor for the goods and services stated; and that the Authority may require this firm to substitute other suppliers or subcontractors in place of those specified. In addition, I understand that nothing herein gives any Minority Business Enterprise an enforceable right against the Housing Authority of the City of Newark.

|           |           |
|-----------|-----------|
| FIRM NAME | SIGNATURE |
|-----------|-----------|

| DATE | TITLE |
|------|-------|
|------|-------|

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Notary Public

### AFFIDAVIT OF NON-COLLUSION

STATE OF \_\_\_\_\_ :

COUNTY OF \_\_\_\_\_ :

The undersigned, being duly sworn according to law, deposes and says:

1. That, as the party making the foregoing Bid, that such Bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived, or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not, in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantages against the Newark Housing Authority, or any person interested in the proposed contract; and that all statements in said Bid are true.
2. The bidder further certifies that he/she has not been convicted or found liable for any act prohibited by state or federal law involving conspiracy or collusion with respect to proposing or bidding on any public contract within the last three years. Such act or conviction does not automatically disqualify a bidder, but may be grounds for administrative suspension or grounds for consideration by NHA as to whether NHA should decline to award a contract to such a bidder on the basis of a lack of responsibility. If bidder has been convicted of any act prohibited by state or federal law involving collusion with respect to proposing or bidding on any public contract within the past three years, bidder should attach an explanation of the circumstances surrounding that conviction.

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

# AFFIDAVIT OF NON-DEFAULT

STATE OF \_\_\_\_\_ :  
COUNTY OF \_\_\_\_\_ : SS

The undersigned, being duly sworn according to law, deposes and says that, as the party making the foregoing Proposal; I certify as follows:

1. That all the statements made by me are true, complete and correct to the best of my knowledge and belief and are made in good faith.
2. That for the period beginning 10 years ago the date of this certification, and except as shown by me on the attachment, I have not experienced defaults or non-compliance under any contract for the U.S. Department of Housing and Urban Development, or any other governmental agency with which I have contracts.
3. To the best of my knowledge there are no unresolved findings raised as a result of HUD audits, management reviews or any other Governmental investigations concerning me or work under any of my contracts.
4. There has not been a suspension or termination of payments under any HUD contract in which I have had a legal or beneficial interest attributable to my fault or negligence.
5. I have not been convicted of a felony and am not presently, to my knowledge, the subject of a complaint or indictment charging a felony. (A felony is any offense punishable by imprisonment for more than one year, but does not include any offense classified as a misdemeanor under the laws of a state and punishable by imprisonment of two years or less.)
6. I have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of any State Government or of the City of Newark or the Newark Housing Authority from doing business with such Department or Agency.
7. I have not defaulted on an obligation covered by a bond and have not been the subject of a claim under any fidelity bond.
8. All the names of the parties, known to me to be principals in this contract, in which I propose to participate, are included on resumes submitted with this proposal.
9. To my knowledge I have not been found by HUD or the State of New Jersey to be in noncompliance with any applicable civil rights laws.
10. I am not a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.

11. I am not an officer or employee or commissioner of the Newark Housing Authority who is prohibited or limited by law from contracting with the NHA.
12. For the period beginning 5 years prior to the date of this certification, and except as shown by me on the attachment, I have not been suspended, debarred or otherwise disqualified by the U.S. Department of Housing and Urban Development, or any other governmental agency with which I have contracted, from doing business with any governmental agency.
13. Statements above (if any) to which I cannot certify have been deleted by striking through the words with a pen. I have initialed each deletion (if any) and have attached a true and accurate signed statement (if applicable) to explain the facts and circumstances, which I think, helps to qualify me as a responsible Principal for participation in this project.

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

## **DRUG-FREE WORK-PLACE CERTIFICATION**

### **DRUG-FREE WORK-PLACE ACT OF 1988**

**41 U.S.C. 701, et seq.**

**54 FED. REG. 4946, et seq.**

The undersigned hereby certifies that he/she will provide a drug-free work-place by publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Respondent's work-place and specifying the actions that will be taken against employees for violation of such prohibition;

1. Establishing a drug-free awareness program to inform employees about:
  - a. The dangers of drug abuse in the work place;
  - b. The Respondent's policy of maintaining a drug-free work place;
  - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - d. The penalties that may be imposed upon employee for violations occurring in the work place;
2. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a):
3. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the contract the employee will:
  - a. Abide by the terms of the statement; and
  - b. Notify the Respondent of any criminal drug statute conviction for a violation occurring in the work place no later than five (5) days after such conviction;
4. Notify the Newark Housing Authority ("NHA") within ten (10) days after receiving notice under Subparagraph (d) (2) from an employee, or otherwise receiving actual notice, of such conviction;
5. Taking one of the following actions within thirty (30) days of receiving notice under Subparagraph (d) (2), with respect to any employee who is so convicted;
  - a. Taking appropriate personnel action against such employee, up to and including termination; or
  - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
6. Making a good faith effort to continue to maintain a drug-free work place through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

7. Respondent is presently working at the following NHA Sites: \_\_\_\_\_; or ( ) none.

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

**CERTIFIED STATEMENT OF NON-DEBARMENT**

**PROVIDE NOTARIZED STATEMENT ON  
COMPANY LETTERHEAD**

**CERTIFIED STATEMENT  
LIENS, SUITS, JUDGMENTS**

**PROVIDE NOTARIZED STATEMENT ON  
COMPANY LETTERHEAD**

**JOINT VENTURE AGREEMENT  
(IF APPLICABLE)**

## **Previous Participation Certification, HUD 2530**

**For HUD HQ/FmHA use only**

This form was prepared by (Please print name)

**Schedule A: List of Previous Projects and Section 8 Contracts.** By my name below is the complete list of my previous projects and my participation history as a principal; in Multifamily Housing programs of HUD/FmHA, State, and Local Housing Finance Agencies. **Note:** Read and follow the instruction sheet carefully. Abbreviate where possible. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If you have no previous projects write, by your name, **"No previous participation, First Experience."**

| 1. List each Principal's Name<br>(list in alphabetical order,<br>last name first) | 2. List Previous Projects<br>(give the I.D. number, project name, city location,<br>& government agency involved<br>if other than HUD) | 3. List Principals' Role(s)<br>(indicate dates participated, and<br>if fee or identity of interest participant) | 4. Status of Loan<br>(current, defaulted,<br>assigned, or<br>foreclosed) | 5. Was Project ever in Default,<br>during your participation?<br>Yes <input type="checkbox"/> No <input type="checkbox"/> If "Yes," explain | 6. Last Mgmt.<br>and/or<br>Physical Inspectn<br>Rating and Date |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
|                                                                                   |                                                                                                                                        |                                                                                                                 |                                                                          |                                                                                                                                             |                                                                 |

**Part II – For HUD Internal Processing Only**

Received and checked by me for accuracy and completeness; recommend approval or transferral to Headquarters as checked below:

|                   |                                                      |                                                                                            |                                                                 |
|-------------------|------------------------------------------------------|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| Date (mm/dd/yyyy) | Telephone Number and Area Code                       | <input type="checkbox"/> A. No adverse information; form HUD-2530 approval is recommended. | <input type="checkbox"/> C. Disclosure or Certification problem |
| Staff             | Processing and Control                               | <input type="checkbox"/> B. Name match in system                                           | <input type="checkbox"/> D. Other, our memorandum is attached.  |
| Supervisor        | Director of Housing / Director, Multifamily Division | Approved <input type="checkbox"/> Yes <input type="checkbox"/> No                          | Date (mm/dd/yyyy)                                               |

### Instructions for Completing the Previous Participation Certificate, form HUD-2530

Carefully read these instructions and the applicable regulations. A copy of those regulations published at 24 C.F.R. 200.210 to 200.245 can be obtained from the Multifamily Housing Representative at any HUD Office. Type or print neatly in ink when filling out this form. Mark answers in all blocks of the form. If the form is not filled completely, it will delay approval of your application.

Attach extra sheets as you need them. Be sure to indicate "Continued on Attachments" wherever appropriate. Sign each additional page that you attach if it refers to you or your record. If you have many projects to list (20 or more) and expect to be applying frequently for participation in HUD projects, you should consider filing a Master List. See Master List instructions below under "Instructions for Completing Schedule A."

**Carefully read the certification before you sign it.** Any questions regarding the form or how to complete it can be answered by your HUD Office Multifamily Housing Representative.

**Purpose:** This form provides HUD with a certified report of all previous participation in HUD multifamily housing projects by those parties making application. The information requested in this form is used by HUD to determine if you meet the standards established to ensure that all principal participants in HUD projects will honor their legal, financial and contractual obligations and are acceptable risks from the underwriting standpoint of an insurer, lender or governmental agency. HUD requires that you certify your record of previous participation in HUD/USDA-FmHA, State and Local Housing Finance Agency projects by completing and signing this form, before your project application or participation can be approved.

HUD approval of your certification is a necessary precondition for your participation in the project and in the capacity that you propose. If you do not file this certification, do not furnish the information requested accurately, or do not meet established standards, HUD will not approve your certification.

**Note** that approval of your certification does not obligate HUD to approve your project application, and it does not satisfy all other HUD program requirements relative to your qualifications.

**Who Must Sign and File Form HUD-2530:** Form HUD-2530 must be completed and signed by all parties applying to become principal participants in HUD multifamily housing projects, including those who have no previous participation. The form must be signed and filed by all principals and their affiliates who propose participating in the HUD project. Use a separate form for each role in the project unless there is an identity of interest.

Principals include all individuals, joint ventures, partnerships, corporations, trusts, non-profit organizations, any other public or private entity, that will participate in the proposed project as a sponsor, owner, prime contractor, turnkey developer, managing agent, nursing home administrator or operator, packager, or consultant. Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals by HUD.

In the case of partnerships, all general partners regardless of their percentage interest and limited partners having a 25 percent or more interest in the partnership are considered principals. In the case of public or private corporations or governmental entities, principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation.

Affiliates are defined as any person or business concern that directly or indirectly controls the policy of a principal or has the power to do so. A holding or parent corporation would be an example of an affiliate if one of its subsidiaries is a principal.

**Exception for Corporations** – All principals and affiliates must personally sign the certificate except in the following situation. When a corporation is a principal, all of its officers, directors, trustees and stockholders with 10 percent or more of the common (voting) stock need not sign personally if they all have the same record to report. The officer who is authorized to sign for the corporation or agency will list the names and title of those who elect not to sign. However, any person who has a record of participation in HUD projects that is separate from that of his or her organization must report that activity on this form and sign his or her name. The objective is full disclosure.

**Exemptions** – The names of the following parties do not need to be listed on form HUD-2530: Public Housing Agencies, tenants, owners of less than five condominium or cooperative units and all others whose interests were acquired by inheritance or court order.

**Where and When Form HUD-2530 Must Be Filed:** The original of this form must be submitted to the HUD Office where your project application will be processed at the same time you file your initial project application. This form must be filed with applications for projects, or when otherwise required in the situations listed below:

- Projects to be financed with mortgages insured under the National Housing Act (FHA).
- Projects to be financed according to Section 202 of the Housing Act of 1959 (Elderly and Handicapped).
- Projects in which 20 percent or more of the units are to receive a subsidy as described in 24 C.F.R. 200.213.
- Purchase of a project subject to a mortgage insured or held by the Secretary of HUD.
- Purchase of a Secretary-owned project.
- Proposed substitution or addition of a principal, or principal participation in a different capacity from that previously approved for the same project.
- Proposed acquisition by an existing limited partner of an additional interest in a project resulting in a total interest of 25 percent or more, or proposed acquisition by a corporate stockholder of an additional interest in a project resulting in a total interest of 10 percent or more.
- Projects with U.S.D.A., Farmers Home Administration, or with state or local government housing finance agencies that include rental assistance under Section 8 of the Housing Act of 1937. For projects of this type, form HUD-2530 should be filed with the appropriate applications directly to those agencies.

**Review of Adverse Determination:** If approval of your participation in a HUD project is denied, withheld, or conditionally granted on the basis of your record of previous participation, you will be notified by the HUD Office. You may request reconsideration by the HUD Review Committee. Alternatively, you may request a hearing before a Hearing Officer. Either request must be made in writing within 30 days from your receipt of the notice of determination.

If you do request reconsideration by the Review Committee and the reconsideration results in an adverse determination, you may then request a hearing before a Hearing Officer. The Hearing Officer will issue a report to the Review Committee. You will be notified of the final ruling by certified mail.

### Specific Line Instructions:

**Reason for submitting this Certification:** e.g., refinancing, management, change in ownership, transfer of physical assets, etc.

**Block 1:** Fill in the name of the agency to which you are applying. For example: HUD Office, Farmers Home Administration District Office, or the name of a State or local housing finance agency. Below that, fill in the name of the city where the office is located.

**Block 2:** Fill in the name of the project, such as "Greenwood Apts." If the name has not yet been selected, write "Name unknown." Below that, enter the HUD contract or project identification number, the Farmers Home Administration project number, or the State or local housing finance agency project or contract number. Include all project or contract identification numbers that are relevant to the project. Also enter the name of the city in which the project is located, and the ZIP Code of the site location.

**Block 3:** Fill in the dollar amount requested in the proposed mortgage, or the annual amount of rental assistance requested.

**Block 4:** Fill in the number of apartment units proposed, such as "40 units." For hospital projects or nursing homes, fill in the number of beds proposed, such as "100 beds."

**Block 5:** Fill in the section of the Housing Act under which the application is filed.

**Block 7:** Definitions of all those who are considered principals and affiliates are given above in the section titled "Who Must Sign and File...."

**Block 8:** Beside the name of each principal, fill in the role that each will perform. The following are possible roles that the principals may perform: Sponsor, Owner, Prime Contractor, Turnkey Developer, Managing Agent, Packager, Consultant, General Partner, Limited Partner (include percentage), Executive Officer, Director, Trustee, Major Stockholder, or Nursing Home Administrator. Beside the name of each affiliate, write the name of the person or firm of affiliation, such as "Affiliate of Smith Construction Co."

**Block 9:** Fill in the percentage of ownership in the proposed project that each principal is expected to have. Also specify if the participant is a general or limited partner. Beside the name of those parties who will not be owners, write "None."

**Block 10:** Fill in the Social Security Number or IRS employer number of every party listed, including affiliates.

**Instructions for Completing Schedule A:**

Be sure that Schedule A is filled-in completely, accurately and the certification is properly dated and signed, because it will serve as a legal record of your previous experience. All Multifamily Housing projects involving HUD/FmHA, and State and local Housing Finance Agencies in which you have previously participated **must** be listed. Applicants are reminded that previous participation pertains to the individual principal within an entity as well as the entity itself. A newly formed company may not have previous participation, but the principals within the company may have had extensive participation and disclosure of that activity is required. To avoid duplication of disclosure, list the project and then the entities or individuals involved in that project. You may use the name or a number code to denote the entity or individual that participated. The number code can then be used in column 3 to denote role.

**Column 2** List the project or contract identification of each previous project. **All previous projects must be included or your certification cannot be processed.** Include the name of all projects, the cities in which they are located and the government agency (HUD, USDA-FmHA or State or local housing finance agency) that was involved. At the end of your list of projects, draw a straight line across the page to separate your record of projects from that of others signing this form who have a different record to report.

**Column 3** List the role(s) of your participation, dates participated, and if fee or identity of interest with owners.

**Column 4** Indicate the current status of the loan. Except for current loans, the date associated with the status is required. Loans under a workout arrangement are considered as signed. An explanation of the circumstances surrounding the status is required for all non-current loans.

**Column 5** Explain any project defaults during your participation.

**Column 6** Enter the latest Management and/or Physical Inspection Review rating. If either of the ratings are below average, the report issued by HUD is required to be submitted along with the applicant's explanation of the circumstances surrounding the rating.

**No Previous Record:** Even if you have never participated in a HUD project before, you must complete form HUD-2530. If you have no record of previous projects to list, fill in your name in column 1 of Schedule A, and write across the form by your name - "No previous participation, first experience."

**Master List System:** If you expect to file this form frequently and you have a long list of previous projects to report on Schedule A, you should consider filing a Master List. By doing so, you will avoid having to list all your previous projects each time you file a new application.

To make a Master List, use form HUD-2530. On page 1, in block 1, enter (in capital letters) the words "**Master List**." In blocks 2 through 6 enter in "N.A." meaning Not Applicable. Complete blocks 7 through 10.

In the box below the statement of certification, fill in the names of all parties who wish to file a Master List together (type or print neatly). Beside each name, every party must sign the form. In the box titled "Proposed Role," fill in "N.A." Also, fill in the date you sign the form

and provide a telephone number where you can be reached during the day. No determinations will be made on these certifications.

File one copy of the Master List with each HUD Office where you do business and mail one copy to the following address:

**HUD-2530 Master List  
Participation and Compliance  
Division - Housing  
U.S. Department of Housing and  
Urban Development  
451 Seventh Street, S.W.  
Washington, D. C. 20410**

Once you have filed a Master List, you do not need to complete Schedule A when you submit form HUD-2530. Instead, write the name of the participant in column 1 of Schedule A and beside that write "See Master List on file." Also give the date that appears on the Master List that you submitted. Below that, report all changes and additions that have occurred since that date. Be sure to include any mortgage defaults, assignments or foreclosures not listed previously.

**If you have withdrawn from a project** since the date the Master List was filed, be sure to name the project. Give the project identification number, the month and year your participation began and/or ended.

**Certification:**

After you have completed all other parts of form HUD-2530, including Schedule A, read the Certification carefully. In the box below the statement of certification, fill in the name of all principals and affiliates (type or print neatly). Beside the name of each principal and affiliate, each party must sign the form, with the exception in some cases of individuals associated with a corporation (see "Exception for Corporations" in the section of the instructions titled "Who Must Sign and File form

HUD-2530"). Beside each signature, fill in the role of each party (the same as shown in block 8). In addition, each person who signs the form should fill in the date that he or she signs, as well as providing a telephone number where he or she can be reached during business hours. By providing a telephone number where you can be reached, you will help to prevent any possible delay caused by mailing and processing time in the event HUD has any questions.

If you cannot certify and sign the certification as it is printed because some statements do not correctly describe your record, use a pen and strike through those parts that differ with your record, then sign and certify to that remaining part which does describe you or your record.

Attach a signed letter, note or an explanation of the items you have struck out on the certification and report the facts of your correct record. Item A(2)(e) relates to felony convictions within the past 10 years. If you have been convicted of a felony within 10 years, strike out all of A(2)(e) on the certificate and attach your statement giving your explanation. A felony conviction will not necessarily cause your participation to be disapproved unless there is a criminal record or other evidence that your previous conduct or method of doing business has been such that your participation in the project would make it an unacceptable risk from the underwriting standpoint of an insurer, lender or governmental agency.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by law (42 U.S.C. 3535(d) and 24 C.F.R. 200.217) and by regulation at 24 CFR 200.210. This information is needed so that principals applying to participate in multifamily programs can become HUD-approved participants. The information you provide will enable HUD to evaluate your record with respect to established standards of performance, responsibility and eligibility. Without prior approval, a principal may not participate in a proposed or existing multifamily project. HUD uses this information to evaluate whether or not principals pose an unsatisfactory underwriting risk. The information is used to evaluate the potential principals and approve only individuals and organizations who will honor their legal, financial and contractual obligations.

**Privacy Act Statement:** The Housing and Community Development Act of 1987, 42 U.S.C. 3543 requires persons applying for a Federally-insured or guaranteed loan to furnish his/her Social Security Number (SSN). HUD must have your SSN for identification of your records. HUD may use your SSN for automated processing of your records and to make requests for information about you and your previous records with other public agencies and private sector sources. HUD may disclose certain information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. You must provide all of the information requested in this application, including your SSN.

**Public reporting burden** for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

A response is mandatory. Failure to provide any of the information will result in your disapproval for participation in this HUD program.

# **HUD Form 5369-C**

# Certifications and Representations of Offerors

## Non-Construction Contract

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

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

### 1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

- (a) ☐ is, ☐ is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) ☐ is, ☐ is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) ☐ is, ☐ is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

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

### 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);  
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

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

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

#### 4. Organizational Conflicts of Interest Certification

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:
- (i) Award of the contract may result in an unfair competitive advantage;
  - (ii) The Contractor's objectivity in performing the contract work may be impaired; or
  - (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.
- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.
- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

#### 5. Authorized Negotiators (RFPs only)

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

#### 6. Conflict of Interest

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

#### 7. Offeror's Signature

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

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Signature & Date:

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Typed or Printed Name:

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Title:

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