



*Executive Director*  
**KEITH D. KINARD**

*Chairperson*  
**MODIA BUTLER**

*BOARD OF COMMISSIONERS*  
**GLORIA CARTWRIGHT**  
**ANGELLA PALMER**  
**NANCY PEREZ**  
**LENIN CRUZ**  
**RASHARD CASEY**

## **INVITATION FOR BIDS**

**IFB #11-S-051**

**FURNISH AND DELIVER ROLL ON/ROLL OFF  
DUMPSTER CONTAINERS  
AND  
DISPOSAL OF #10 REFUSE FOR ALL NHA SITES**

**PART 1 OF 3**

**SCOPE OF SERVICES**

**CONTRACTS DIVISION**

**BID OPENING:  
TUESDAY,  
DECEMBER 20, 2011  
AT 10 A.M.**

| Section    | Description                                             | Page     |
|------------|---------------------------------------------------------|----------|
|            | <b>Advertisement</b>                                    | <b>3</b> |
|            | <b>IFB Information at a Glance</b>                      | <b>4</b> |
| <b>1.0</b> | <b>Introduction/Background</b>                          | <b>5</b> |
| <b>2.0</b> | <b>General Information</b>                              |          |
| 2.1        | NHA Reservation of Rights                               | 5        |
| 2.2        | Bidder's Responsibilities – Contact with NHA            | 5        |
| 2.3        | Non-Curable Items                                       | 6        |
| 2.4        | Proof of Business Registration                          | 6        |
| 2.5        | Causes for Rejecting Bids                               | 6        |
| 2.6        | Method of Contract Award                                | 7        |
| 2.7        | Protest                                                 | 7        |
| <b>3.0</b> | <b>Intent and Scope of Work</b>                         |          |
| 3.1        | Intent of Invitation for Bids                           | 8        |
| 3.2        | Scope of Work                                           | 8        |
| 3.3        | Contract Requirements                                   | 9        |
| 3.4        | Payment                                                 | 10       |
| 3.5        | Time for Completion                                     | 10       |
| <b>4.0</b> | <b>Submission Format</b>                                |          |
| 4.1        | Bid                                                     | 10       |
| 4.2        | Non-Curable Documents                                   | 11       |
| 4.3        | Statement of Bidder's Qualifications                    | 12       |
| 4.4        | References                                              | 12       |
| 4.5        | Financial Statement                                     | 12       |
| 4.6        | Other Required Bid Documents                            | 12       |
| <b>5.0</b> | <b>General Instructions</b>                             |          |
| 5.1        | Questions                                               | 13       |
| 5.2        | Interpretation and Addenda                              | 13       |
| 5.3        | Discrepancies in Bid                                    | 13       |
| 5.4        | Bid Pricing, Minimum Contract Awards                    | 14       |
| 5.5        | Brand Names, Standards of Quality and Performance       | 14       |
| <b>6.0</b> | <b>Evaluation to Determine Responsibility of Bidder</b> |          |
| 6.1        | Equal Bids                                              | 14       |
| <b>7.0</b> | <b>Additional Information</b>                           |          |
| 7.1        | Insurance Requirement                                   | 14       |
| 7.2        | Job-Site Responsibilities                               | 15       |
| 7.3        | EEO, Affirmative Action Statement                       | 15       |
| 7.5        | Mandatory Affirmative Action Certification              | 16       |
| 7.6        | Section 3 Clause                                        | 16       |
| 7.7        | Americans with Disabilities                             | 17       |
| 7.8        | Truth in Contracting                                    | 18       |
| 7.9        | Termination of Contract                                 | 18       |
| 7.10       | Pay-to-Play                                             | 19       |
|            |                                                         |          |
|            |                                                         |          |

**NEWARK HOUSING AUTHORITY  
INVITATIONS FOR BID  
FURNISH AND DELIVER ROLL-ON/ROLL OFF DUMPSTER CONTAINERS  
AND  
DISPOSAL OF REFUSE FOR ALL NHA SITES  
IFB #11-S-051**

The Newark Housing Authority is accepting sealed bids to furnish and deliver 20 cubic yard roll-off/roll-on containers and disposal of #10 refuse for all Newark Housing Authority sites. The contract term shall be for a period of five (5) years.

The Authority will receive sealed bids at 500 Broad Street, 5th Floor, Contracts Division, Newark, New Jersey 07102. All bid packages shall clearly indicate the specific applicable bid number and title, and submitted in triplicate. **The opening of all bids will be held in the Contracts Division Conference Room located on the 5<sup>th</sup> floor at 10:00 a.m. on DECEMBER 20, 2011** at which time and place all bids will be publicly opened and read aloud. Bids shall be submitted to: Newark Housing Authority, **ATTN: A. KEVIN MEDLIN**, CONTRACTS DIVISION 500 Broad Street, 5<sup>th</sup> Floor, Newark, New Jersey 07102.

**A pre-bid conference will be held on NOVEMBER 2, 2011 in the Contracts Division Conference Room located on the 5<sup>th</sup> floor at 10:00 a.m.**

All bids must be accompanied by a negotiable Bid Guarantee payable to the NEWARK HOUSING AUTHORITY. The bid guarantee may be a certified check, bank draft or a satisfactory Bid Bond secured by a Surety Company acceptable to the U.S. Government and authorized to do business in the State of New Jersey. **The guarantee shall be in an amount of 5% of the total bid. Consent of Surety must accompany the Bid Guarantee. Failure to submit a 5% Bid Guarantee and Consent of Surety for the full amount of the bid shall result in rejection of the bid.**

The successful bidder will be required to furnish and pay for a satisfactory Performance and Payment Bond(s) in the amount of 100% of the contract as awarded. The surety company for all bonds must be a guaranty or surety company acceptable to the U.S. Department of Treasury. Individual sureties will not be considered. The surety company must be licensed to do business in the State of New Jersey. U.S. Treasury Circular 570, published annually in the Federal Register lists companies approved to act as surety on bonds securing government contracts, the maximum underwriting limits on each contract bonded, and the state in which each company is licensed to do business.

Bid forms and contract documents, including specifications are on file at the office of the Newark Housing Authority, Contracts Division, 500 Broad Street, Newark, New Jersey 07102 or can be downloaded from our website: [www.newarkha.org](http://www.newarkha.org). For further information, please contact **A. KEVIN MEDLIN** at 973-273-6526.

Bidders must submit a copy of their NJ Business Registration Certificate, P.L. 2004,c.57, prior to the award of the contract. Bidders 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 bidders must also comply with 24 CFR 85.36.

The Newark Housing Authority reserves the right to reject any or all bids or to waive any informality in the bidding. The Authority also reserves the right to award all or a portion of the award to one or more responsible responsive bidders. No bid shall be withdrawn for a period of sixty (60) days subsequent to the opening of the bids without the consent of the Newark Housing Authority.

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

**IFB INFORMATION AT A GLANCE**

|                                                         |                                                                                                                                                                                                                                                                          |
|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NHA CONTACT PERSON                                      | A. KEVIN MEDLIN<br>Telephone: 973-273-6526<br>Email: kmedlin@newarkha.org                                                                                                                                                                                                |
| PRE-BID CONFERENCE                                      | WEDNESDAY, NOVEMBER 2, 2011<br>AT 10 A.M.<br>CONTRACTS 5 <sup>TH</sup> FLOOR CONFERENCE<br>ROOM<br>500 BROAD STREET, NEWARK, NJ 07102                                                                                                                                    |
| DUE DATE FOR QUESTIONS                                  | NOVEMBER 10, 2011<br>At 10 A.M.                                                                                                                                                                                                                                          |
| RELEASE OF ANY REQUIRED<br>ADDENDA                      | NOVEMBER 17, 2011                                                                                                                                                                                                                                                        |
| HOW TO FULLY RESPOND TO THIS<br>IFB BY SUBMITTING A BID | 1. As instructed within Section 5.0 of the IFB<br>document, submit bid in triplicate;<br>2. As instructed within Section 2.3, any<br>submissions not including the Non-Curable<br>Items will be rejected.                                                                |
| BID OPENING                                             | Tuesday, December 20, 2011<br>10 A.M.<br>Newark Housing Authority<br>Contracts Division<br>500 Broad Street, 5 <sup>th</sup> Floor<br>Newark, NJ 07102<br><br>The bid must be received in-hand and time-<br>stamped by the NHA by no later than 10 A.M. on<br>this date. |

## SECTION 1.0 INTRODUCTION / BACKGROUND

The Newark Housing Authority 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 bids, to waive any informality in the IFB process, or to terminate the IFB process at any time, if deemed by the NHA to be in its best interests.
- The NHA reserves the right to award a single delivery order contract or to award multiple delivery order contracts for the same or similar supplies or services to two or more sources under this solicitation.
- The NHA reserves the right not to award a contract pursuant to this IFB.
- The NHA reserves the right to terminate a contract awarded pursuant to this IFB, at any time for its convenience upon 10 days written notice to the successful Bidder(s).
- The NHA reserves the right to determine the days, hours and locations that the successful Bidder(s) shall provide the services called for in this IFB.
- The NHA reserves the right to retain all bids submitted and not permit withdrawal for a period of 60 days subsequent to the deadline for receiving bid without the written consent of the NHA Director of Procurement & Contracts.
- The NHA reserves the right to reject and not consider any bid that does not meet the requirements of this IFB.
- The NHA shall have no obligation to compensate any Bidder for any costs incurred in responding to this IFB.
- The NHA shall reserve the right to at any time during the IFB or contract process to prohibit any further participation by a Bidder or reject any bid submitted that does not conform to any of the requirements detailed herein.

### 2.2 BIDDER'S RESPONSIBILITIES – CONTACT WITH THE NHA

It is the responsibility of the Bidder to address all communication and correspondence pertaining to this IFB process to the designated Contract Coordinator, **A. Kevin Medlin** or the Director of Procurement & Contracts, **Shari Hamilton**. Bidders must not make inquiry or communicate with any other NHA staff member or official (including members of the Board of Commissioners) pertaining to this IFB. Failure to abide by this requirement may be cause for the NHA to not consider a bid received from any Bidder 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 bid; the failure to submit any one of the mandatory items shall be deemed a fatal defect that shall render the bid submission unresponsive and that cannot be cured by the governing body.

1. A guarantee to accompany the bid pursuant to N.J.S.A. 40A:11-21;
2. A certification from a surety company pursuant to N.J.S.A. 40A:11-22;
3. A statement of corporate ownership pursuant to NJSA 52:25-24.2
4. A listing of sub-contractors as required by NJSA 40A:11-16
5. A document for the Bidder to acknowledge receipt of any notice or revisions or addenda to the advertisement or bid documents, or if applicable, the Bidder acknowledges same pursuant to NJSA 40A:11-23.2e

## 2.4 PROOF OF BUSINESS REGISTRATION

N.J.S.A. 52:32-44 requires that each Bidder submit proof of business registration prior to contract award. Proof of registration shall be a copy of the Bidder'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 IFB.

N.J.S.A. 52:32-44 imposes the following requirements on Bidders and all sub-contractors that knowingly provide goods or perform services for a Bidder fulfilling this contract: The Bidder shall provide written notice to its sub-contractors and suppliers to submit proof of business registration to the Bidder. If the bid includes the use of named sub-contractors, the Business Registration Certificates for those sub-contractors must be submitted prior to contract award. If the selected Bidder uses sub-contractors 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-contractors or attest that none was used. During the term of this contract, the Bidder and its affiliates shall collect and remit, and shall notify all sub-contractors 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 Bidder, sub-contractors or supplier who provides false business registration information or post award, fails to provide proof of business registration for added sub-contractors 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 BID

Bid 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 bids pursuant to N.J.S.A. 40A: 11-13.2;

3. If more than one bid is received from an individual, firm or partnership, corporation or association under the same name;
4. Multiple bid from an agent representing competing Bidders;
5. The bid is inappropriately unbalanced;
6. The Bidder is determined to possess, pursuant to N.J.S.A. 40A: 11-4b, Prior Negative Experience; or
7. If the successful Bidder 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 bid of the next lowest Bidder. (N.J.S.A. 40A: 11-24b)

A rejected bid shall be **DEEMED** a **NO BID**, and shall be returned to the Bidder.

## 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 bid 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 Bidder. Terms of the specifications/bid package prevail. Bidder exceptions must be formally accepted by the NHA.

## 2.7 PROTESTS

Any actual or prospective bidder may challenge a bid specification or protest the award of a contract. In the case of a challenge to the bid specification, such challenge must be in writing and submitted to the Contracting Officer or the designee no less than three business days prior to the opening of bids. The Contracting Officer or designees shall review the matter of the challenge and issue a written decision on the matter. Challenges filed after that time period shall be considered void and thereupon having no effect on the NHA from awarding a contract. In the case of the award of a contract, the protest must be in writing and received by the Contracting Officer or the designee within five business days after the notice of the contract award, or the protest will not be considered.

### **The Bidder shall provide the following:**

1. Name, address and telephone number, email is optional of the person filing the bid protest.
2. Indicate/specify the IFB number and the description of the solicitation.
3. Provide a detailed statement specifying the nature of the complaint.
4. Specify the form of relief being sought.

The Contracting Officer or designee shall conduct a review of the protest matter and shall issue a written decision on the matter. The Contracting Officer may, after concurrence of the General Counsel and with approval by the Executive Director suspend the procurement pending resolution of the protest, if it is warranted by the facts and findings discovered by the Contracting Officer or designee in the review of the protest matter.

## SECTION 3.0 INTENT AND SCOPE OF WORK

### 3.1 INTENT OF THE INVITATION FOR BIDS

The Newark Housing Authority is in need of a vendor to furnish 20 cubic yard roll-on/roll-off dumpster containers for the removal of #10 refuse at various Newark Housing Authority complexes.

### 3.2 SCOPE OF WORK - GENERAL

The Newark Housing Authority utilizes, at its various complexes, on an average of approximately 125 20 cubic yard containers per month.

The successful bidder will be required to supply this Agency with an adequate amount of containers to avoid any trash pile up at the various complexes. The contractor shall be prepared to pick up full containers immediately upon notice from the Authority.

The contractor will be required to supply empty containers and pick up full containers as requested. The Authority may provide a schedule of deliveries and pick-ups for various sites, which may include daily pick-ups and deliveries.

The Contractor picks up and delivers containers within no more than four (4) hours from the notification by the Authority. Notification will be made by: a) a telephone call from authorized Authority personnel, b) by fax, or c) written notice.

These containers may contain regular household garbage, furniture, apartment renovation materials, and construction material such as, but not limited to: wood, wires, sheet rock, cabinets, shingles, concrete, tiles, fixtures, etc. and any other type of garbage. **The contractor will not be compensated additional money for various types of garbage in these containers.** The weight of the garbage in these containers may vary from container to container. The average container weight is approximately 3 to 4 tons (some containers may be lighter and some may be heavier.) The contractor will not receive additional money for additional weight or heavier containers. The contractor will be paid a fixed amount per container as stated in the bid.

Contents of the containers shall be disposed of in properly approved, legal dumping areas and in accordance with all applicable local, state and federal codes, regulations and laws.

Each container shall be clearly labeled as to capacity and shall have swing-out doors.

Upon delivery of containers, the contractor will be required to show on the receipts:

- 1) Date and time of delivery;
- 2) Total number of containers delivered;
- 3) Authority representative signature;
- 4) Address of delivery/pick-up;
- 5) Container number.

All required costs and fees, **including but not limited to dumping fees and transfer fees**, shall be included in the unit price of each full container being picked up.

The budgeted amount for this contract is not to exceed **\$720,000.00.** The contract will be terminated if this budget amount is exhausted prior to the contract period. The contractor shall

not exceed this budget limit in any case. It will be the contractor's responsibility to monitor the dollar amount expended, and the Authority will not pay any amount that exceeds this budget limit. The contract period will be five (5) years, contingent upon the availability of budgeted funds.

### 3.3 CONTRACT REQUIREMENTS

**3.3.1 Performance Bond:** Bidder shall simultaneously with the delivery of the executed contract, submit an executed bond in the amount of one hundred percent (100%) of the acceptable bid as security for the faithful performance of this contract.

Failure to submit this with the executed contract shall be cause for declaring the contract null and void pursuant to N.J.S.A. 40A:11-22. A sample of this bond is included in Part 2 of this IFB #11-S-051.

**3.3.2 Labor and Material (Payment) Bond:** Bidder shall with the delivery of the performance bond submit an executed payment bond to guarantee payment to laborers and suppliers for the labor and material used in the work performed under the contract.

Failure to submit a labor and material bond with the performance bond shall be cause for declaring the contract null and void. The performance bond provided shall not be released until final acceptance of the whole work and then only if any liens or claims have been satisfied. The surety on such bond or bonds shall be a duly authorized surety company authorized to do business in the State of New Jersey pursuant to N.J.S.A. 17:31-5.

**3.3.3 Maintenance Bond: NOT APPLICABLE FOR THIS CONTRACT.**

**3.3.4 N.J. Worker and Community Right to Know Act:** The manufacturer or supplier of chemical substances or mixtures shall label them in accordance with the N.J. Worker and Community Right to Know Law (N.J.S.A. 34:51 et seq., and N.J.A.C 5:89-5 et seq.). Containers that the law and rules require to be labeled shall show the Chemical Abstracts Service number of all the components and the chemical name. Further, all applicable Material Safety Data Sheets (MSDS) - hazardous substance fact sheet - must be furnished.

**3.3.5 Prevailing Wage Act: NOT APPLICABLE FOR THIS CONTRACT.**

**3.3.6 The Public Works Contractor Registration Act:  
NOT APPLICABLE FOR THIS CONTRACT.**

### 3.4 PAYMENT:

- No payment will be made unless duly authorized by the NHA's authorized representative and accompanied by proper documentation.
- Payment will be made in accordance with the Owner's policy and procedures.

### 3.5 TIME FOR COMPLETION

The term of the agreement shall be for a period of five (5) years subject to availability of annually appropriated funding for the contract. If directed by NHA, any work in effect at the time the Contract expires or is terminated shall continue until that work is completed.

## **SECTION 4.0 SUBMISSION FORMAT**

The purpose of the bid submission is to determine the lowest responsible responsive bidder. The bid should include the following:

#### 4.1 BID

All prices and amounts must be written in ink or preferably machine-printed. Bids containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid form, attachment of additive information not required by the specifications, or irregularities of any kind, may be rejected by the Authority. Any changes, whiteouts, strikeouts, etc. in the bid must be initialed in ink by the person signing the bid.

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

- Bids by 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.
- Bids by 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.
- Bids by sole-proprietorship shall be signed by the proprietor.
- When requested, satisfactory evidence of the authority of the officer signing shall be furnished.

#### 4.2 NON-CURABLE DOCUMENTS:

**4.2.1 Bid Guarantee:** Bidder shall submit with the bid a certified check, cashier's check or bid bond in the amount of **5% percent of the total bid price** unconditionally to the owner as allowed by HUD Handbook 7460.8 REV2 6.11(D)(1). When submitting a Bid Bond, it shall contain Power of Attorney for full amount of Bid Bond from a surety company authorized to do business in the State of New Jersey and acceptable to the owner. The check or bond of the unsuccessful bidder(s) shall be returned pursuant to N.J.S.A. 40A:11-24(a). The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted. The check or bond of the successful bidder shall be forfeited if the bidder fails to enter into a contract pursuant to N.J.S.A. 40A:11-21.

**4.2.2 Consent of Surety:** Bidder shall submit with the bid a Certificate (Consent of Surety) with Power of Attorney for **full amount of bid price** from a Surety Company authorized to do business in the State of New Jersey and acceptable to the owner stating that it will provide said bidder with a Performance Bond in the full amount of the bid. This certificate shall be obtained in order to confirm that the bidder to whom the contract is awarded will furnish Performance and Payment Bonds from an acceptable surety company on behalf of said bidder, any or all subcontractors or by each respective subcontractor or by any combination thereof which results in performance security equal to the total amount of the contract, pursuant to N.J.S.A. 40A:11-22.

**4.2.3 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.

4.2.4 Listing of Sub-contractors and Sub-Contractor Certification form: A signed listing of all sub-contractors to be used and completion of certification form. (NJSA 40A:11-16)

4.2.5 Acknowledgement of Receipt of Addenda/Clarifications: A document provided by the contracting agent in the bid plans, specifications or bid documents for the bidder to acknowledge the bidder's receipt of any notice, revisions, addenda or clarifications to the advertisement or bid documents. (NJSA 40A:11-23.2e)

4.2.6 Business Registration Certificate: N.J.S.A. 52:32-44 requires that each Bidder submit proof of business registration prior to the award of the contract. Proof of registration shall be a copy of the Bidder's Business Registration Certificate (BRC). Where the bid includes the use of named sub-contractors, the Business Registration Certificates for those sub-contractors must be part of the submission package.

#### 4.3 STATEMENT OF BIDDER'S QUALIFICATIONS:

Bidder shall complete form provided in Part 3 of this IFB 11-S-051.

#### 4.4 REFERENCES

Bidder shall complete reference form provided in Part 3 of the IFB 11-S-051 and 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 IFB. 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); and
2. Contact names and telephone numbers of clients in the State of New Jersey with whom organization has had a working relationship
3. **Do not list the Newark Housing Authority as a reference.**

#### 4.5 FINANCIAL STATEMENT

Bidder shall demonstrate its financial stability by the submission of audited financial statements or annual reports from the previous two (2) years, or the two (2) most recently available, or such other information as is reasonably acceptable to the NHA.

#### 4.6 OTHER REQUIRED BID DOCUMENTS:

Each Bidder is required to submit, in addition to those listed in items 4.1-4.5, the documents included in the *Submission Documents* package. These include:

- Checklist
- 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 Bidder 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-A: Representations, Certifications and other Statements of Bidders
- HUD Form 2530: Previous Participation Certification

## **SECTION 5.0 GENERAL INSTRUCTIONS**

Bid Submission deadline is by **TUESDAY, DECEMBER 20, 2011** at 10:00 a.m. It is the Bidder's responsibility that bids are presented to the NHA at the time and at the place designated. Sealed bids may be hand delivered or mailed; however, the NHA disclaims any responsibility for bids forwarded by regular or overnight mail. If the bid is sent by express mail service, the designation above must also appear on the outside of the express mail envelope. Bids received after the designated time and date will be returned unopened.

Bidders are asked to submit a bid in triplicate addressed to NEWARK HOUSING AUTHORITY - CONTRACTS DIVISION; bearing the name and address of the Bidder written on the face of the package, and clearly marked "BID" with the IFB title and **#11-S-051**.

### **5.1 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 IFB shall be by 10:00 a.m. on Thursday, November 10, 2011. All communications pertaining to this IFB shall be addressed to Contracts Division, 500 Broad Street, 5th Floor, Newark, N.J. 07102 or by facsimile 973-273-6549.

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

### **5.2 INTERPRETATION AND ADDENDA:**

The Bidder should rely only on representations, statements or explanations, contained in this IFB, any documents that the Authority has provided the Bidder, which are referred to in this IFB, and in such formal written addenda as are issued by the Authority prior to the Bid opening.

### **5.3 DISCREPANCIES IN BIDS**

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.

#### 5.4 BID PRICING, MINIMUM CONTRACT AWARD

5.4.1 The owner is exempt from any local, state or federal sales, use or excise tax.

5.4.2 The owner has attempted to identify the need and estimated amounts of work to cover its requirements; however, past experience shows that the amount of work tasked may be different than that submitted for bidding. The right is reserved to decrease or increase the work as specified in the specifications pursuant to N.J.A.C. 5:30-11.2 and 11.10. NO MINIMUM PURCHASE OR WORK IS IMPLIED OR GUARANTEED.

5.4.3 Contractor shall be responsible for obtaining any applicable permits or licenses from any government entity that has jurisdiction to require the same. All bids submitted shall have included this cost.

5.4.4 Bidders shall insert prices for furnishing goods and services required by these specifications. Prices shall be net, including any charges for packing, crating, containers, etc. All transportation charges shall be fully prepaid by the contractor, F.O.B. destination and placement at locations specified by the owner. As specified, placement may require inside deliveries. No additional charges will be allowed for any transportation costs resulting from partial shipments made for the contractor's convenience.

#### 5.5 BRAND NAMES, STANDARDS OF QUALITY AND PERFORMANCE

**NOT APPLICABLE FOR THIS CONTRACT.**

### **SECTION 6.0 EVALUATION TO DETERMINE RESPONSIBILITY OF BIDDER**

The apparent low bidder may be required to participate in a conference and provide additional information as required by the NHA. The objective is to answer questions, clarify issues, and provide additional information regarding the respondent's bid. However, please note that the NHA reserves the right to make its decision based solely on the submitted bids without any requests for additional information.

#### 6.1 EQUAL BIDS

In the case of equal low bids, the NHA shall determine based on drawing of lots or other random means.

## SECTION 7.0 ADDITIONAL INFORMATION

### 7.1 INSURANCE REQUIREMENTS

Before commencing of services under this project, the Bidder 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 and Commercial Automobile Liability Insurance policies.

- 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. Comprehensive General Liability Insurance (bodily injury and property damage coverage) covering claims made at any time prior, during, or subsequent to completion of the Bidder's services with a limit of not less than \$2,000,000 with a deductible not more than \$10,000.
- c. 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.
- d. Where an endorsement to the policies is required as a result of a contract with the Authority, the endorsement shall be made prior to signing of said contract.

The Bidder 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-contractor's activities. Certificates of insurance are to be forwarded to the Authority upon receipt.

### 7.2 JOB-SITE RESPONSIBILITIES

**7.2.1 Contractor's Supervision:** The contractor shall give his personal supervision to the work or have a competent supervisor, satisfactory to the Authority on the site at all times with full authority to act on behalf of the contractor. This employee shall have authority for the contractors' operations and shall be available should N.H.A. officials have questions or directives. The contractor shall provide staff adequate to coordinate and expedite the work properly and maintain competent supervision of the work to assure compliance of the contract at all times.

**7.2.2 Identification:** The contractor shall provide an identification badge to each employee. Identification badges shall state the name of the contractor, name of the employee and the employees I.D. number. The contractor must notify the buildings engineers and security desk of their presence on the job site at the beginning of each day. All personnel are required to wear an identification badge during their presence on the job site.

**7.2.3 Drugs and Alcohol:** The contractor shall be responsible for the conduct of employees during the workday. The presence of drugs or alcohol will not be tolerated on the job site by the Authority.

7.2.4 Access: Access to the site shall be through public streets and rights-of-way only.

Access shall be maintained at all times for emergency and service vehicles (garbage, postal, etc.). Local traffic shall be provided access upon completion of the normal workday.

7.2.5 Work Week: The Authority's regular workweek is from Monday to Friday. The hours of work are from 8:00 a.m. to 5:00 p.m. The contractor shall conform to this schedule unless written permission is granted by the Authority to deviate from this schedule.

### 7.3 EQUAL EMPLOYMENT OPPORTUNITY, AFFIRMATIVE ACTION STATEMENT

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 Bidder'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.

### 7.5 MANDATORY AFFIRMATIVE ACTION CERTIFICATION

7.5.1 Goods and Services Contracts: 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 Bidder's submission will be rejected as non-responsive if either one of the required documents is not submitted in the specified time frame.

7.5.2 Maintenance/Construction Contracts: after notification of award, but prior to signing the contract, the contractor shall submit to the public agency compliance officer and the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts (Division) an initial project workforce report (Form AA201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor shall also submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of the contract to the Division and to the public agency compliance officer. The contractor shall also cooperate with the public agency in the payment of budgeted

funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

7.6 SECTION 3 CLAUSE:

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

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

- 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).

#### 7.7 AMERICANS WITH DISABILITIES ACT OF 1990

Discrimination on the basis of disability in contracting for the purchase of goods and services is prohibited. Bidders 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.

#### 7.8 TRUTH IN CONTRACTING

Bidders 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.

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

#### 7.9 TERMINATION OF CONTRACT

1. If, through any cause, the Bidder shall fail to fulfill in a timely and proper manner obligations under the contract or if the Bidder 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 Bidder 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 Bidder 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 Bidder and the NHA may withhold any payments to the Bidder for the purpose of compensation until such time as the exact amount of the damage due the NHA from the Bidder is determined.

3. The Bidder agrees to indemnify and hold the owner harmless from any liability to sub-contractors/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 Bidder, the NHA may procure the goods or services from other sources and hold the Bidder 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 Bidder 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 bid/contract. Any change shall be approved by the NHA. The Bidder 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 Bidder.

#### 7.10 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).



*Executive Director*  
**KEITH D. KINARD**

*Chairperson*  
**MODIA BUTLER**

*BOARD OF COMMISSIONERS*  
**GLORIA CARTWRIGHT**  
**ANGELLA PALMER**  
**NANCY PEREZ**  
**LENIN CRUZ**  
**RASHARD CASEY**

**INVITATION FOR BIDS**

**IFB #11-S-051**

**FURNISH AND DELIVER ROLL ON/ROLL OFF  
DUMPSTER CONTAINERS  
AND  
DISPOSAL OF #10 REFUSE FOR ALL NHA SITES**

**PART 2 OF 3**

***STANDARD DOCUMENTS***

**CONTRACTS DIVISION**

**BID OPENING:  
TUESDAY,  
DECEMBER 20, 2011  
AT 10:00 A.M.**

**NEWARK HOUSING AUTHORITY**

**INVITATION FOR BIDS**

**11-S-051**

**PART II**

**STANDARD DOCUMENTS**

**INDEX**

|                  |                                                                     |
|------------------|---------------------------------------------------------------------|
| <b>SECTION 1</b> | <b>INSTRUCTIONS TO BIDDERS (HUD 5369)</b>                           |
| <b>SECTION 2</b> | <b>GENERAL CONDITIONS FOR NON-CONSTRUCTION<br/>(HUD 5370-C1-C1)</b> |
| <b>SECTION 3</b> | <b>24 CFR 86.36 (CODE OF FEDERAL REGULATIONS)</b>                   |
| <b>SECTION 4</b> | <b>SAMPLE CONTRACT</b>                                              |

## **PART II**

### **SECTION 1**

# **INSTRUCTIONS TO BIDDERS (HUD 5369)**

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

**Instructions to Bidders for Contracts  
Public and Indian Housing Programs**

# Instructions to Bidders for Contracts

## Public and Indian Housing Programs

### Table of Contents

| Clause                                                     | Page |
|------------------------------------------------------------|------|
| 1. Bid Preparation and Submission                          | 1    |
| 2. Explanations and Interpretations to Prospective Bidders | 1    |
| 3. Amendments to Invitations for Bids                      | 1    |
| 4. Responsibility of Prospective Contractor                | 1    |
| 5. Late Submissions, Modifications, and Withdrawal of Bids | 1    |
| 6. Bid Opening                                             | 2    |
| 7. Service of Protest                                      | 2    |
| 8. Contract Award                                          | 2    |
| 9. Bid Guarantee                                           | 3    |
| 10. Assurance of Completion                                | 3    |
| 11. Preconstruction Conference                             | 3    |
| 12. Indian Preference Requirements                         | 3    |

### 1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

### 2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

### 3. Amendments to Invitations for Bids

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

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

### 4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

- (1) Integrity;
- (2) Compliance with public policy;
- (3) Record of past performance; and
- (4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

## 5. Late Submissions, Modifications, and Withdrawal of Bids

(a) Any bid 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 PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(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 observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, 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, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, 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, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

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

(g) Bids 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 the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

## 6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

## 7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

## 8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

#### **9. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)**

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

#### **10. Assurance of Completion**

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[ ] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[ ] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[ ] (3) a 20 percent cash escrow;

[ ] (4) a 25 percent irrevocable letter of credit; or,

[ ] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

#### **11. Preconstruction Conference (applicable to construction contracts)**

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

#### **12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)**

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to be used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [ ] does [ ] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

## **PART II**

### **SECTION 2**

# **GENERAL CONDITIONS FOR NON-CONSTRUCTION (HUD 5370-C1-C1)**

# 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. 3/31/2010)

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.

---

## 16. Equal Employment Opportunity

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

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

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

## 17. Dissemination or Disclosure of Information

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

## 18. Contractor's Status

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

## 19. Other Contractors

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

## 20. Liens

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

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

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

---

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

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

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

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

## **PART II**

### **SECTION 3**

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

**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 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 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 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.

(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

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 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]

# **PART II**

## **SECTION 4**

### **SAMPLE CONTRACT**

**AGREEMENT BETWEEN**  
**THE HOUSING AUTHORITY OF THE CITY OF NEWARK**  
**and**

---

This Contract, entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Seven, by and between the **HOUSING AUTHORITY OF THE CITY OF NEWARK**, a body corporate and politic, organized and existing under and by virtue of the laws of the State of New Jersey, having its principal place of business at 500 Broad Street, in the City of Newark, County of Essex and State of New Jersey, hereinafter called the **"AUTHORITY"**, and \_\_\_\_\_ a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its principal place of business at \_\_\_\_\_ in the City of \_\_\_\_\_, County of \_\_\_\_\_ and the State of New Jersey, hereinafter called the **"CONTRACTOR"**.

The Authority and the Contractor are mutually desirous of entering into a contract to complete the Scope of Work for the \_\_\_\_\_.

**Article I: SCOPE OF WORK.**

The Scope of Work to be performed under this contract shall be completed in strict accordance with the specifications entitled: \_\_\_\_\_ IFB 11-S-051, hereinafter referred to as **"SPECIFICATIONS"**. All other work performed shall be in strict accordance with the Specifications and any and all applicable local, state and federal rules, regulations, guidelines, ordinances and codes.

**Article II: TERM OF CONTRACT.**

The term of the contract shall be for five (5) years commencing \_\_\_\_\_ 2012 through \_\_\_\_\_ 2017.

**Article III: COMPENSATION.**

The Authority shall pay the Contractor for the performance of the work in accordance with the attached fee schedule under this Contract, in current funds, an amount not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_.00).

Payments of the Contractor's work shall be made upon presentation of the Contractor's itemized invoice. Prior to an invoice submittal, progress schedules and cost breakdowns shall be on file with the NHA for the periodical approval. The invoices are to be forwarded to **Newark Housing Authority, Chief Operations Officer, 500 Broad Street, Newark, New Jersey 07102.**

#### **Article IV: SCHEDULE AND COORDINATION.**

The Contractor shall submit a proposed detailed project schedule in accordance with the Specifications. Approval will be made by the Authority. Upon approval the schedule shall remain in effect throughout the duration of the contract. No changes to the schedule shall be made unless prior approval of the Authority has been obtained.

The Contractor is required to submit a schedule of job completion each time a periodical is submitted. Failure to submit this schedule will result in the periodical being returned. The purpose of submitting a schedule of job completion with monthly periodicals is to permit the Authority to measure the Contractor's actual performance against the schedule submitted prior to commencement of the contract work. The Authority's payment as per the periodical submitted shall not constitute an acceptance or approval of the schedule of job completion submitted therewith, nor shall such payment of a monthly periodical constitute modification or change to the schedule submitted prior to the commencement of the contract work.

#### **Article V: INSURANCE.**

Before commencing of services under this project, the Bidder 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 and Commercial Automobile Liability Insurance policies.

- a. Worker's Compensation and Employer's Liability Insurance according to the laws of the state in which the services are to be performed.
- b. Comprehensive General Liability Insurance (bodily injury and property damage coverage) covering claims made at any time prior, during, or subsequent to completion of the Bidder's services with a limit of not less than \$2,000,000 with a deductible not more than \$10,000.
- c. 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.
- d. Where an endorsement to the policies is required as a result of a contract with the Authority, the endorsement shall be made prior to the signing of said contract.

The Bidder 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-contractor's activities. Certificates of insurance are to be forwarded to the Authority upon receipt.

**Article VI: COVENANT AGAINST CONTINGENT FEES.**

The Contractor warrants that he has not employed any person to solicit or secure this Contract upon any contract for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Authority the right to terminate this Contract, at its discretion, for default.

**Article VII: TERMINATION FOR CAUSE**

If through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the Authority shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five days before the effective date of the termination. The Authority shall have the benefit of such work as may have been completed up to the time of such termination and the Contractor shall be entitled to receive just and equitable compensation for such work.

**Article VIII: TERMINATION FOR CONVENIENCE.**

The Authority may terminate this contract any time by a notice in writing from the Authority to the Contractor. If the Contract is terminated by the Authority as provided herein, the Contractor shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments previously made. If the Contract is terminated due to fault of the Contractor, Article VIII hereof relative to termination shall apply.

**Article IX: CHANGES.**

The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes: (1) In the specifications (including drawings and designs); (2) In the method or manner of performance of the work; (3) Authority-furnished facilities, equipment, materials, services, or site; or, (4) Directing the acceleration in the performance of the work.

**Article X: EQUAL EMPLOYMENT OPPORTUNITY.**

During the performance of this contract, the Contractor agrees to enforce the provisions of Clauses 38, 39 and 40 of the General Conditions of the Contract for Construction, HUD 5370-C1, which are incorporated herein.

**Article XI: 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 Authority under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partner-ship, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

**Article XII: MODIFICATION.**

Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing. The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the Authority's address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer. When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the Authority's approved threshold), such modification shall not be effective until the required approval is received by the Authority.

**Article XIII: SUBCONTRACTING.**

Subcontracting under this contract shall be as defined in Clauses 37 and 38 of the General Conditions of the Contract for Construction, HUD 5370-C1-C1, which are incorporated herein.

**Article XIV: COMPLIANCE WITH LOCAL LAWS.**

The Contractor shall comply with all applicable laws, ordinances, regulations and codes of the State and local governments and shall not trespass on any public or private property in performing any of the work embraced by this Contract.

**Article XV: SECTION 3 REQUIREMENT**

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

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth

minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and 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.

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).

#### **Article XVI: CONTRACT DOCUMENTS.**

The executed Contract shall consist of the following component parts:

- a. This Instrument;
- b. Invitation for Bids 11-S-051 entitled: Furnish And Deliver Roll On/Roll Off Dumpster Containers And Disposal Of #10 Refuse For All NHA Sites;
- c. The Bid 11-S-051 received from \_\_\_\_\_, dated \_\_\_\_\_ 2011, as accepted by the NHA.
- d. Section 3 Opportunity Plan dated \_\_\_\_\_

THIS INSTRUMENT, together with the other documents enumerated in this Article XVI, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, form the Contract. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this Article XVI, shall govern, except as otherwise specifically stated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Contract which each modifies.

**IN WITNESS WHEREOF**, the Authority and the Contractor have executed on this Contract, the day and year first above written.

ATTEST:

\_\_\_\_\_  
WITNESS/NOTARY

\_\_\_\_\_  
PRESIDENT/PRINCIPAL

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
ELLEN M. HARRIS, ESQ.  
CHIEF LEGAL OFFICER  
HOUSING AUTHORITY of the  
CITY OF NEWARK

ATTEST:

NEWARK HOUSING AUTHORITY

\_\_\_\_\_  
KEITH D. KINARD  
EXECUTIVE DIRECTOR

NAME OF ORIGINATING DEPARTMENT:

DEPARTMENT OF OPERATIONS

INDEMNIFICATION AGREEMENT

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the Housing Authority of the City of Newark and \_\_\_\_\_, in the County of \_\_\_\_\_ and the State of New Jersey.

Whereas, \_\_\_\_\_ has been contracted by the Housing Authority of the City of Newark for \_\_\_\_\_ in accordance with the Contract Documents and all applicable laws, and;

WHEREAS, parties hereto seek to protect the Owner, from any and all real, actual or potential claims arising from any negligent or allegedly negligent act and or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be or appear to be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

NOW, THEREFORE, \_\_\_\_\_, hereby agrees to save and INDEMNIFY and keep harmless the Housing Authority of the City of Newark, against all liability for any and all claims, demands, judgments, and damages including personal and property damage arising from any act or omission of \_\_\_\_\_, or its Subcontractors, agents or employees, while in or about the building or premises and further agrees to Indemnify the Owner and/or its agents

Signed and Sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BY: \_\_\_\_\_

AFFIDAVIT

STATE OF NEW JERSEY    )  
                                      ) S.S.  
COUNTY OF                 )

BE IT REMEMBERED that on this                 day                 , 20\_\_\_\_, before me the subscriber, a Notary Public of the State of New Jersey, personally appeared, \_\_\_\_\_ who, being duly sworn does depose and make proof to my satisfaction that he/she is the Secretary of, \_\_\_\_\_, the Corporation named in the foregoing Instrument; that, \_\_\_\_\_ is the President/Owner of said corporation, that the execution, as well as the making of this Instrument has been duly authorized by a proper resolution of the Board of Directors of said corporation, that deponent well knows the corporate seal of said corporation and the seal affixed to said Instrument is such corporate seal and was thereto affixed and said Instrument signed and delivered by said Secretary, as and for his voluntary act and deed of said corporation, in the presence of deponent, who thereupon subscribed his name thereto as a witness by like order of the Board of said Corporation.

\_\_\_\_\_  
Secretary



*Executive Director*  
**KEITH D. KINARD**

*Chairperson*  
**MODIA BUTLER**

*BOARD OF COMMISSIONERS*  
**GLORIA CARTWRIGHT**  
**ANGELLA PALMER**  
**NANCY PEREZ**  
**LENIN CRUZ**  
**RASHARD CASEY**

**INVITATION FOR BIDS**

**IFB #11-S-051**

**FURNISH AND DELIVER ROLL ON/ROLL OFF  
DUMPSTER CONTAINERS  
AND  
DISPOSAL OF REFUSE FOR ALL NHA SITES**

**PART 3 of 3**

**BID DOCUMENTS  
SUBMIT IN TRIPLICATE**

**CONTRACTS DIVISION**

**BID OPENING:  
TUESDAY,  
DECEMBER 20, 2011  
AT 10:00 A.M.**

**PART 3****11-S-051****BIDDER'S CHECKLIST**

The following is a checklist to aid the bidders in completing the bid documents. Please check off the items completed for accuracy and completeness of the bid documents. Please note that certain forms must be completed when the bid package is returned. Failure to return documents at the time of bid opening may render bid as non-responsive.

| MANDATORY SUBMITTAL REQUIREMENTS                                    | YES | NO |
|---------------------------------------------------------------------|-----|----|
| CHECKLIST (COMPLETED)                                               |     |    |
| 1. Bid Document (provided within)                                   |     |    |
| A. NON-CURABLE ITEMS                                                |     |    |
| 2. Bid Bond (provided within)                                       |     |    |
| Consent of Surety (provided within)                                 |     |    |
| 3. Stockholder Disclosure Certification (provided within)           |     |    |
| 4. Sub-Contractor Certification (provided within)                   |     |    |
| 5. Acknowledgement of Addenda/Clarifications (provided within)      |     |    |
| B. OTHER SUBMISSION DOCUMENTS                                       |     |    |
| 6. Business Registration Certificate                                |     |    |
| 7. Non-Collusive Affidavit (provided within)                        |     |    |
| 8. Statement of Bidder's Qualifications (provided within)           |     |    |
| 9. Statement of Compliance Wages (provided within)                  |     |    |
| 10. Affirmative Action Documents (provided within)                  |     |    |
| 11. HUD 5369A, Representations, Certifications (provided within)    |     |    |
| 12. HUD 2530 Previous Participation Certification (provided within) |     |    |
| 13. Reference (provided within)                                     |     |    |
| 14. Section 3 Opportunities Plan (provided within)                  |     |    |

# **PART 3**

## **SECTION 1**

### **BID DOCUMENT**

**BID DOCUMENT  
11-S-051**

FROM:

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

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

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

\_\_\_\_\_  
FAX #

\_\_\_\_\_  
CITY, STATE AND ZIP CODE

\_\_\_\_\_  
EMPLOYER TAX ID #

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

\_\_\_\_\_  
CONTACT E-MAIL ADDRESS

TO: NEWARK HOUSING AUTHORITY  
500 BROAD STREET, NEWARK, NEW JERSEY 07102

The undersigned, having familiarized themselves with the Invitation for Bids and all attachments, with the Scope of Work as prepared by the **AUTHORITY** and with local conditions affecting the cost of the work, hereby submit this Bid to furnish all labor, materials, services, equipment and related items required to complete the entire Scope of Work which is furnishing labor & materials, management and supervision for the **furnishing and delivering of 20 cubic yard roll-on/roll-off dumpster containers and disposal of #10 refuse from all Newark Housing Authority complexes**. This contract period is five (5) years.

The prospective bidder acknowledges by submitting this Bid that he has reviewed all documents of the bid and the physical, regulatory, environmental, and social conditions of the site and the Scope of Work to be performed, and that the Bid Price and the completion times are based on the Bidder's knowledge of and unconditional acceptance of the contract conditions.

The bidder takes sole responsibility for the protection and security of the installed and completed work, tools, materials, labor, and the safety of the residents, Authority staff and the public at large, and hereby holds the Authority harmless from any damages, including third parties, based upon any failure of the Bidder's to protect and secure the work or the assigned apartment(s) as required.

All list prices and hourly rates and material mark-ups include any labor, material, security, tools, equipment, overhead cost, profit, insurance cost, supervision cost, travel cost, fringe benefits, and the cost for submitting this bid, including price estimates and quotes for individual jobs required to perform the job as specified in the scope of work. In any case, NHA will not provide or pay any additional cost for tools, equipment, security and storage space or for all other items included in mark-ups per this paragraph.

**BID PAGE****IFB #11-S-051****UNIT PRICE**

The Newark Housing Authority utilizes 20 cubic yard containers, at its various complexes, on an average of approximately 125 containers per month for years 2012-2014 and approximately 150 per month in years 2014 – 2017.

(A)

(B)

(C) =(A x B)

(D) = (12 x C)

| PERIOD           | UNIT COST | ESTIMATED QUANTITY | MONTHLY COST | ANNUAL COST |
|------------------|-----------|--------------------|--------------|-------------|
| <b>2012-2013</b> | \$        | <b>125</b>         | \$           | \$          |
| <b>2013-2014</b> | \$        | <b>125</b>         | \$           | \$          |
| <b>2014-2015</b> | \$        | <b>150</b>         | \$           | \$          |
| <b>2015-2016</b> | \$        | <b>150</b>         | \$           | \$          |
| <b>2016-2017</b> | \$        | <b>150</b>         | \$           | \$          |

**GRAND TOTAL - FIVE (5) YEARS**      \$ \_\_\_\_\_

**NOTE:** The contract period is five (5) years; the contractor shall submit a unit price per container per month and extend the amount on an annual basis. The prices submitted per year shall include any applicable fees (dumping fees and transfer fees).

NAME OF COMPANY \_\_\_\_\_

PRINT/TYPE NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

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

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

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

My commission expires \_\_\_\_\_.

## **PART 3**

### **SECTION 2**

#### ***BID BOND & CONSENT OF SURETY***

**Non-Curable Documents**  
**\*\*Form must be completed\*\***

## BID BOND

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned,

\_\_\_\_\_  
(Name of Principal)

as PRINCIPAL, and

\_\_\_\_\_  
(Name of Surety)

as SURETY, are held and firmly bound unto the NEWARK HOUSING AUTHORITY, hereinafter called the "AUTHORITY", in the penal sum of five percent (5%) of the total BID \_\_\_\_\_. Lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid, dated \_\_\_\_\_, 20\_\_, for

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

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

IFB #11-S-051  
**BID BOND**

ATTEST:

\_\_\_\_\_  
(Corporate Principal)

\_\_\_\_\_  
(Business Address)

BY: \_\_\_\_\_ Affix  
Corporate Seal

ATTEST:

\_\_\_\_\_  
(Corporate Surety)

BY: \_\_\_\_\_ Affix  
Corporate Seal

\_\_\_\_\_(Power of  
Attorney for persons signing for Surety Company must be attached to bond).

**CERTIFICATE AS TO CORPORATE SEAL**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the Corporation named as \_\_\_\_\_, who signed the said bond on behalf of the Principal, was then \_\_\_\_\_ of said corporation; that I know his signature and his signature thereto is genuine, and that said bond was duly signed, sealed and attested to, for and in behalf of said corporation by authority of its governing body.

(Corporate Seal)

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

## CONSENT OF SURETY

A performance bond will be required from the successful contractor on this project, and consequently, all bidders shall submit, with their bid, a Consent of Surety in substantially the following form:

To: \_\_\_\_\_  
(Owner)

Re: \_\_\_\_\_  
Contractor)

\_\_\_\_\_  
(Project Description)

This is to certify that the \_\_\_\_\_  
(Surety Company)

will provide to the \_\_\_\_\_ (Owner) a performance bond in the total amount of the bid in the event that said contractor is awarded a contract for the above project.

\_\_\_\_\_  
(Contractor)

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
Attorney-in-Fact

**CONSENT OF SURETY MUST BE EXECUTED BY AN AUTHORIZED AGENT OR REPRESENTATIVE OF A SURETY COMPANY AND NOT BY THE INDIVIDUAL OR COMPANY REPRESENTATIVE SUBMITTING THE BID.**

## **PART 3**

### **SECTION 3**

#### **STOCKHOLDER DISCLOSURE CERTIFICATION**

**Non-Curable Document**  
**\*\*Form must be completed\*\***

\*\*\*\*\*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. Continue on additional page if necessary.**

Stockholders:

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day  
of \_\_\_\_\_

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

\_\_\_\_\_, 2 \_\_\_\_.  
(Notary Public)

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

My Commission expires:

(Corporate Seal)

## **PART 3**

### **SECTION 4**

#### **SUBCONTRACTOR CERTIFICATION**

**Non-Curable Document**

**\*\*Form must be completed\*\***

**\*\*\*\*\*NON-CURABLE ITEM\*\*\*\*\*****SUB-CONSULTANT LISTING**

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

All subcontractors designated by the bidder 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 subcontractor shall also be provided with the bid. Specifically, the bidder shall include a listing of all relevant jobs performed by the subcontractor within the past two (2) years.

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



**The Bidder will not be using any subcontractors.**

***THIS FORM MUST BE SIGNED AND SUBMITTED BY THE BIDDER.***

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
(CORPORATE SEAL)

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

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

**SUBCONTRACTOR CERTIFICATION FORM**

All subcontractors designated by the bidder 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 subcontractor shall also be provided with the bid. Specifically, the bidder 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.

Subcontractor  
Firm Name

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

Contact Person

\_\_\_\_\_

Telephone #

\_\_\_\_\_

Facsimile #

\_\_\_\_\_

Trade

\_\_\_\_\_

State License #

\_\_\_\_\_

***THIS FORM TO BE SIGNED AND SUBMITTED BY THE SUBCONTRACTOR.***

\_\_\_\_\_  
Name of Subcontractor

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(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 |                 |

## **PART 3**

### **SECTION 5**

#### **ACKNOWLEDGMENT OF ADDENDUM(S) AND/OR CLARIFICATION(S)**

**Non-Curable Document**  
**\*\*Form must be completed\*\***

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

**ACKNOWLEDGMENT OF RECEIPT OF ADDENDA/CLARIFICATION**

The undersigned Bidder 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 were received:

***THIS FORM MUST BE SIGNED AND SUBMITTED BY THE BIDDER.***

Acknowledged for: \_\_\_\_\_  
(Name of Bidder)

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

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

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

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

## **PART 3**

### **SECTION 6**

#### **BUSINESS REGISTRATION CERTIFICATE &**

#### **SUBCONTRACTOR(S) BUSINESS REGISTRATION CERTIFICATE(S)**

**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>0107330</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)                                                                                             | <br>Acting Director<br>This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address. |                                                                                         |

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

## **PART 3**

### **SECTION 7**

# **NON COLLUSIVE AFFIDAVIT**

# **AFFIDAVIT OF NON-COLLUSION**

**STATE OF**

:

:

**SS**

**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.

Sworn to and subscribed  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Firm Name

Notary Public

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Bidder

## **PART 3**

### **SECTION 8**

#### **STATEMENT OF BIDDER'S QUALIFICATIONS**

## STATEMENT OF BIDDER'S QUALIFICATIONS

NAME OF BIDDER: \_\_\_\_\_

BIDDER'S ADDRESS: \_\_\_\_\_

\_\_\_\_\_

I. If a corporation, answer the following:

a. Date of Incorporation: \_\_\_\_\_

b. State of Incorporation: \_\_\_\_\_

c. President's Name: \_\_\_\_\_

d. Vice President's Name: \_\_\_\_\_

II. If an individual or partnership, answer the following:

a. Date of Organization: \_\_\_\_\_

b. Name(s) and address(es) of Individual/Partners:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

III. State background and experience of principals and key personnel.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

It is necessary that the bidder present evidence that he is a general contractor and that he has been in business for at least five years, satisfactorily completing similar projects. In addition, he shall submit evidence that his company has the necessary equipment and resources to carry out this scope of work.

1. How many years has your organization been in business performing the type of work required under this contract?

---

2. State general character of work performed by your company.

---

---

---

3. We normally perform \_\_\_\_\_ % of the work with our own forces.

4. Have you ever failed to complete or defaulted on any contract awarded to you? If so, state circumstances.

---

---

---

5. Has any officer/partner of your organization ever been an officer/partner of any organization that failed to complete a service contract? If so, state name of individual, organization and reason thereof.

---

---

---

6. List any outstanding liens against your company.

---

---

---

7. Name of the supervisor proposed for this work.

---

8. Explain in what manner you have inspected site(s).

---

---

9. Name of the supervisor proposed for this work.

---

10. List recent contracts and amounts recently completed.

---

---

---

11. List trade references:

---

---

---

12. List bank references:

---

---

Credit available: Please list amount. \$\_\_\_\_\_

Will you, upon request, submit a detailed financial statement and furnish any other information required by the Housing Authority of the City of Newark? Yes ( ). No ( ).

13. Have you entered into contracts or received firm offers for materials required for preparing your bid? Yes ( ). No ( ).

**FINANCIAL STATEMENT**


---

 NAME OF FIRM

---

 DATE
**CURRENT ASSETS:**

|                              |          |
|------------------------------|----------|
| Cash                         | \$ _____ |
| Joint Venture Account        | \$ _____ |
| Accounts Receivable          | \$ _____ |
| Notes Receivable             | \$ _____ |
| Accrued Interest on Notes    | \$ _____ |
| Deposits                     | \$ _____ |
| Material and Prepaid Expense | \$ _____ |

|                      |          |
|----------------------|----------|
| Total Current Assets | \$ _____ |
|----------------------|----------|

|                   |          |
|-------------------|----------|
| FIXED ASSETS NET: | \$ _____ |
|-------------------|----------|

|               |          |
|---------------|----------|
| OTHER ASSETS: | \$ _____ |
|---------------|----------|

|                |          |
|----------------|----------|
| TOTAL ASSETS : | \$ _____ |
|----------------|----------|

**CURRENT LIABILITIES :**

|                           |          |
|---------------------------|----------|
| Accounts Payable          | \$ _____ |
| Notes Payable             | \$ _____ |
| Accrued Interest on Notes | \$ _____ |
| Provisions for Taxes      | \$ _____ |
| Accrued Salaries          | \$ _____ |
| Payroll Taxes             | \$ _____ |
| Other                     | \$ _____ |

|                           |          |
|---------------------------|----------|
| Total Current Liabilities | \$ _____ |
|---------------------------|----------|

|                   |          |
|-------------------|----------|
| OTHER LIABILITIES | \$ _____ |
|-------------------|----------|

**CAPITAL:**

|                                                 |          |
|-------------------------------------------------|----------|
| Capital Stock                                   | \$ _____ |
| Authorized and Outstanding<br>Shares, Par Value | \$ _____ |
| Earned Surplus                                  | \$ _____ |

|                              |          |
|------------------------------|----------|
| TOTAL LIABILITIES & CAPITAL: | \$ _____ |
|------------------------------|----------|

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the NEWARK HOUSING AUTHORITY in verification of the recitals comprising this Statement of Bidder's Qualifications.

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\*\*\*\*\*

AFFIDAVIT

State of New Jersey        )  
                                      ) SS:  
County of \_\_\_\_\_ )

\_\_\_\_\_ (Name), being duly sworn, deposes and says that he is  
(Title) of \_\_\_\_\_ (Company) and that the answers to the  
foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to  
before me this \_\_\_\_ day  
\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
My commission expires \_\_\_\_\_.

NOTARY SEAL

## **PART 3**

### **SECTION 9**

#### ***STATEMENT OF COMPLIANCE - WAGES***

**STATEMENT OF COMPLIANCE - WAGES**

This is to certify that all persons employed by the undersigned will be paid full weekly wages earned, less permissible deductions for income taxes, Social Security, etc., and that no rebates have been or will be made either directly or indirectly to the undersigned from the full weekly wages earned by any person in its employ, and further that all employees will be paid as defined in Regulations, Part 3 (29 CFR) issued by the Secretary of Labor under the Copeland Act, as amended (43 Stat. 948, 63 Stat. 108, 72 Stat. 967; U.S.C. 276), and described on said payroll; that said payroll is correct and complete; that the wage rates contained in said payroll for laborers and mechanics pursuant to the contract under which such work was performed; and that the classification set forth for each laborer or mechanic conforms with the work he performed.

---

SIGNATURE

---

TITLE

# **PART 3**

## **SECTION 10**

### **AFFIRMATIVE ACTION DOCUMENTS**

## **AFFIRMATIVE ACTION PROGRAM**

**1. CONTRACTOR'S OBLIGATION.** To be a responsive bidder, the contractor/bidder must submit the statements included herewith that sets forth the minimum Affirmative Action requirements of the Newark Housing Authority.

At a minimum, the contractor (and/or relevant subcontractors) shall submit with his bid the following documentation explicated in detail below upon bidding for any particular materials, supplies or services:

- A. Certificate of compliance (narrative)
- B. Affidavit of MBE Participation
- C. Good faith in use of Section 3 business concern

The contractor shall not discriminate against employees and applicants for employment on the grounds of union membership, or because of race, color, religion, sex, or national origin.

The contractor/bidder (or relevant subcontractor) must also submit a signed narrative NHA "Statement of Compliance" with the Affirmative Action requirements pursuant to this document as well as all Federal, State, Municipal and Executive Order mandates.

**2. SUBCONTRACTORS.** Each prime contractor is responsible for the performance of his subcontractors for the implementation of the Affirmative Action Program during the performance of the contract. Whenever the contractor subcontracts a portion of services or materials, the subcontract shall bind the subcontractor to the obligations contained herein to the same extent as if he were the contractor.

**NOTE:** Contractor will not be paid any additional amount for minority participation or subcontractors.

## STATEMENT OF COMPLIANCE BY ALL CONTRACTORS

### AFFIRMATIVE ACTION PLAN

The employment policies and practices of the (YOUR COMPANY'S NAME) are to recruit and to hire employees without discrimination because of race, creed, color, or national origin, ancestry, marital status, political affiliation, liability for service in the armed forces of the United States or physical/mental handicap (except to the extent that such disability prevents the applicant from performing the tasks related to his/her occupation, profession, office or craft) and to treat them equally with respect to compensation and opportunities for advancement, including upgrading, promotion and transfer.

This company submits this plan to assure compliance with Executive Order #11246 and subsequent orders and more specifically the Housing Authority of the City of Newark's Affirmative Action Plan that may pertain to this program and to reaffirm its continued commitment to a program of equal employment opportunity and merit employment policies.

It agrees to assert leadership within the community and to put forth the maximum effort to achieve full employment and utilization of the capabilities and productivity to all who apply for employment on an equal basis.

This company further recognizes that the effective application of a policy of merit employment involves more than a policy statement and will, therefore, undertake a program of affirmative action to make known that equal employment opportunities are available on the basis of individual merit and to give notice to all persons seeking employment and to strive for advancement on this basis.

\_\_\_\_\_  
President/Director

\_\_\_\_\_  
Your Company's Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Job Site

\_\_\_\_\_  
City State Zip Code

**AFFIDAVIT OF  
MINORITY BUSINESS/HUD SECTION 3 ENTERPRISE PARTICIPATION**

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

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

\_\_\_\_\_ being first sworn states:  
That I \_\_\_\_\_ the respondent  
(am a Partner, Director, or Owner of the bidding firm) submitting the foregoing proposal  
or bid and that said party will comply with the requirements of the Equal Business  
Opportunity Program of the Housing Authority of the City of Newark and in furtherance  
thereof agrees to subcontract at least 30% of the goods or services to be awarded in a  
contract to a certified minority business entrepreneur. The bidder shall acquire the  
stated percentage of goods or services to be supplied hereunder from the following  
minority business enterprise(s):

**Minority Business**

HUD Section 3 Enterprise  
(address and phone number)

Percent of Bid  
(or dollar value)

Product or Service

|       |       |       |
|-------|-------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

I understand that nothing herein obligates the Housing Authority of the City of Newark to approve of said Equal Business Opportunity Program as a supplier or subcontractor for the goods and/or services stated and that the Authority may require the contractor/bidder to substitute suppliers or subcontractors other than the one(s) specified. In addition, it is understood and agreed that nothing herein gives any MBE/WBE an enforceable right against the Housing Authority of the City of Newark.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Sworn and subscribed before  
me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

**DESIGNATION OF COMPLIANCE OFFICER/  
EQUAL EMPLOYMENT OPPORTUNITY**

Your Company  
Street Address  
City State Zip Code

Attention: All Employees

Mr./Ms. \_\_\_\_\_ has been appointed the Affirmative Action Compliance Officer, under the direct supervision of (YOUR COMPANY'S DIRECTOR/PRESIDENT) for the (NAME OF YOU COMPANY). He/She will handle all complaints which allege discrimination because of race, creed, color or national origin ancestry, marital status, political affiliation, liability for service in the armed forces of the United States or physical/mental handicap (except to the extent that such disability prevents the applicant from performing the tasks related to his/her occupation, profession, office or craft). He/She will also handle all compliance situations relative to the Housing Authority of the City of Newark's Affirmative Action Program.

This company has pledged to abide by the provisions of the Civil Rights Act of 1964 and the current Executive Order relating to Equal Employment Opportunity.

Mr./Ms. J \_\_\_\_\_ Doe can be reached by telephone at (PHONE NUMBER). His/Her office address is at (STREET ADDRESS, CITY, STATE, ZIP CODE).

\_\_\_\_\_  
President/Director

\_\_\_\_\_  
Job Site

c: Office of Affirmative Action

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

Certification

**CERTIFICATE OF EMPLOYEE INFORMATION REPORT**

**RENEWAL**

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of

**15-APR-2005**

to **15-APR-2008**

S A M P L E



*John P. DeLoe*

State Treasurer

## **PART 3**

### **SECTION 11**

# **REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF BIDDERS (HUD 5369A)**

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

**Representations, Certifications,  
and Other Statements of Bidders**  
**Public and Indian Housing Programs**

# Representations, Certifications, and Other Statements of Bidders

## Public and Indian Housing Programs

### Table of Contents

| Clause                                                                                       | Page |
|----------------------------------------------------------------------------------------------|------|
| 1. Certificate of Independent Price Determination                                            | 1    |
| 2. Contingent Fee Representation and Agreement                                               | 1    |
| 3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions | 1    |
| 4. Organizational Conflicts of Interest Certification                                        | 2    |
| 5. Bidder's Certification of Eligibility                                                     | 2    |
| 6. Minimum Bid Acceptance Period                                                             | 2    |
| 7. Small, Minority, Women-Owned Business Concern Representation                              | 2    |
| 8. Indian-Owned Economic Enterprise and Indian Organization Representation                   | 2    |
| 9. Certification of Eligibility Under the Davis-Bacon Act                                    | 3    |
| 10. Certification of Nonsegregated Facilities                                                | 3    |
| 11. Clean Air and Water Certification                                                        | 3    |
| 12. Previous Participation Certificate                                                       | 3    |
| 13. Bidder's Signature                                                                       | 3    |

### 1. Certificate of Independent Price Determination

#### (a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

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

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

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

### 2. Contingent Fee Representation and Agreement

#### (a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

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

(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.

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

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

### 3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to 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 on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to 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 on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

#### 4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the bidder; or,  
(b) Impair the bidder's objectivity in performing the contract work.  
[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

#### 5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

#### 6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

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

The bidder 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 business enterprise. "Women-owned business enterprise," as used in this provision, means a 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 business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

|                        |                              |
|------------------------|------------------------------|
| [ ] Black Americans    | [ ] Asian Pacific Americans  |
| [ ] Hispanic Americans | [ ] Asian Indian Americans   |
| [ ] Native Americans   | [ ] Hasidic Jewish Americans |

#### 8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

**9. Certification of Eligibility Under the Davis-Bacon Act** (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

**10. Certification of Nonsegregated Facilities** (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

**Note:** The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

**11. Clean Air and Water Certification** (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

**12. Previous Participation Certificate** (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate"

[ ] is, [ ] is not included with the bid.

**13. Bidder's Signature**

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

\_\_\_\_\_  
(Signature and Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Address)

# **PART 3**

## **SECTION 12**

### **PREVIOUS PARTICIPATION CERTIFICATION (HUD 2530)**

# Previous Participation Certification

U.S. Department of Housing  
and Urban Development  
Office of Housing/Federal Housing Commissioner

U.S. Department of Agriculture  
Farmers Home Administration

OMB Approval No. 2502-0118  
(exp. 9/30/2009)

## Part I To be completed by Principals of Multifamily Projects. See Instructions Reason for Submitting Certification

### For HUD HQ/FmHA use only

1. Agency Name and City where the application is filed

2. Project Name, Project Number, City and Zip Code contained in the application

3. Loan or Contract Amount

4. Number of Units or Beds

5. Section of Act

6. Type of Project (check one)

☐ Existing

☐ Rehabilitation

☐ Proposed (New)

### List of All Proposed Principal Participants

7. Names and Addresses of All Known Principals and Affiliates (people, businesses & organizations) proposing to participate in the project described above. (list names alphabetically; last, first, middle initial)

8. Role of Each  
Principal in Project

9. Expected % Owner  
ship Interest in Project

10. Social Security or IRS  
Employer Number

**Certifications:** I (meaning the individual who signs as well as the corporations, partnerships or other parties listed above who certify) hereby apply to HUD or USDA-FmHA, as the case may be, for approval to participate as a principal in the role and project listed above based upon my following previous participation record and this Certification.

I certify 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, including the data contained in Schedule A and Exhibits signed by me and attached to this form.

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

I further certify that:

1. Schedule A contains a listing of every assisted or insured project of HUD, USDA-FmHA and State and local government housing finance agencies in which I have been or am now a principal.

2. For the period beginning 10 years prior to the date of this certification, and except as shown by me on the certification.

a. No mortgage on a project listed by me has ever been in default, assigned to the Government or foreclosed, nor has mortgage relief by the mortgagee been given;

b. I have not experienced defaults or noncompliances under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project;

c. To the best of my knowledge, there are no unresolved findings raised as a result of HUD audits, management reviews or other Governmental investigations concerning me or my projects;

d. There has not been a suspension or termination of payments under any HUD assistance contract in which I have had a legal or beneficial interest;

e. 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 defined as any offense punishable by imprisonment for a term exceeding 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);

f. I have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency.

g. I have not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond.

3. All the names of the parties, known to me to be principals in this project(s) in which I propose to participate, are listed above.

4. I am not a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in Standards of Ethical Conduct for Employees of the Executive Branch in 5 C.F.R. Part 2635 (57 FR 35006) and HUD's Standard of Conduct in 24 C.F.R. Part O and

USDA's Standard of Conduct in 7 C.F.R. Part O Subpart B.

5. I am not a principal participant in an assisted or insured project as of this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification have not been filed with HUD or FmHA.

6. To my knowledge I have not been found by HUD or FmHA to be in noncompliance with any applicable civil rights laws.

7. 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.

8. 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.

| Typed or Printed Name of Principal | Signature of Principal | Certification Date (mm/dd/yyyy) | Area Code and Telephone No. |
|------------------------------------|------------------------|---------------------------------|-----------------------------|
|                                    |                        |                                 |                             |
|                                    |                        |                                 |                             |
|                                    |                        |                                 |                             |
|                                    |                        |                                 |                             |
|                                    |                        |                                 |                             |

This form was prepared by (Please print name)

Area Code and Telephone No.

**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? |    | If "Yes," explain | 6. Last Mgmt.<br>and/or<br>Physical Inspctn<br>Rating |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|---------------------------------------------------------------|----|-------------------|-------------------------------------------------------|
|                                                                                   |                                                                                                                                        |                                                                                                                 |                                                                          | Yes                                                           | No |                   |                                                       |
|                                                                                   |                                                                                                                                        |                                                                                                                 |                                                                          |                                                               |    |                   |                                                       |

**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<br><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., refinance, 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 assigned. 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 certificates.

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.

## **PART 3**

### **SECTION 13**

### **REFERENCES**

## REFERENCES

COMPANY NAME: \_\_\_\_\_

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

PHONE NUMBER: \_\_\_\_\_

PLEASE LIST AT LEAST THREE (3) REFERENCES OF CURRENT CUSTOMERS WHO CAN VERIFY THE QUALITY OF SERVICES PERFORMED BY YOUR COMPANY; INCLUDE COMPANY NAME, ADDRESS, CONTACT PERSON AND TELEPHONE NUMBER:

1. COMPANY NAME: \_\_\_\_\_

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

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

PHONE: \_\_\_\_\_

2. COMPANY NAME: \_\_\_\_\_

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

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

PHONE: \_\_\_\_\_

3. COMPANY NAME: \_\_\_\_\_

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

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

PHONE: \_\_\_\_\_

## **PART 3**

### **SECTION 14**

### **SECTION 3 OPPORTUNITIES PLAN**



# SECTION 3 PROGRAM

## UTILIZATION PLAN PACKET

The purpose of Section 3 is to ensure that jobs and economic opportunities generated by HUD financial assistance for housing and community development programs are directed to low and very low income persons, particularly those who are recipients of government assistance for housing and business concerns which provide economic opportunities to low and very low income persons.

**JOB  
TRAINING  
OPPORTUNITIES  
INDEPENDENCE**

**SCHEDULE D: All bidders/proposers are required to complete this form and submit it with their final bid/proposal package. The form must be signed and dated by the responsible party.**

**The remainder of the packet must be completed with the NHA Section 3 Coordinator once the contract is awarded. It is important to familiarize yourself with ALL the contents so that you are aware of what is required and the various options for compliance once the contract is executed.**

The Section 3 Utilization Plan is to be completed for all construction and non-construction contracts. There are four (4) ways in which Section 3 can be fulfilled. They are listed in order of preference:

- 1) Subcontract or joint venture with a resident owned business and expend 25% (for construction contracts) or (3% for non-construction contracts) of the total subcontracting dollars allocated for this project. The business must be 51% or more owned by residents of the housing development, or other NHA public housing residents; or subcontractor/joint venture with a business that employs full-time, 30% or more of NHA residents, or low and very low income individuals within the HUD Metro Fair Marketing Rent areas of New Jersey (Essex, Morris, Sussex and Union counties). The list of certified Section 3 Business Concerns is provided in this packet, or
- 2) Direct hiring of NHA public housing residents and/or low and very low-income area residents. NHA has a complete database of properly screened residents who are available for employment, or
- 3) Incur the cost of providing skilled training for residents in an amount commensurate with the sliding scale set forth. Such training shall be determined after consultation with the Resident Services Department of the NHA.
- 4) Contribute to a NHA resident educational fund in an amount commensurate with your contract value on the requirement scales.

If a prime contractor is unable to satisfy the NHA resident hiring requirements per the above, the requirements may be satisfied through a qualified subcontractor that may be involved in the project and qualified to complete a percentage of the work.

For Option 1, if the contractor or subcontractor has identified a resident owned business or a business which employs 30% or more NHA public housing or area residents, this section is to be completed by indicating the percentage of total contract award and corresponding dollar amount that will be expended with such businesses in the spaces provided. (See steps for calculating Section 3 obligation to include Option 1)

**PART A:**

**Step 1:** Add the total amount of the awarded contracting dollars that you plan to allocate for subcontracting.

**Step 2:** Multiply the subcontracting dollars by 25% if this is a construction contract or 3% for non-construction. This is the amount you would place in the space provided in the utilization plan under Option 1. This will satisfy 100% of your obligation. If you choose a combination of options that include Option 1 proceed to Step 3.

**Step 3:** Multiply the percentage you chose *to comply with* Option 1 by the answer received in Step 2. For example, to use 50% of Option 1 *to comply with* your Section 3 obligation you would multiply the answer in step 2 by 50%.

Remember: You may use Option 1 to satisfy 100% of your Section 3 obligation or you may use a combination of options; nevertheless the sum of all percentages must equate 100% compliance.

**PART B:****SAMPLE CONSTRUCTION WORKSHEET USING OPTION 1****Subcontracts:**

|                   |           |
|-------------------|-----------|
| Plumbing          | \$100,000 |
| Heating           | \$100,000 |
| Plumbing Supplier | \$100,000 |

Total Subcontracting Dollars: \$300,000 x 25% = \$75,000

Option 1                      \$75,000 = 100% compliance

If you choose a combination of options (see the following example):

Contract Amount: \$400,000 x (5% = \$20,000) Note: Don't forget to add an additional \$10,000 if contract value is or becomes \$500,000 or more.)

Option 1                      **50%** x \$75,000 = **\$37,500**

Option 2                      **20%** x \$20,000 = \$ **4,000**

Option 3                      **-0-** x \$20,000 = \$ **0**

Option 4                      **30%** x \$20,000 = \$ **6,000**

**100% compliance    \$47,500 (Total Section 3 Requirement)**

your contract to calculate your full requirement. Following is two examples to illustrate the calculation method:

**Example 1 for construction contracts:**

If your contract amount is \$100,000.00, the Section 3 dollar amount that must be expended is 5% or \$5,000.00. If the contract amount is \$1,000,000.00, the calculations are 5% plus \$10,000.00, the Section 3 requirement amount in this example will be \$60,000.00.

**Example 2 for non-construction contracts:**

If your contract amount is \$100,000.00, the Section 3 dollar amount that must be expended is 3% or \$3,000.00. If the contract amount is \$1,000,000.00 the calculations are 3% plus \$10,000.00, the Section 3 requirement amount in this example will be \$40,000.00.

If the entire requirement amount is to be expended on resident's salary, then 100% is to be inserted on the percent line along with the dollar amount. If the salary amount is less than 100% of the requirement, that amount must be inserted on the line and the remaining dollar amount must be expended through subcontracting/joint venturing with a resident owned business or a business that employs 30% or more residents, or placed into NHA Section 3 Resident Training/Educational Fund. In which case, the corresponding paragraph must be completed.

If the (sub)contractor has exhausted the first two (2) options, then the full amount of the contractor's Section 3 obligations will be placed into NHA Resident Training/Educational Fund, in which case Paragraph three (3) must be completed and Paragraphs one (1) and two (2) will contain zeroes in the percentage lines. (Sub)contractors utilizing the NHA Resident Educational Fund to meet its Section 3

obligation must indicate their preference for a one-time payment/invoice deduction or periodic invoice deductions.

**LABOR SURVEY:** The third section is to be completed by listing current staff to be used to complete the work bid upon.

- 1) indicate each category of employment for all phase of this contract;
- 2) the number of positions which will be needed in each category;
- 3) how many of those positions are currently filled;
  - (a) total number of positions that are filled;
  - (b) the number filled by NHA public housing residents;
  - (c) the number filled by area residents, excluding NHA residents.
- 4) Indicate your goal for the number of positions you intend to fill with:
  - (a) Section 3 Residents
  - (b) Low and Very low income area residents.

**RESIDENT LIST:** The final section is to be completed after the contract has been awarded; interviews have taken place and residents have been hired. The completed Section 3 Utilization Plan must be submitted to the Section 3 Coordinator and Procurement and Contracts Department.

Public housing residents are screened and skills assessed by the NHA. Each contractor is required to attend a post-award meeting where contractual obligations related to Section 3 compliance will be explained and the Section 3 Utilization Plan will be finalized.

## Exhibit 2

**SECTION 3 UTILIZATION PLAN**

***Business Opportunities and Employment Training of the Housing Authority of  
the City of Newark Public Housing Residents and Low and Very Low Income Area  
Residents***

**Utilization Plan (Company Name \_\_\_\_\_)**

**LINE 1** Contract Amount \$ \_\_\_\_\_; this amount is the base you must use to calculate your Section 3 requirement. (Note: this does not apply to Option 1).

**LINE 1b** Total Subcontracting Dollars \$ \_\_\_\_\_; this amount is what you have allocated to subcontracting this project. It is also the base you must use to calculate Option 1 only.

**LINE 2** After choosing option(s) below, add all figures and place on this line \$ \_\_\_\_\_. This is your total Section 3 requirement. (Note: This total may change in accordance with increases and decreases in contract value. All changes should be reflected on monthly Section 3 report.)

The Contractor hereby agrees to comply with all the provisions of Section 3 as set forth in 24 CFR 135.1 et seq. and the NHA Contract Resolutions implementing Section 3 requirements.

You may comply by choosing one or all options. Remember, your compliance must be equal to 100% or any remaining percentages and the corresponding dollar amount will be deducted from payouts and placed in the NHA Resident Training/Educational Fund account. An electronic worksheet to assist in completing the Utilization Plan can be found at [www.newarkha.org](http://www.newarkha.org).

☐ **Option 1: Subcontract with Section 3 Business Concern(s)**

**LINE 3** The Contractor has chosen a NHA certified Section 3 resident owned business(es) or Section 3 business(s) to expend 25% (for construction) or 3% (for non-construction) of the total subcontracting dollars, to comply with (a) \_\_\_\_\_ % , (b) \$ \_\_\_\_\_ of its Section 3 requirements covered under this Contract.

☐ **Option 2: Hire Section 3 residents/participants**

**LINE 4** The Contractor has committed to employ the following in order to comply with (a) \_\_\_\_\_ %, (b) \$ \_\_\_\_\_, of its Section 3 requirements. The Contractor hereby submits this document to identify employment opportunities for the new hire of NHA public housing residents and low and very low-income area residents, during the term of the contract between the Contractor and NHA. The Contractor affirms that the jobs identified shall be for meaningful employment that may or may not be related to the scope of services covered under this Contract. (See attached Labor Survey)

☐ **Option 3: Resident Training by Contractor**

**LINE 5** The Contractor has a training/apprenticeship program in place and is willing to train and/or sponsor residents to comply with (a) \_\_\_\_\_ % or (b) \$ \_\_\_\_\_ of its Section 3 requirements. Enter number of residents to be trained: (c) \_\_\_\_\_.

☐ **Option 4: Contribution**

**LINE 6**

The Contractor will contribute to the NHA Training/Educational Fund for resident training to comply with (a) \_\_\_\_\_% or (b)\$ \_\_\_\_\_ of its Section 3 requirements.

In the event I choose Option (4), I have the option to submit my check in the compliance amount of the start of contract date, or allow NHA to deduct payment from my draw requests. (Compliance amount is based upon the contract amount spelled out on the related scale.)

\_\_\_\_\_  
Contractor's Signature and Title:

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

Sworn & Subscribed Before Me

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
Day Month Year

\_\_\_\_\_  
Signature of Notary Public

Date Commission Expires \_\_\_\_\_

**Exhibit 2a****SCHEDULE D**

NAME OF PRIME CONTRACTOR:

\_\_\_\_\_

TITLE OF IFB/RFP: \_\_\_\_\_

IFB/RFP#: \_\_\_\_\_

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

**THIS DOCUMENT IS REQUIRED FOR ALL CONSTRUCTION AND NON-CONSTRUCTION BID SUBMISSIONS**

The Contractor hereby agrees to comply with all the provisions of Section 3 as set forth in 24 CFR 135.38 implementing Section 3 requirements. The contractor hereby submits this Schedule D as evidence of its good faith commitment to comply with all provisions of HUD Section 3 as implemented by the Newark Housing Authority.

The Contractor hereby agrees to complete and execute a Section 3 Utilization Plan, acceptable to Newark Housing Authority, upon contract award. The Contractor understands and further agrees that the issuance of a Notice to Proceed in connection with the work subject to the awarded contract shall be contingent upon execution of Contractor's Section 3 Utilization Plan.

The Contractor shall provide a status report identifying its progress in meeting the Section 3 goals established in the Utilization Plan on a monthly basis throughout the contract period. The monthly status report shall be submitted at the time payment is being requested. For any goal not met, the report shall identify any other economic opportunities, which the contractor has provided, or intend to provide in order to meet the Section 3 goals.

Acknowledged by:

\_\_\_\_\_  
(President or Authorized Officer)

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

Sworn &amp; Subscribed Before Me

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Day Month Year

\_\_\_\_\_  
Signature of Notary Public

Date Commission Expires \_\_\_\_\_

**III. Labor Survey:**

| IFB OR RFP #  |                   | IFB OR RFP TITLE               |               |             |                  |               |             |
|---------------|-------------------|--------------------------------|---------------|-------------|------------------|---------------|-------------|
| (1) JOB TITLE | (2) NUMBER NEEDED | (3) NUMBER OF POSITIONS FILLED |               |             | HIRING GOAL      |               |             |
|               |                   | (a)<br>Total                   | (b)<br>LINHAR | (C)<br>LIAR | (4) To Be Filled | (a)<br>LINHAR | (b)<br>LIAR |
|               |                   |                                |               |             |                  |               |             |
|               |                   |                                |               |             |                  |               |             |
|               |                   |                                |               |             |                  |               |             |
|               |                   |                                |               |             |                  |               |             |
|               |                   |                                |               |             |                  |               |             |
|               |                   |                                |               |             |                  |               |             |
|               |                   |                                |               |             |                  |               |             |
|               |                   |                                |               |             |                  |               |             |
|               |                   |                                |               |             |                  |               |             |

LINHAR = Low and Very Low-Income Newark Housing Authority Resident

LIAR = Low -Income Area Resident

**IV. Resident List****Section 3 Resident Employee Information (Jobs to be filled)**

| Job Title | LINHAR or LIAR Name | Address | Phone Number |
|-----------|---------------------|---------|--------------|
|           |                     |         |              |
|           |                     |         |              |
|           |                     |         |              |
|           |                     |         |              |
|           |                     |         |              |
|           |                     |         |              |
|           |                     |         |              |

LINHAR = Low and Very Low-Income Newark Housing Authority Resident

LIAR = Low-Income Area Resident

**SECTION 3 REQUIREMENT SCALE****CONSTRUCTION****VALUES**

| Contract Values |    |             | CONTRIBUTION TO TRAINING FUND |           |           |
|-----------------|----|-------------|-------------------------------|-----------|-----------|
| \$21,000        | to | \$99,999    | 5%                            | \$1,050   | \$5,000   |
| \$100,000       | to | \$199,999   | 5%                            | \$5,000   | \$10,000  |
| \$200,000       | to | \$299,999   | 5%                            | \$10,000  | \$15,000  |
| \$300,000       | to | \$399,999   | 5%                            | \$15,000  | \$20,000  |
| \$400,000       | to | \$499,999   | 5%                            | \$20,000  | \$25,000  |
| \$500,000       | to | \$999,999   | 5% + \$10,000                 | \$35,000  | \$60,000  |
| \$1,000,000     | to | \$1,999,999 | 5% + \$10,000                 | \$60,000  | \$110,000 |
| \$2,000,000     | to | \$2,999,999 | 5% + \$10,000                 | \$110,000 | \$160,000 |
| \$3,000,000     | to | \$3,999,999 | 5% + \$10,000                 | \$160,000 | \$210,000 |
| \$4,000,000     | to | \$4,999,999 | 5% + \$10,000                 | \$210,000 | \$260,000 |

Five percent (5%) plus \$10,000 will be applied to each contract of \$500,000.00 dollars or more for the purpose of calculating requirement values.

**SECTION 3 REQUIREMENT SCALE****NON-CONSTRUCTION****VALUES**

| Contract Values |    |             | CONTRIBUTION TO TRAINING FUND |          |           |
|-----------------|----|-------------|-------------------------------|----------|-----------|
| \$21,000        | to | \$99,999    | 3%                            | \$630    | \$3,000   |
| \$100,000       | to | \$199,999   | 3%                            | \$3,000  | \$6,000   |
| \$200,000       | to | \$299,999   | 3%                            | \$6,000  | \$9,000   |
| \$300,000       | to | \$399,999   | 3%                            | \$9,000  | \$12,000  |
| \$400,000       | to | \$499,999   | 3%                            | \$12,000 | \$15,000  |
| \$500,000       | to | \$999,999   | 3% +                          | \$10,000 | \$25,000  |
| \$1,000,000     | to | \$1,999,999 | 3% +                          | \$10,000 | \$40,000  |
| \$2,000,000     | to | \$2,999,999 | 3% +                          | \$10,000 | \$60,000  |
| \$3,000,000     | to | \$3,999,999 | 3% +                          | \$10,000 | \$90,000  |
| \$4,000,000     | to | \$4,999,999 | 3% +                          | \$10,000 | \$130,000 |
|                 |    |             |                               |          | \$160,000 |

Three percent (3%) plus \$10,000 will be applied to each contract of \$500,000.00 dollars or more for the purpose of calculating requirement values.

## Exhibit 2b

## FY 2009 Income Limits Summary

| Newark, NJ HUD Metro FMR Area             |                          |                                                      |             |             |             |                 |             |             |             |             |
|-------------------------------------------|--------------------------|------------------------------------------------------|-------------|-------------|-------------|-----------------|-------------|-------------|-------------|-------------|
| FY 2009<br>Income<br>Limit<br>Area        | <u>Median<br/>Income</u> | FY 2009<br>Income<br>Limit<br>Category               | 1<br>Person | 2<br>Person | 3<br>Person | 4<br>Person     | 5<br>Person | 6<br>Person | 7<br>Person | 8<br>Person |
| Newark,<br>NJ HUD<br>Metro<br>FMR<br>Area | \$87,600                 | <u>Very Low<br/>(50%)<br/>Income<br/>Limits</u>      | \$30,650    | \$35,050    | \$39,400    | <b>\$43,800</b> | \$47,300    | \$50,800    | \$54,300    | \$57,800    |
|                                           |                          | <u>Extremely<br/>Low (30%)<br/>Income<br/>Limits</u> | \$18,400    | \$21,050    | \$23,650    | <b>\$26,300</b> | \$28,400    | \$30,500    | \$32,600    | \$34,700    |
|                                           |                          | <u>Low (80%)<br/>Income<br/>Limits</u>               | \$44,800    | \$51,200    | \$57,600    | <b>\$64,000</b> | \$69,100    | \$74,250    | \$79,350    | \$84,500    |

The **Newark, NJ HUD Metro FMR Area** contains the following areas: Essex County, NJ; Morris County, NJ; Sussex County, NJ; and Union County, NJ.