REQUEST FOR QUOTE

Solicitation #17-015-QTE-0004

PROCESS SERVER SERVICES

1815 EGBERT AVENUE
SAN FRANCISCO, CA 94124

July 10, 2017
REQUEST FOR QUOTES
Solicitation #17-015-QTE-0004
Process Server Services

QUOTE DUE: JULY 24, 2017 by 2:00 PM

DESCRIPTION OF SERVICES:
The Housing Authority of the City and County of San Francisco (Authority) invites vendors to submit quotes for Process Server Services. The Authority currently owns and operates approximately 2,500 units and administers the Housing Choice Voucher Program for over 10,000 individuals. The selected contractor shall provide process server services for the Authority. The service includes, but is not limited to: Service of Legal Notices; Service of Subpoena; and Service of Summons and Complaints. The selected contractor will also provide courier or messenger services on an as needed basis by the request of the Authority. The monthly average volume of service requests can range from 10-100.

SERVICES REQUESTED:
Process Server duties will include, but not limited to;

- Serve the following documents via Hand Delivery and/or Mailing:
  - Service of Legal Notices (Examples include Fourteen-day Notice to Pay Rent or Quit; Three-day Notice to Quit; Thirty-day Notice to Terminate Tenancy);
  - Service of Subpoena(s);
  - Service and/or filing of pleadings including, but not limited to Summons and Complaints, Answers, and Prejudgment Claim of Right Possession
  - Courier duties as may be needed through the regular course of business such as delivery of files.
- Services of documents to be completed include
  - Not to exceed five (5) business days.
  - If services are unsuccessful, the Contractor will notify the Authority within 24 hours of the five (5) business day deadline.
  - Same-day response required
  - Weekend services required
- Contractor will return completed proofs of services and, in the case of sub-service, declarations of due diligence within Five (5) days after service. Five (5) attempts satisfies due diligence. Proof of Service must be completed correctly. Request corrections must be returned within Five (5) business days of notice of error
- Contractor must be available to testify at court hearings and filing of documents with the court
- Contractor to pay for all postage or mailing expenses associated with the case filing
- Provide Stake out services
- All requested locations must be accepted
- Courier or messenger services on an as needed basis
- Any other related Process Server duties as assigned

PREPARATION OF QUOTE:
Quotes must be:
1) Submitted on the forms furnished by the Authority or on copies of those forms, and
2) Manually signed by an authorized representative of the Contractor.
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3) All erasure or change appearing on any form must be initialed by the authorized person signing the form.
4) Pricing is to be submitted on the CONTRACTOR’S QUOTE.

OFFERRORS SHALL:

1) Complete and sign: CONTRACTOR’S QUOTE
2) Read and sign: Acknowledgement to Adhere to the Immigration & Naturalization Act
3) Complete and sign: HUD 5369-C Certifications Representations of Offerors Non-Construction
4) Read HUD 5369-B, Instructions to Offerors Non-Construction.
5) Read HUD 5370-C General Contract Conditions Non-Construction

DEADLINE: Quotes must be submitted to one of the following prior to 2:00 PM on July 24, 2017

Mail/Deliver to: San Francisco Housing Authority
1815 Egbert Street
San Francisco, CA 94124
ATTN: Procurement Department

Email: procurement@sfha.org

TYPE OF CONTRACT:
The Authority contemplates award of a Firm Fixed Price Contract resulting from this Quote.

TERM OF CONTRACT:
The term of the contract to be awarded shall be for Two (2) years with up to Three (3), One (1) year extensions and a maximum contract term of Five (5) years.

No Awards may be made to a contractor that is on the list of contractors ineligible to receive awards from the Authority or the United States, as furnished by HUD.

CONTRACT DOCUMENTS:
The “Submittal” forms when accepted by the Authority together with all other required documents that are submitted with a bid, “Special Conditions”, “Amendment(s) to Special Conditions” (if any), “General Conditions”, “Amendment(s) to General Conditions” (if any), “Instructions to Offeror's” (if any), “Technical Specifications”, and “Drawings” (if any), form the contract. In the event that any provision in one of the component parts of this contract conflicts with any provision of any other component part, the provision in the component part first enumerated herein shall govern except as otherwise specifically stated. The documents enumerated herein contain the entire contract agreement between the parties, and no representations, warranties, agreements, or promises (whether
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oral, written, expressed, or implied) by Authority or Offeror are a part of the contract unless expressly stated therein.

AWARD:
The Authority will evaluate quotes in response to this solicitation and will award a contract to the responsible Contractor whose quote is the most advantageous to the Authority, considering only price and the price-related factors specified in the solicitation.

The Authority may reject any or all quotes, and waive informalities or minor irregularities in quote received.

The Authority may reject a quote as non-responsive if the prices are materially unbalanced between line items or sub-line items. A quote is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the quote will result in the lowest overall cost to the Authority even though it may be the low evaluated quote, or it is so unbalanced as to be tantamount to allowing an advance payment.

SINGLE OR MULTIPLE AWARDS:
The Authority reserves the right to award any or all items to a single contractor or multiple contractors.

INSURANCE:
Upon award of the contract, the Contractor shall furnish a Certificate of Insurance providing coverage for Commercial and/or Comprehensive General Liability, Comprehensive Automobile Liability (owned and not owned), Worker's Compensation Employers' Liability, and, if applicable, Professional Liability Insurance.

INSURANCE REQUIREMENTS:
The Contractor will maintain in full force and effect during the full term of the Contract the insurance requirements listed below, and in a solvent company or companies that maintain a rating of "B+" or better and admitted to sell insurance in California through the Department of Insurance. This insurance must be under the usual terms employed by casualty companies in California, naming the Authority and its respective members, officers, agents and employees as additional insured. Such insurance shall protect such additional insured and indemnify them against direct or contingent loss or liability for bodily injury, death and and/or property damage arising in any manner from the Contractor's performance of the Contract with Authority, or the nature of the services provided, or any operations under or connected with the Contract with the Authority.

1. Worker's Compensation Employers' Liability with limits as required by State California (Currently $1,000,000 for each accident).

2. Comprehensive General Liability Insurance with limits not less than $2,000,000/$1,000,000 per person occurrence Combined Single Limit Bodily Injury and Property Damage, including
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Contractual Liability, and Completed Operations coverage. If the Respondent Contractor has a "claims made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion of the Contract.

3. Comprehensive Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit bodily Injury and Property Damage.

Comprehensive General Liability and Comprehensive Automotive Liability Insurance policies shall be endorsed to provide the following:

1. Name as ADDITIONAL INSURED the San Francisco Housing Authority, its Officers, and Members of Commission, Agents and Employees.

2. Such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against who claim is made or suit is brought, but the inclusion of more than one insured shall not increase the insurer's limits of liability.

3. All policies shall be endorsed to provide thirty (30) days advance written notice to the Authority of cancellation, non-renewal or reduction in coverage, mailed to the following address:

   San Francisco Housing Authority
   1815 Egbert Avenue
   San Francisco, CA 94124
   ATTN: Procurement Department

4. Certificates of Insurance, in form and with insurers satisfactory to the Authority, evidencing all coverage above, shall be furnished to the Authority prior to award and before commencing any operations under this contract, with complete copies of policies to be furnished promptly upon the written request of the Authority, at the following address:

   San Francisco Housing Authority
   1815 Egbert Avenue
   San Francisco, CA 94124
   ATTN: Procurement Department

5. Any coverage which the Contractor proposes to self-insure, or any intention to operate vehicles other than automobiles (i.e. boats, aircraft, etc.) shall require prior Authority approval of the appropriate insurance to be agreed upon.

Approval of the insurance by the Authority shall not relieve or decrease the liability of the Contractor. The contract shall terminate immediately, without notice to the Contractor, upon any lapse of required insurance coverage. The Contractor shall be advised that should the Contractor through its negligence fail to meet the professional standards of care and performance of its services
that result in additional costs to the Authority, it will be the intention of the Authority to recoup these costs from the Contractor.

AFFIRMATIVE ACTION:
The Contractor shall take affirmative action to ensure that employees and applicants for employment are not discriminated against because of race, color, creed, religion, sex, age, national origin, disability, ancestry, public assistance status, marital status or veteran status.

W-9 SUBMITTAL:
Upon award of the contract, the Contractor shall provide a copy of its Request for Taxpayer Number and Certification (W-9) at the time and date specified by the Authority.

TAX:
This quote shall not include California Retailers’ Occupational Tax (so called “Sales Tax”) on direct sales to the Authority or on any material incorporated into or becoming part of the work; federal excise taxes, or federal transportation taxes. The Authority will provide all contract awardees with a tax Exemption Certificate.

AVAILABILITY OF FUNDS:
This contract award is subject to availability of funds. The Authority’s obligation under this contract is contingent upon the availability of appropriated funds from which payments for contract purposes can be made. No legal liability on the part of the Authority for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

SECURITY BADGE IDENTIFICATION REQUIREMENT:
All Contractors’ employees will be required to obtain and wear security badges while working at any San Francisco Housing Authority sites. The badges can be obtained from the Human Resources Department at 1815 Egbert Avenue, San Francisco, CA 94124. The Authority will charge a minimal fee of $5.00 per badge. Badges must be obtained prior to commencing work and will be turned in upon completion of the job prior to final payment.
CONTRACTOR’S QUOTE

Solicitation #17-015-QTE-0004

In conformance with the terms and conditions of the Contract Documents, the undersigned, having familiarized him/her self with local conditions and said Contract Documents, hereby proposes, offers, and agrees, if this quote is accepted within 120 calendar days from the date of offer opening to do all things necessary to fully perform and satisfy all terms, conditions, and requirements of the said Contract Documents, for and at the price or prices indicated in the schedule of services/prices. Offeror pricing as detailed below, shall be firm through the entire term of the awarded contract. The bidder is responsible for supplying all labor, equipment and materials to perform the services as identified in the scope of work.

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<thead>
<tr>
<th>Price Quote Required</th>
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<tbody>
<tr>
<td>Description</td>
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<tr>
<td>Base Rate for Notices</td>
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<tr>
<td>Same Day Service</td>
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<td>Courier / Messenger Services</td>
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<td>Court Serving</td>
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<tr>
<td>Cost to File</td>
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<tr>
<td>Stakeout Services</td>
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<tr>
<td>Additional Services</td>
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</tbody>
</table>

Print Name: ____________________________ Title: ____________________________
Signature: ____________________________ Date: ____________________________
Address: ____________________________ Telephone: ____________________________
City, State: ____________________________ Taxpayer ID: ____________________________

False Statements in Quote: Contractors must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements is prescribed in 18 U.S.C. 1001.
ACKNOWLEDGEMENT TO ADHERE TO
THE IMMIGRATION AND NATURALIZATION ACT

________________________________________________________________________
(Name of Contractor) acknowledges to have read and will adhere to the Immigration and Naturalization Act. I have made this information available to all sub-contractors participating in this project.

US CODE: Title 8,1324. Bringing in and harboring certain aliens

________________________________________________________________________
CONTRACTOR

________________________________________________________________________
DATE
1. Preparation of Offers
(a) Offers are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror’s risk.
(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Measures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent’s authority, unless that evidence has been previously furnished to the HA.
(c) Offers for services other than those specified will not be considered.

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

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

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

5. Responsibility of Prospective Contractor
(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must:
   (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
   (2) Have a satisfactory performance record;
   (3) Have a satisfactory record of integrity and business ethics;
   (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
   (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.
(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers
(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:
   (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
   (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/HUD that the late receipt was due solely to mishandling by the HA/HUD after receipt at the HA;
   (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term “working days” excludes weekends and U.S. Federal holidays; or
   (4) Is the only offer received.
(b) Any modification of an offer, except a modification resulting from the HA’s request for “best and final” offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.
(c) A modification resulting from the HA’s request for “best and final” offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.
(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull’s-eye postmark on both the receipt and the envelope or wrapper.
(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.
(f) The only acceptable evidence to establish the date of mailing of a
late offer, modification, or withdrawal sent by Express Mail Next Day
Service-Post Office to Addressee is the date entered by the post office
receiving clerk on the "Express Mail Next Day Service-Post Office to
Addressee" label and the postmark on both the envelope or wrapper
and on the original receipt from the U.S. Postal Service. "Postmark"
has the same meaning as defined in paragraph (c) of this provision,
excluding postmarks of the Canadian Postal Service. Therefore,
offerors should request the postal clerk to place a legible hand
 cancellation bull’s eye postmark on both the receipt and the envelope
or wrapper.

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

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

7. Contract Award

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

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

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

(1) [ ] has, [ ] has not employed or retained any person or company to solicit or obtain this contract; and

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

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

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

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

The bidder/offeree represents and certifies as part of its bid/off er that it:

(a) [ ] is, [ ] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [ ] is, [ ] is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [ ] is, [ ] is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

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

(Check the block applicable to you)

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

3. Certificate of Independent Price Determination

(a) The bidder/offeree certifies that—

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

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

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

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

(1) Is the person in the bidder/offeree’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/offeree’s organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeree’s organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and
(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

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

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor’s organizational, financial, contractual or other interest are such that:

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

(ii) The Contractor’s objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror’s Signature

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

Signature & Date:

Typed or Printed Name:

Title:
General Conditions for Non-Construction Contracts
Section I – (With or without Maintenance Work)

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 855.105) 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 Contractor, 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 may 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 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) 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 offset 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 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 direct 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, claim, 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. S4-163) 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 thereof 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, notify the HA is 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 (ii) 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.

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 34 CFR Part 54.

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 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 the 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 objectives 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 as so to not impede the work of the Contractor.
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 therefrom, 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 officer, 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(l), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 51 U.S.C. 9101(l).

"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. 4621). 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 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 subsection (b)(i)(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, 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. 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, 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.
   (ii) Selling activities by independent sales representatives.
      (c) The prohibition on the use of appropriated funds, in subparagraph (b)(ii) 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 selection for training; (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 all 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 sanction 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, heading 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.