

**Request for Qualifications  
For  
Architectural/Engineering Services  
RFQ# 08242018A-CF17**

The Stark Metropolitan Housing Authority (SMHA) and its affiliated entities are seeking sealed proposals from independent qualified Firms with demonstrated professional competence and experience in providing **Architectural/Engineering** services at various SMHA properties.

As a part of our social mission and federal mandate, SMHA is committed to providing eligible residents of Stark County with quality affordable housing in decent, safe, and nourishing neighborhoods. By working in partnership with the public and private sectors. SMHA provides families with housing choices and opportunities.

All responses to the RFQ must be enclosed in a sealed envelope and labeled as follows with the specific information: **RFQ #08242018A-CF17, Architectural/Engineering Services, Due Date and Time: January 11, 2019, 2:00 P.M. (EST). The RFQ response must be addressed to The Stark Metropolitan Housing Authority, Procurement & Contracting Department, 400 East Tuscarawas Street Canton, Ohio 44702.**

This Request for Qualifications (RFQ) contains submission requirements, scope of services, period of services, terms and conditions and other pertinent information for submitting a proper and responsive proposal. **Prospective proposers desiring any explanation or interpretation of the solicitation must request it in writing by January 2, 2019 at 12:00 PM (EST) to the Procurement & Contracting Department at the address listed above or via email to [bids@starkmha.org](mailto:bids@starkmha.org).** Any information given to a prospective proposer about this solicitation will be furnished to all other prospective proposers as a written amendment to the solicitation.

Late submissions will not be accepted. Submissions received prior to the opening will be held in confidence until the opening. Submissions will be evaluated on the criteria stated in the RFQ. After evaluation of the responses, the Contract will be awarded to the proposer/s representing the "Best Value" to SMHA after preferences for Section 3 business concerns are considered. The resulting Contract may be funded through Section 3 covered assistance and as such will be subject to Section 3, 24 CFR Part 135. SMHA and its affiliated entities reserve the right to reject any and all submissions.

The Stark Metropolitan Housing Authority will receive proposals for Architectural/Engineering Services until **2:00 PM (EST), January 11, 2019**, at the Stark Metropolitan Housing Authority Procurement & Contracting Department **400 E. Tuscarawas Street Canton, OH 44702**, at which time and place all submittals will be opened.

The Request for Qualifications can be obtained online at <http://www.starkmha.org>, by contacting the SMHA Procurement & Contracting Department, at [bids@starkmha.org](mailto:bids@starkmha.org), or in person at 400 East Tuscarawas Street Canton, OH 44702-

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

The Stark Metropolitan Housing Authority  
Canton, OH

By: Herman L. Hill, Executive Director

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## RFQ INFORMATION AT A GLANCE

<b>SMHA CONTACT PERSON</b>	Procurement & Contracting Department <a href="mailto:bids@starkmha.org">bids@starkmha.org</a>
<b>HOW TO OBTAIN THE RFQ DOCUMENTS</b>	1. Access: <a href="http://www.starkmha.org">www.starkmha.org</a> . 2. Email request to: Procurement & Contracting Department <a href="mailto:bids@starkmha.org">bids@starkmha.org</a>
<b>HOW TO FULLY RESPOND TO THIS RFQ</b>	Submit 1 unbound original 3 bound copies and 1 electronic copy (CD or flash drive) of the proposal to the SMHA Procurement & Contracting Department in the format as described under item 5.0, Form of Proposal on page 13. Use the Form of Proposal checklist (Attachment A)
<b>DATE ISSUED</b>	<b>December 21, 2018</b>
<b>Q &amp; A DEADLINE</b>	<b>January 2, 2019</b>
<b>RFQ SUBMITAL DEADLINE</b>	<b>January 11, 2019 at 2:00 P.M.</b> SMHA Planning & Development Dept. 400 East Tuscarawas Street Canton, Ohio 44702
<b>ANTICIPATED AWARD DATE</b>	<b>Late January/Early February 2019</b>

## INTRODUCTION



Stark Metropolitan Housing Authority (SMHA), a political subdivision of the State of Ohio is governed by the Ohio Revised Code and the U. S. Department of Housing and Urban Development (HUD). SMHA is a public entity that was formed to provide federally subsidized housing and housing assistance to low-income families. SMHA is headed by an Executive Director and is governed by a five-person Board of Commissioners. SMHA has 2546 public housing rental units and 15 additional non-public housing units consisting of family sites, high-rises, and scattered sites located throughout Stark County. The mission of SMHA is to serve the Stark County community with housing opportunities and options.

SMHA enters into and executes contracts and other instruments that are necessary and convenient to the exercise of its powers. SMHA maintains contractual arrangements with United States Department of Housing and Urban Development (HUD) to manage and operate its low rent public housing program and administers the Section 8 Housing Assistance Payments Programs. SMHA programs are federally funded along with development and modernization grants and rental income.

Its primary activity is the ownership and management of over 2,500 public housing units. It also administers rental assistance for almost 1, 700 privately owned rental units through the Section 8 program. It operates and manages its housing developments to provide decent, safe, sanitary and affordable housing to low income families, the elderly, and the disabled, and implements various programs designed and funded by HUD.

# REQUEST FOR PROPOSAL

## 1.0 GENERAL INFORMATION:

- 1.1 Statement of Purpose:** The Stark Metropolitan Housing Authority and its affiliated entities (SMHA) are seeking proposals from independent contractors with demonstrated professional competence and experience to provide as needed architectural and engineering services.
- 1.2** Prospective proposers acknowledge by downloading and receiving the RFQ documents and/or by submitting a proposal that the submission of a proposal to SMHA is not a right by which to be awarded a contract, but merely is an offer by the prospective proposer to perform the requirements of the RFQ documents in the event SMHA decides to consider to award a contract to that proposer.
- 1.3 Definitions:** Throughout this Request for Qualifications and all resulting documents, the terms below shall be defined as follows:
- 1.3.1 “Best Value”** means that SMHA will in an evaluation of each proposal submittal, consider factors other than just cost in making the award decision.
- 1.3.2 “Contracting & Procurement Manager”** when named within an RFQ is refers to the SMHA’s point of contact.
- 1.3.3 “Contract”** refers to the fully executed written agreement that ensues from the RFQ. Whereas all RFQ documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within an RFQ document; such is referring to both the RFQ documents and the ensuing contract document.
- 1.3.4 “Contractor”** and the term "successful proposer" may be used interchangeably.
- 1.3.5 “Day(s)”** unless otherwise specified, shall refer to calendar days to include working on Saturday, Sunday, and holidays unless deemed by SMHA to be disruptive to the normal operations of the organization.
- 1.3.6 “HUD”** is the United States Department of Housing and Urban Development. HUD is the Federal agency from which SMHA receives funding; however, pertaining to this RFQ, correspondences, including proposal submittals, received from each proposer must exhaust all provisions contained herein prior to contacting HUD (i.e. in the case of a protest).
- 1.3.7 “Herein”** shall refer to all documents issued pursuant to the noted RFQ, including the RFQ documents and the attachments.
- 1.3.8 “President & CEO”** is SMHA’s Executive Director and/or Interim President and Chief Executive Officer.

- 1.3.9 “Offer”** is the proposal submittal that the proposer delivers to SMHA in response to the RFQ.
- 1.3.10 “Offeror” or “Offerors”** are the proposer or proposers.
- 1.3.11 “Director of Planning & Development (DP&D)”** is the SMHA Director of Planning & Development or his/her designated representative.
- 1.3.12 “Parties”** When “the parties,” “both parties” and “either party” is stated within the RFQ documents or the contract, such refers to SMHA and the successful proposer(s).
- 1.3.13 “Proposal”** and/or “Proposal Submittal” is the "hard copy" document that the proposer is required to, as detailed within the RFQ document, deliver to SMHA.
- 1.3.14 “Protestant”** is a prospective proposer or proposer(s) who feel(s) that he/she has been treated inequitably by SMHA and wishes SMHA to correct the inequitable condition or situation. To be eligible to file a protest with SMHA pertaining to an RFQ or contract, the protestant must have been involved in the RFQ process in some manner as a prospective proposer or proposer.
- 1.3.15 “Prospective Proposer”** or “Proposer” A prospective proposer is a firm or individual who has been notified of the RFQ solicitation and/or who has requested and/or received the RFQ documents and is considering responding with a proposal; a proposer is a firm or individual who has submitted a proposal in response to the RFQ. All terms and conditions shall apply equally to all prospective proposers as well as proposers, though prospective proposers may not, after the deadline set for receiving proposals, receive further notices pertaining to that RFQ-meaning, certain notices are only delivered to proposers and not to prospective proposers.
- 1.3.16 “Request for Qualifications”** (RFQ) is the competitive proposal process allowed by HUD, especially as defined within Chapter 7 of HUD Procurement Handbook 7460.8 REV 2.
- 1.3.17 “RFQ Document(s)”** When stated in the singular or the plural form, such refers to the body of documents, including attachments and the information posted on the [www.starkmha.org](http://www.starkmha.org), that SMHA makes available to all prospective proposers wherein are detailed SMHA's requirements.
- 1.3.18 “SMHA”** is the Stark Metropolitan Housing Authority located in Canton, Ohio and all its affiliated entities. Unless otherwise defined herein or within the ensuing contract, whenever the term "SMHA" is used without clearly designating a responsible SMHA staff person, the proposer(s) may assume that responsibility for that item rests with the SMHA CA.

- 1.4 Non-Mandatory Pre-Proposal Conference:** Not scheduled. Any questions or request for information must be submitted in writing to the SMHA's Procurement & Contracting Department ([bids@starkmha.org](mailto:bids@starkmha.org)) no later than September 23, 2015 at 12:00 PM (EST).
- 1.5 Proposal Submission Deadline: January 11, 2019 at 2:00 PM (EST)** at SMHA Central Office, 400 East Tuscarawas Street Canton Ohio 44702
- 1.6 Proposer's Responsibilities-Contact with SMHA:** It is the responsibility of the proposer to address all communication and correspondences pertaining to this RFQ process to only the Contract and Procurement Manager via email at [bids@starkmha.org](mailto:bids@starkmha.org). Proposers must not make inquiry or communicate with any other SMHA staff member or official (including members of the Board of Commissioners) pertaining to this RFQ. Failure to abide by this requirement may be cause for SMHA to not consider a proposal submittal received from any proposer who has not followed this directive. During the RFQ solicitation process, the SMHA Contract and Procurement Manager will not conduct any ex parte conversations which may give one prospective proposer an advantage over other prospective proposers.
- 1.7 Type of Contract resulting from RFQ:** Firm fixed-price contract for Architectural/Engineering Services at the various property locations in compliance with all applicable laws and regulations and technical specifications included in this RFQ. The Contract(s) will not bind, nor purport to bind, SMHA for any contractual commitment in excess of the original contract period; however, SMHA, at its sole discretion, reserves the option to extend the contract. In the event that SMHA exercises such rights, all other terms, conditions, and provisions of the original contract will remain the same and shall apply during the extension period.
- 1.8** Proposers shall make all investigations necessary to thoroughly inform themselves regarding the RFQ. Proposers shall be held to have examined examined the same and be satisfied as to the extent of the work and as to the conditions under which he/she will be obligated to perform the work or that will in any manner affect the work under any resulting contract. No plea of ignorance by the Contractor of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the proposer to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of SMHA or the compensation to the Contractor.

## **2.0 SMHA'S RESERVATION OF RIGHTS:**

- 2.1** SMHA reserves the right to reject any or all proposals, to waive any informality in the RFQ process, or to terminate the RFQ process at any time, if deemed by SMHA to be in its best interests.
- 2.2** SMHA reserves the right not to award a contract pursuant to this RFQ.

- 2.3** SMHA reserves the right to terminate a contract awarded pursuant to this RFQ, at any time for its convenience upon 14 days written notice to the successful proposer(s).
- 2.4** SMHA reserves the right to determine the days, hours and locations that the successful proposer(s) shall provide the services called for in this RFQ.
- 2.5** SMHA reserves the right to retain all proposals submitted and not permit withdrawal for a period of 90 days subsequent to the deadline for receiving proposals without the written consent from the Contracting & Procurement Manager.
- 2.6** SMHA reserves the right to negotiate the fees proposed by all proposers. If such negotiations are not, in the opinion of SMHA's Contract and Procurement Manager successfully concluded within a reasonable timeframe as determined by SMHA, SMHA shall retain the right to end such negotiations.
- 2.7** SMHA reserves the right to reject and not consider any proposal that does not meet the requirements of this RFQ, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.
- 2.8** SMHA shall have no obligation to compensate any proposer for any costs incurred in responding to this RFQ.
- 2.9** SMHA reserves the right to at any time during the RFQ or contract process to prohibit any further participation by a proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein. Each prospective proposer further agrees that he/she will inform SMHA's Contract and Procurement Manager in writing within five (5) days of the discovery of any item that is issued thereafter by SMHA that he/she feels needs to be addressed. Failure to abide by this timeframe shall relieve SMHA, but not the prospective proposer, of any responsibility pertaining to such issue.
- 2.10** SMHA reserves the right, prior to award, to revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the RFQ documents issued, within any attachment or drawing, or within any addenda issued. All addenda will be posted on SMHA's website [www.starkmha.org](http://www.starkmha.org). Such changes that are issued before the proposal submission deadline shall be binding upon all prospective proposers. It is the responsibility of the proposer to ensure all addenda have been received.
- 2.11** In the case of rejection of all proposals, SMHA reserves the right to advertise for new proposals or to proceed to do the work otherwise, if in the judgment of SMHA, the best interest of SMHA will be promoted.
- 2.12** SMHA reserves the right to, without any liability; cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties.

- 2.13** SMHA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to SMHA, if:
- 2.13.1** Funding is not available,
  - 2.13.2** Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,
  - 2.13.3** SMHA's requirements in good faith change after award of the contract.
- 2.14** SMHA reserves the right to make an award to more than one proposer based on ratings and to award with or without negotiations or a best and final offer (BAFO).
- 2.15** SMHA reserves the right to require additional information from all proposers to determine level of responsibility. Such information shall be submitted in the form required by SMHA within two (2) days of written request.
- 2.16** SMHA reserves the right to amend the contract any time prior to contract execution.
- 2.17** SMHA reserves the right to require the Contractor to keep accurate timesheets for all employees assigned to perform any project, task, or assignment resulting from this RFQ and any resulting contract.
- 2.18** SMHA reserves the right to contact any individuals, entities, or organizations that have had a business relationship with the proposer regardless of their inclusion in the reference section of the proposal submittal.
- 2.19** In the event any resulting contract is prematurely terminated due to nonperformance and/or withdrawal by the Contractor, SMHA reserves the right to seek monetary restitution (to include but not limited to withholding of monies owed) from the Contractor to cover costs for interim services and/or cover the difference of a higher cost (difference between terminated Contractor's rate and new company's rate) beginning the date of Contractor's termination through the contract expiration date.

### **3.0 SCOPE OF WORK/TECHNICAL SPECIFICATIONS**

- 3.1** The SMHA intends to award a contract to a firm to provide as needed architectural/engineering services for various SMHA projects/properties. Services will include, but are not limited to:
- 3.1.1 Develop costs for the management of projects and physical improvements on existing and/or new projects.
  - 3.1.2 Architecture/Landscape Architecture
  - 3.1.3 Site Planning

3.1.4 Structural, Mechanical, Electrical, and Civil Engineering

3.1.5 Construction Contract Administration

3.1.6 Provide design services on an as needed basis. The services provided for all aspects of the design requests as listed, but not limited to:

3.1.6.1 Complete all mandatory and optional design elements.

3.1.6.2 Research and provide design and code options.

3.1.6.3 Advise on complete turnkey projects and detail any project items that cannot be part typical architectural design. If needed, provide options of design/construction of non-typical items.

3.1.6.4 Gather all information and data needed for evaluation criteria.

3.1.6.5 Write verbiage for all evaluation criteria.

3.1.6.6 Follow up and respond to stakeholder and other officials for design modification and further review.

3.1.7 ADA/Section 504

3.1.8 Physical Needs Assessments (PNA)/Green Physical Needs Assessments (GPNA)

3.1.9 Interior Design Services

3.1.10 Energy Performance Contracts

#### **4.0 GENERAL CONDITIONS:**

**4.1 Pre-Qualification of Proposers:** Prospective proposers will not be required to prequalify in order to submit a proposal. However, all proposers will be required to submit adequate information showing the proposer is qualified to perform the required work (i.e. **Vendor Registration Form (Attachment E)**). Failure by the prospective proposer to provide the requested information may, at SMHA's discretion, eliminate that Prosper from consideration, provided that all Proposers were required to submit the same information.

#### **4.2 RFQ Forms, Documents, Specifications and Drawings:**

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

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

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

**4.3 Submission and Receipts by SMHA:**

**4.3.1 Time for Receiving Proposals:** Proposals received prior to the proposal submittal deadline shall be securely kept, unopened, by SMHA. The Contracting and Procurement Manager, whose duty it is to open such proposals, will decide when the specified time has arrive. No proposal received after the designated deadline shall be considered.

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

**4.3.1.2** A total of one (1) unbound original signature copy (marked "ORIGINAL") and 3 bound copies and one (1) electronic copy (CD or flash drive), shall be placed unfolded in a sealed package with the proposer's name and return address and addressed as follows:

**RFQ # 08242018A-CF17**  
**Architectural/Engineering Services**  
**{January 11, 2019; 2:00 PM}**  
**Stark Metropolitan Housing Authority**  
**Procurement & Contracting Department**  
**400 E. Tuscarawas Street**  
**Canton, OH 44702**

**4.3.2 Withdrawal of Proposals:** Proposals may be withdrawn as detailed within **Section 6 of Form HUD-5369-B**, Late Submissions, Modifications and Withdrawal of proposals. Negligence on the part of the proposer in preparing his/her proposal confers no right of withdrawal or modification of his/her proposal after such proposal has been received and opened.

**4.3.2.1 Procedure to withdraw proposal submittal:** A request for withdrawal of a proposal due to a purported error need not be considered by SMHA unless filed in writing by the proposer within 48 hours after the proposal deadline. Any such request shall contain a full explanation of any purported error and shall, if requested by SMHA, be supported by the original calculations on which the proposal was computed, together with a certification and notarization thereon that such computation is the original and was prepared by the proposer or his/her agent, who must be identified on the notarized form. The foregoing shall not be construed that such withdrawal will be permitted, as SMHA retains the right to accept or reject any proposed withdrawal for a mistake.

**4.4 Exceptions to Specifications:**

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

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

**5.0 FORM OF PROPOSAL:**

The proposal shall be submitted in the following manner. Failure to submit the proposal in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that proposal, and may, at the discretion of the SMHA Contracting and Procurement Manager, eliminate that proposer from consideration for award.

**5.1 Required Forms:** All required forms furnished by SMHA as a part of the RFQ document issued shall, as instructed, be fully completed and submitted by the proposer. Such forms may be completed in a legible hand-written fashion, by use of a typewriter, or may be downloaded and completed on a computer. If, during the

download, a form becomes changed in any fashion, the proposer must “edit” the form back to its original form (for example, signature lines must appear on the page which the line was originally intended)

**5.2 Tabbed Proposal Submittal:** SMHA intends to retain the successful proposer pursuant to a “Best Value” basis, not a “Low Bid” basis. Therefore, so that SMHA can properly evaluate the proposals received, all proposals submitted in response to this RFQ must be formatted in accordance with the sequence noted below. Each category must be separated by numbered index dividers and the number on the index divider must extend so that each tab can be located without opening the proposal and labeled with the corresponding tab reference noted below. None of the proposed services may conflict with any requirement SMHA has published herein or has issued by addendum.

**All proposals submitted in response to this RFQ shall be formatted in accordance with the sequence noted below (Tab 1 through Tab 11).**

**5.2.1 Tab 1, Form of Proposal:** This Form is attached hereto as (**Attachment A**) to this RFQ document. This one-page Form must be fully completed, and submitted under this tab as a part of the proposal submittal. The proposed section of this form will be intentionally left blank in the proposal submittals.

**5.2.2 Tab 2, Proposal Fee Sheet:** This Form is attached hereto as (**Attachment B**) to this RFQ document. This one-page Form shall be fully completed, including acknowledgement of addendum and **placed in a separate sealed envelope and attached to the Tab. Attach the sealed envelope containing the Proposal Fee only to the “original” copy.**

**5.2.3 Tab 3, Proposers Certification:** This Form is attached hereto as (**Attachment C**) to this RFQ document. This one-page Form must be fully completed, and submitted under this tab as a part of the proposal submittal.

**5.2.4 Tab 4, HUD Forms:** These Forms are attached hereto as (**Attachment D**) to this RFQ document and must be fully completed, executed where provided thereon and submitted under this tab as a part of the proposal submittal.

**5.2.5 Tab 5, Vendor Registration Form:** The Vendor Registration Form is attached hereto as (**Attachment E**) to this RFQ document. This two-page Form must be fully completed, executed and submitted under this tab as a part of the proposal submittal by the Proposer and each subcontractor.

**5.2.6 Tab 6, Capacity/Services:** The Proposer shall submit under this tab a concise description of its capacity to deliver the proposed services, to include:

**5.2.6.1 Company Information**

**5.2.6.1.1 Company Information & Qualifications**

**5.2.6.1.2 Name of Company (including any 'Doing Business As' names)**

**5.2.6.1.3 History of Company**

**5.2.6.2 Qualifications**

**5.2.6.2.1 An explanation of why the company is the best qualified to perform the contract and;**

**5.2.6.2.2 Demonstrate qualifications including an item-by-item disclosure outlining how the company meets or exceeds the requirements of this RFQ.**

**5.2.6.3 Staffing**

**5.2.6.3.1 The level of staff to be assigned to this project**

**5.2.6.3.2 Documentation demonstrating that the identified staff has direct housing authority related experience.**

**5.2.6.4 Other information**

**5.2.6.4.1 Provide information to address each evaluation factor in **Section 6.0 PROPOSAL EVALUATION.****

**5.2.7 Tab 7, Client Information:** The proposer shall submit three former or current clients, preferably other than SMHA, for whom the proposer has performed similar or like services to those being proposed herein. The list shall, at a minimum, include for each reference:

**5.2.7.1 The client's name;**

**5.2.7.2 The client's telephone number and address,**

**5.2.7.3 Description of services provided to the client, and**

**5.2.7.4 Date of services; include completion time frame and days over/under schedule**

#### 5.2.7.5 Documentation of recent projects and completed projects

- 5.2.8 **Tab 8, Joint Venture/Subcontractors**: The proposer shall identify hereunder if this proposal is a joint venture or partnership with another entity. Please remember that all information required from the proposer under the proceeding tabs must also be included for any joint venture or partner. One entity must be designated as the primary contact for the joint venture or partnership in the proposal. Proposers must also provide SMHA with the name, contact information to include address, phone number, email address, core area of business, and years of expertise for each subcontractor and supplier intended to be utilized by the Proposer to perform the services requested in this RFQ. Proposer must realize that the actual usage of the subcontractor will be contingent upon SMHA's prior written approval, and Proposer remains responsible to SMHA for any and all services and goods provided pursuant to this RFQ and any resulting contract.

**If no joint venture exists or subcontractors will not be utilized, please provide this statement, "NO JOINT VENTURE/ NO SUBCONTRACTORS", in this section.**

- 5.2.9 **Tab 9, Section 3 Business Documentation**: Proposers are required to submit a utilization plan outlining their efforts to employ qualified Section 3 businesses or persons. **FAILURE TO PROVIDE A SECTION 3 PLAN MAY CAUSE THE RESPONSE TO BE DISQUALIFIED AS NON-RESPONSIVE.** In addition, any proposer claiming a Section 3 Business Preference, shall under this tab include the fully completed and executed Section 3 Business Preference Certification Form attached hereto as **(Attachment F)** and any documentation required by that form. Please include all supporting documentation with the proposal. Supporting documentation includes but is not limited to income tax returns for low-income employees for which proposer is seeking the preference, verification of total number of full-time employees, names, addresses of low-income residents who are proposers employees. Note: If you qualify as a Section 3 Business Concern, your proposal will receive a preference over other proposals.
- 5.2.10 **Tab 10, Small/Minority/Disadvantaged/Veteran Business Enterprise Utilization Plan**: The proposer is required to include hereunder a plan to assist SMHA in its responsibility to foster the development of small and historically under-utilized business enterprises. All subcontracting opportunities should be outlined here. **FAILURE TO PROVIDE A S/W/MBE PLAN MAY CAUSE THE RESPONSE TO BE DISQUALIFIED AS NON-RESPONSIVE.**

**5.2.11 Tab 11, Other Information:** The proposer may also include hereunder any other general information that the proposer believes is appropriate to assist SMHA in its evaluation. If no pertinent information is to be placed under this tab, please place hereunder a statement that “**NO INFORMATION IS BEING PLACED HEREUNDER.**”

**5.3 Proposed Cost:**

The cost of services will be negotiated once the firm(s) has been selected as outlined in **Section 6.0 PROPOSAL EVALUATION.**

**5.4 Proposal Submittal Method:**

It is preferable and recommended that the proposer submit an unbound proposal. A total of one (1) unbound original signature copy (marked “ORIGINAL”) three (3) bound copies and one (1) electronic copy (CD or flash drive), shall be placed unfolded in a sealed package with the proposer’s name and return address.

**6.0 PROPOSAL EVALUATION:**

**6.1 Proposal Opening Results:** Proposals will not be opened and read publically.

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

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

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

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

**6.2.4 Evaluation Criteria:** The evaluation panel will use the following criteria to evaluate each proposal:

<b>Evaluation Factor</b>	<b>Max Points</b>
Evidence of your firm's ability to perform the work as indicated by the profiles of the principals and staff's professional and technical competence and experience with HUD	15
Capability to provide professional services in a timely manner	10
Evidence that A/E is currently registered in the State of OH with proper accreditation and able to perform work in the municipalities of Stark County	5
Past performance in terms of cost control, quality of work, and compliance with performance schedules	15
Demonstrated knowledge of local building codes and federal building alteration requirements	10
Identify recently completed public housing projects and contact Representatives	5
Knowledge of HUD and SMHA policy requirements	10
Knowledge and understanding of Lead-Based Paint Interim Guidelines and Hazard Identification and LBP and asbestos testing and abatement	5
Past and Present Performance in Construction Management	10
Knowledge of Section 504 of the Rehabilitation Act of 1973	10
Knowledge and Understanding of Energy Audits	5

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

**6.2.6 Negotiations** will be held first with those whose proposals are included in the competitive range. After negotiations, SMHA will invite offerors remaining in the competitive range to submit their best and final offer. EXCEPTION: If after the initial evaluation of proposals there is a clear winner, SMHA may proceed directly to award.

**6.2.7 Burden of Proof:** If requested by SMHA, it shall be the responsibility of the proposer(s) to furnish SMHA with sufficient data or physical samples, within a specified time, so that SMHA may determine if the goods or services offered conform to the specifications.

**6.3 Mistake in Proposal Submitted:**

**6.3.1** Unless otherwise prohibited within the RFQ documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at SMHA's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to the SMHA Contracting and Procurement Manager, for review. This mistake must be corrected before the issuance of any contract documents. Such correction shall not operate to give any proposer an advantage over another.

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

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

**6.4.2** If all requested completed attachments do not accompany the proposal submittal.

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

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

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

**6.5 Disqualification of Proposers:** Any one or more of the following shall be considered as sufficient for the disqualification of a prospective proposer and the rejection of his/her proposal:

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

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

**6.5.3** Lack of competency, lack of experience and/or lack of adequate machinery and/or other resources.

- 6.5.4 Unsatisfactory performance record as shown by past work for SMHA or with any other local, state or federal agency, judged from the standpoint of workmanship and progress.
  - 6.5.5 Incomplete work, which in the judgment of SMHA, might hinder or prevent prompt completion of additional work, if awarded.
  - 6.5.6 Failure to pay or satisfactorily settle all bills due on former contracts still outstanding.
  - 6.5.7 Failure to comply with any qualification requirements of SMHA.
  - 6.5.8 Failure to list, if required, all subcontractors (if subcontractors are allowed by SMHA) who will be employed by the successful proposer(s) to complete the work of the proposed contract.
  - 6.5.9 As required by the RFQ documents, failure of the successful proposer to be properly licensed by the City, County and/or the State of Ohio and/or to be insured by a commercial general liability policy and/or worker's compensation policy and/or business automobile liability policy, if applicable. If a proposer receives an award unless otherwise waived in the Contract, the Contractor will be required to provide an original Certificate of Insurance confirming the following minimum requirements to SMHA within 10 days of contract signature:
  - 6.5.10 Any reason to be determined in good faith, to be in the best interests of SMHA.
- 6.6 **Award of Proposal(s):** The successful proposer shall be determined by the top rated responsive and responsible proposer as determined by the evaluation process and presentations detailed above and any further negotiations, provided his/her proposal is reasonable and within budget, he/she is able to deliver the specified items in a timely manner and it is, in the opinion of SMHA, to the best interests of SMHA to accept the proposal after preferences for Section 3 business concerns are considered.

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**7.0 INSURANCE REQUIREMENTS:**

If a proposer receives an award and unless otherwise waived in the Contract, the Contractor will be required to provide an original Certificate of Insurance confirming the following minimum requirements to SMHA within 10 days of contract signature:

Professional Liability	Required Limits
SMHA and its affiliates must be named as an Additional Insured and be a Certificate Holder. This is required for vendors who render observational services to SMHA such as appraisers, inspectors, attorneys, engineers or consultants.	\$ 1,000,000.00
Business Automobile Liability	Required Limits
SMHA and its affiliates must be named as an additional insured and as the certificate holder. This is required for any vendor that will be using their vehicle to do work on SMHA properties.	\$500,000.00 combined Single limit, per occurrence
Workers' Compensation and Employer's Liability	Required Limits
Workers' Compensation coverage is Statutory and has no pre-set limits. Employer's Liability limit is \$500,000.  Workers' Compensation is required for any vendor made up of more than one person. A Waiver of Subrogation in favor of SAHD must be included in the Workers' Compensation policy.  SMHA and its affiliates must be a Certificate Holder.	Statutory \$500,000.00
Commercial General Liability	Required Limits
<b>This is required for any vendor who will be doing hands on work at SMHA properties.</b> SMHA and its affiliates must be named as an Additional Insured and as the Certificate Holder.	\$1,000,000.00 per accident \$2,000,000 aggregate

**8.0 RIGHT TO PROTEST:**

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

**8.1.1** An alleged aggrieved "protestant" is a prospective proposer or proposer who feels that he/she has been treated inequitably by SMHA and wishes SMHA to correct the alleged inequitable condition or situation. To be eligible to file a protest with SMHA pertaining to an RFQ or contract, the alleged aggrieved protestant must have been involved in the RFQ process in some manner as a prospective proposer (i.e. recipient of the RFQ

documents) when the alleged situation occurred. SMHA has no obligation to consider a protest filed by any party that does not meet these criteria.

- 8.1.2** Any actual or prospective contractor may protest the solicitation or award of a contract for material violation of SMHA's procurement policy. Any protest against a SMHA solicitation must be received before the due date for receipt of bids or proposals and any protest against the award of a contract must be received within ten calendar days after contract award or the protest will not be considered.

All protests must be in writing and submitted to the Director of Planning & Development for a written decision. The Director of Planning & Development shall make a recommendation to the Contracting & Procurement Manager who shall issue a written decision and findings to the Contractor within 30 days from receipt of the written protest. This decision is then appealable to the Board of Commissioners within 30 days of receipt of the written decision. Appeals which are not timely filed will not be considered and the decision becomes final. All appeals shall be marked and sent to the address as listed in the example below:

**APPEAL OF RFQ #08242018A-CF17**  
**ATTN: Procurement & Contracting Department**  
**Stark Metropolitan Housing Authority**  
**Procurement & Contracting Department**  
**400 E. Tuscarawas Street**  
**Canton, OH 44702**

## **9.0 DISPUTES UNDER THE CONTRACT:**

- 9.1 Procedures:** In addition to the procedures detailed within Form HUD-5370-C Section I and II, in the event that any matter, claim, or dispute arises between the parties, whether or not related to this RFQ or any resulting contract, both parties shall be subject to nonbinding mediation if agreed to by both parties within thirty days of either party making a request in writing. The parties further agree that if the matter, claim or dispute is not settled during mediation, it shall thereafter be submitted to binding arbitration. The parties shall make a good faith attempt to mutually agree upon an arbitrator. If the parties cannot mutually agree upon an arbitrator after reasonable efforts have been exerted, then the matter, claim or dispute shall be submitted to the American Arbitration Association for final and binding arbitration. Unless extended by the arbitrator for good cause shown, the final arbitration hearing shall begin no later than two months after selection of the arbitrator.

## 10.0 **ADDITIONAL CONSIDERATIONS**

- 10.1 Escalation:** This is a Firm Fixed Price Contract with no escalation provisions.
- 10.2 Required Permits and Licenses:** Unless otherwise stated in the RFQ documents, all Federal, State or local permits and licenses which may be required to provide the services ensuing from any award of this RFQ, whether or not they are known to either the SMHA or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the successful proposer and all offers submitted by the proposer shall reflect all costs required by the successful proposer to procure and provide such necessary permits or licenses.
- 10.3 Taxes:** All persons doing business with SMHA are hereby made aware that SMHA is exempt from paying Ohio State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.
- 10.4 Government Standards:** It is the responsibility of the prospective proposer to ensure that all items and services proposed conform to all local, state and federal law concerning safety (OSHA) and environmental control (EPA and Stark County Pollution Regulations) and any other enacted ordinance, code, law or regulation. The successful proposer shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the successful proposer for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.
- 10.5 Free on Board (FOB) and Delivery:** All costs submitted by the successful proposer shall reflect the cost of delivering the proposed items and/or services to the locations specified within the RFQ documents or within the Contract. All costs in the proposal submittal shall be quoted as FOB Destination, Freight Prepaid and allowed unless otherwise stated in this RFQ.
- 10.5.1** The successful proposer agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful proposer. Upon default, the successful proposer agrees that SMHA may, at its option, rescind the finalized contract under the termination clause herein and seek compensatory damages as provided by law.
- 10.6 Work on SMHA Property:** If the successful proposer's work under the contract involves operations by the successful proposer on SMHA premises, the successful proposer shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, shall indemnify SMHA, and their officers, agents, servants and employees

against all loss which may result in any way from any act or omission of the successful proposer, its agents, employees, or subcontractors.

**10.7 Estimated Quantities:** Unless otherwise indicated, the quantities reflected within the RFQ documents, to the best of SMHA's knowledge, reflect projected consumption data. These quantities are not meant to infer or imply actual consumption figures or quantities that will be purchased by SMHA under the finalized contract; but, pursuant to all RFQ documents, these quantities will be used only as calculation figures to determine the successful proposer. SMHA makes no guarantee as to the actual quantity that will be purchased under the Contract resulting from this RFQ.

**10.8 Warranty:**

**10.8.1** The services provided under the contract shall conform to all information contained within the RFQ documents as well as applicable Industry Published Technical Specifications, and if one of the above mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.

**10.8.2** The liability of the successful proposer to SMHA (except as to title) arising out of the furnishing of services/goods under the terms of the contract shall not exceed the correcting of the defect(s) in the services/goods provided under the contract, and upon expiration of the warranty period all such liability shall terminate except under the warranty for merchantability and the warranty of fitness for a particular purpose. However, this limitation does not preclude SMHA from seeking indirect, consequential, incidental exemplary, and liquidated damages.

**10.9 Official, Agent and Employees of the SMHA Not Personally Liable:** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of SMHA in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.

**10.10 Subcontractors:** Unless otherwise stated within the RFQ documents, the successful proposer may not use any subcontractors to accomplish any portion of the services described within the RFQ documents or the contract without the prior written permission of the SMHA Contract and Procurement Manager. Also, any substitution of subcontractors must be approved in writing by SMHA prior to their engagement.

**10.11 Salaries and Expenses Relating to the Successful Proposers Employees:** Unless otherwise stated within the RFQ documents, the successful proposer shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees

used in the performance of the contract. The successful proposer further agrees to comply with all Federal, State and local Prevailing Wage Maintenance Wage Decision and all licensing laws applicable to its employees or other personnel furnished under this agreement.

- 10.12 Independent Contractor:** Unless otherwise stated within the RFQ documents or the contract, the successful proposer is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 10.13 Severability:** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held invalid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 10.14 Waiver of Breach:** A waiver of either party of any terms or conditions of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 10.15 Time of the Essence:** Time is of the essence as to each provision in which a timeframe for performance is provided in this RFQ. Failure to meet these timeframes may be considered a material breach, and SMHA may pursue compensatory and/or liquidated damages under the contract.
- 10.16 Limitation of Liability:** In no event shall SMHA be liable to the successful proposer for any indirect, incidental, consequential or exemplary damages.
- 10.17 Indemnity:** The Contractor shall indemnify and hold harmless SMHA and its officers, agents, representatives, and employees from and against all claims, losses, damages, actions, causes of action and/or expenses resulting from, brought for, or on account of any personal injury or property damage received or sustained by any persons or property growing out of, occurring, or attributable to any work performed under or related to this Agreement, resulting in whole or in part from the negligent acts or omissions of the Contractor, any subcontractor, or any employee, agent or representative of the Contractor or any subcontractor, **AND REGARDLESS OF WHETHER CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF SMHA. CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS INDEMNITY CONTROLS OVER ALL OTHER PROVISIONS IN THE AGREEMENT, SURVIVES TERMINATION OF THIS AGREEMENT, AND APPLIES TO CLAIMS AND LIABILITY ARISING OUT OF THE SOLE OR CONCURRENT NEGLIGENCE OF SMHA.**

Contractor shall indemnify and hold harmless SMHA, their agents, consultants and employees from and against any and all property damage claims, losses, damages, costs and expenses relating to the performance of this Agreement, including any resulting loss of use, but only to the extent caused by the negligent acts or omissions of Contractor, its employees, sub-subcontractors, suppliers, manufacturers, or other persons or entities for whose acts Contractor may be liable.

**10.18 Public/Contracting Statutes.** SMHA is a governmental entity as that term is defined in the procurement statutes. SMHA and this RFQ and all resulting contracts are subject to federal, state and local laws, rules, regulations and policies relating to procurement.

**10.19 Termination:** Any contract resulting from this RFQ may be terminated under the following conditions:

**10.19.1** By mutual consent of both parties, and

**10.19.2 For Termination for Cause:** As detailed within Form HUD-5370-C Section I and II, attached hereto:

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

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

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

**10.19.3 Termination for Convenience:** In the sole discretion of the Contracting & Procurement Specialist, SMHA may terminate any and all contracts resulting from this RFQ in whole or part upon fourteen (14) days prior notice to the Contractor when it is determined to be in the best interest of SMHA.

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

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

**10.20 Examination and Retention of Contractor's Records:** SMHA, HUD, or Office of Inspector General of the United States, or any of their duly authorized representatives shall, until three (3) years after final payment under all contracts executed as a result of this RFQ, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audits, examinations, excerpts and transcriptions.

**10.21 Invoicing (If applicable):**

**10.21.1** Contractor(s) will only be allowed to invoice for the cost of services/goods in compliance with his/ her proposal or best and final offer as accepted by SMHA and may not invoice until all work is completed and accepted by SMHA

**10.21.2** Invoices must contain a complete description of the work or service that was performed, the contract price for each service, the purchase order number, date of service, and address of service location or delivery address.

**10.21.3** If applicable, SMHA may make progress payments approximately every 30 days as the work proceeds if work meets owner's standards, as approved by the Contracting & Procurement Manager. SMHA may, subject to written determination and approval of the Contracting & Procurement Manager, make more frequent payments to contractors which are qualified small businesses in accordance with HUD documents.

**10.21.4** Upon the Award of Contract, Contractor shall receive a request from SMHA to process all payments electronically to insure prompt and efficient payment of all invoices.

**10.21.5** Unless utilizing a progress payment schedule invoices shall be sent to the following address:

**Stark Metropolitan Housing Authority  
Finance Department  
400 E. Tuscarawas Street  
Canton, OH 44702**

**10.22 Inter-local Participation**

**10.22.1** SMHA may from time to time enter into Inter-local Cooperation Purchasing Agreements with other governmental entities or governmental cooperatives (hereafter collectively referred to as “Entity” or “Entities”) to enhance SMHA’s purchasing power. At SMHA’s sole discretion and option, SMHA may inform other Entities that they may acquire items listed in this RFQ. Such acquisition(s) shall be at the prices stated herein, and shall be subject to Contractor’s acceptance.

**10.22.2** In no event shall SMHA be considered a dealer, remarketer, agent or other representative of Contractor or Entity. Further, SMHA shall not be considered and is not an agent; partner or representative of the Entity making purchases hereunder, and shall not be obligated or liable for any such order.

**10.22.3** Purchase orders shall be submitted to Contractor by the individual Entity.

**10.22.4** SMHA shall not be liable or responsible for any obligation, including but not limited to, payment and for any item or service ordered by an Entity, other than SMHA.

**10.23 Right to data and Patent Rights:** SMHA 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 any resulting contract, including but not limited to, reports, memoranda or letters concerning the research and reporting tasks of any resulting contract. Both parties agree to comply with HUD Bulletin 909-23, which is the Notice of Assistance Regarding Patent and Copyright Infringement.

**10.24 Lobbying Certification:** By proposing to do business with SMHA or by doing business with SMHA, each proposer certifies the following:

**10.24.1** No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress, an officer or employee of Congress, or an

employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

**10.24.2** If any funds other than Federally 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 in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form “Disclosure Form to Report Lobbying”, in accordance with its instructions.

**10.24.3** The successful proposer shall require that the language of this certification be included in the award documents for all sub awards at all tiers, (including but not limited to subcontractors, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

**10.24.4** This clause is a material misrepresentation of fact upon which reliance will be placed when the award is made or a contract is entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

**10.25 Executive Order 11246:** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply 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).

**10.26 Copeland “Anti-Kickback” Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland “AntiKickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

**10.27 Davis-Bacon Act:** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).

- 10.28 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act:** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 10.29 Clean Air Act:** For all contracts in excess of \$100,000, both parties hereby agree to comply 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) and any amendments.
- 10.30 Energy Policy and Conservation Act:** Both parties hereby agree to comply with all 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) and any amendments.
- 10.31 Executive Order 11061:** Both parties agree that they will comply with this order, which directs the Secretary of HUD to take all action, which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 10.32 Public Law 88-352, Title VI of the Civil Rights Act of 1964, and its amendments:** Both parties agree that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. SMHA hereby extends this requirement to the Contractor and its subcontractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C.19901 et. Seq.).
- 10.33 Public Law 90-284, Title VIII of the Civil Rights Act of 1968 and its Amendments (Fair Housing Act):** Both parties agree to comply and prohibit any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. As a result, SMHA requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 10.34 Age Discrimination Act of 1975 and its amendments:** Requires the Contractor to prohibit discrimination on the basis of age.
- 10.35 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.) and its amendments:** SMHA requires Contractors to comply with this law.

**10.36 HUD Information Bulletin 909-23:** Contractors shall comply with the following laws and regulations:

**10.36.1** Notice of Assistance Regarding Patent and Copyright Infringement

**10.36.2** Clean Air and Water Certification

**10.36.3** Energy Policy and Conservation Act

**10.37** Copy Rights/Rights in Data SMHA has unlimited rights to any data, including computer software, developed by the Contractor in the performance of the Contract specifically:

**10.37.1** Except as provided elsewhere in this clause, SMHA shall have unlimited rights in data first produced in the performance of this Contract; form, fit, and function data delivered under this Contract; data delivered under this Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Contract; and all other data delivered under this Contract unless provided otherwise for limited rights data or restricted computer software.

**10.37.2** Contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, unless provided otherwise in this contract; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this contract; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this contract; and establish claim to copyright subsisting in data first produced in the performance of this Contract to the extent provided below.

**10.37.3** For data first produced in the performance of this Contract, the contractor may establish, without prior approval of the Contract and Procurement Manager, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this Contract. The Contractor grants SMHA and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of SMHA.

**10.37.4** The Contractor shall not, without the prior written permission of the Contract and Procurement Manager, incorporate in data delivered under

this Contract any data not first produced in the performance of this Contract and which contains copyright notice, unless the Contractor identifies such data and grants SMHA a license of the same scope as identified in the preceding paragraph.

**10.37.5** SMHA agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this Contract are improperly marked, SMHA may either at its discretion return the data to the Contractor or cancel or ignore the markings.

**10.37.6** The Contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the Contractor's obligations under this Contract.

**10.37.7** Notwithstanding any provisions to the contrary contained in the Contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this Contract, and irrespective of whether any such contract has been proposed prior to the award of this Contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the Contractor agrees that SMHA shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this Contract. The terms and conditions of any resulting contract, including any commercial lease or licensing contract, shall be subject to the following procedures.

**10.37.7.1** The restricted computer software delivered under a resulting contract may not be used, reproduced, or disclosed by SMHA except as provided below or as expressly stated otherwise in a resulting contract. The restricted computer software may be used accordingly:

**10.37.7.1.1** Used or copied for use in or with the computers for which it was acquired, including use at any SMHA location to which such computer may be transferred;

**10.37.7.1.2** Used or copied for use in or with backup computer if any computer for which it was acquired is inoperative;

**10.37.7.1.3** Reproduced for safekeeping (archives) or backup purposes;

**10.37.7.1.4** Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software

incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in a resulting contract; and

**10.37.7.1.5** Used or copied for use in or transferred to a replacement computer.

**10.38 Additional Information:** Each provision of law and each clause, which is required by law to be inserted in this RFQ or any contract, shall be deemed to have been inserted herein, and this RFQ and any resulting contract shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party. The fore-mentioned statutes, regulations and executive orders are not intended as an indication that such statute, regulation or executive order is necessary applicable nor is an omission of such statute, regulation or executive order intended to indicate that it is not applicable.

**10.39 Conflicting Conditions:** In the even there is a conflict between the documents comprising this RFQ and any resulting contracts, the following order of precedence shall govern: (1) the more restrictive terms of either: any and all attached HUD forms and the term/conditions in the body of any resulting contract; (2) the RFQ; and (3) Contractor's Response. In the event that a conflict exists between any state statute, or federal law the most restrictive terms shall apply.

**10.40 Interpretations:** No official oral interpretation can be made to any proposer as to the meaning of any instruction, condition, specifications, drawing (if any), or any other document issued pertaining to this RFQ. Every request for an official interpretation shall be made by the prospective proposer, in writing at least seven (7) days prior to the submission deadline. Official interpretations will be issued in the form of addenda, which will be posted on [www.starkmha.org](http://www.starkmha.org); but it shall be the prospective proposer's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the RFQ documents and the proposed contract with the successful proposer and all proposers shall be bound by such addenda, whether or not received by the prospective or successful proposer(s).

**10.41 Contract Form:** SMHA will not execute a contract on the successful proposer's form. Contracts will only be executed on SMHA's form. By submitting a proposal, the successful proposer agrees to this condition. However, SMHA will consider any contract clauses that the proposer wishes to include therein, but the failure of SMHA to include such clauses does not give the successful proposer the right to refuse to execute SMHA's contract form. It is the responsibility of each prospective proposer to notify SMHA, in writing, with the proposal submittal of any contract clauses that he/she is not willing to include in the final executed

contract. SMHA will consider such clauses and determine whether or not to amend the Contract.

**10.42 Liquidated Damages:** For each day that performance under a resulting contract from this RFQ is delayed beyond the time specified for completion, the successful proposer shall be liable for liquidated damages in the amount of \$25.00 per consecutive (calendar) day. However, the timeframe for performance may be adjusted at SMHA's discretion in writing and received by the successful proposer prior to default under any resulting contract.

**10.42.1 Force Majeure:** Neither SMHA nor Contractor shall be held responsible for delays nor default caused by fire, flood, riot, acts of God or war where such cause was beyond, respectively, SMHA or Contractor's reasonable control. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

**10.43 Immigration Reform:** By submitting a proposal Contractor certifies compliance with the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986 who will perform any labor or services under any resulting contract.

**10.44 Most Favored Customer:** The Contractor agrees that if during the term of any resulting contract, the Contractor enters into any agreement with any other governmental customer, or any non-affiliated commercial customer by which it agrees to provide equivalent services at lower prices, or additional services at comparable prices, the resulting Contract will at SMHA's option, be amended to accord equivalent advantage to SMHA.

**10.45 Lapse in Insurance Coverage:** In the event Contractor fails to maintain insurance as required by a resulting contract, the Contractor shall immediately cure such lapse in insurance coverage at the Contractor's expense, and pay SMHA in full for all costs and expenses incurred by SMHA under this Contract as a result of Contractor's failure to maintain insurance as required, including costs and reasonable attorney's fees relating to SMHA's attempts to cure such lapse in insurance coverage. Such costs and attorney fees, not to exceed fifteen hundred and 00/100 dollars (\$1,500.00), shall be automatically deducted from monies or payments owed to Contractors. Moreover, SMHA shall retain from monies or payments owed to Contractor by SMHA five percent (5%) of the value of the Contract and place this retainage into an account to cover SMHA's potential exposure to liability during the period of such lapse. This retainage shall be held by SMHA until six (6) months after the term of the resulting contract has ended or has otherwise been terminated, cancelled or expired and shall be

released if no claims are received or lawsuits filed against SMHA for any matter that should have been covered by the required insurance.

**10.46 Fair Labor Standards Act:** Both parties hereby agree to comply with the provisions of the Fair Labor Standards Act (29 U.S.C. 201, et seq).

*The remainder of this page was intentionally left blank.*

**ATTACHMENT A**  
**Form of Proposal**

# FORM OF PROPOSAL

## (Attachment A)

(This Form must be fully completed and placed under Tab No. 1 of the “hard copy” tabbed proposal submittal.)

**Instructions:** Unless otherwise specifically required, the items listed below must be completed and included in the proposal submittal. Please complete this form by marking an “X,” where provided, to verify that the referenced completed form or information has been included within the “hard copy” proposal submittal submitted by the proposer. Also, complete the Section 3 Statement and the Proposer’s Statement as noted below. Submit one (1) unbound original three (3) bound copies and one (1) electronic copy (either CD or flash drive) of the following documents:

<u>X</u>	<u>TAB</u> #	<u>Documents Required in Submittal</u>	<u>RFQ</u> <u>Attachment</u>	<u>Page #</u>
	1	Form of Proposal (checklist and Section 3 Statement)	A	37
	2	Proposal Fee Sheet	B	39
	3	Proposers Certification	C	41
	4	HUD Forms 5369-B and HUD 5369-C (fully executed)	D	43
	5	Vendor Registration Form and W-9 (if not registered)	E	67
	6	Capacity/Proposed Services	N/A	15
	7	Client Information	N/A	15
	8	Joint Venture/Subcontractors	G	76
	9	Section 3 Business Documentation	F	71
	10	Small/Minority/Disadvantaged/Veteran Business Enterprise Utilization Plan	H	78
	11	Other Information	N/A	17

### SECTION 3 STATEMENT

**Are you claiming a Section 3 business preference? YES \_\_\_ or NO \_\_\_. If “YES,” pursuant to the documentation justifying such submitted under Tab No. 8, which priority are you claiming?**

\_\_\_ Category I

\_\_\_ Category II

\_\_\_ Category III

\_\_\_ Category IV

**ATTACHMENT B**  
**PROPOSAL FEE SHEET**



**ATTACHMENT C**  
**PROPOSERS CERTIFICATION**

## Proposer's Certification

By signing below, Proposer certifies that the following statements are true and correct:

1. He/she has full authority to bind Proposer and that no member of Proposer's organization is disbarred, suspended or otherwise prohibited from contracting with any federal, state or local agency,
2. Items for which Proposer's were provided herein will be delivered as specified in the RFQ,
3. In performing this contract, the contractor(s) shall comply with any and all applicable federal, state or local laws including but not limited to: Occupational Safety & Health, Equal Employment Opportunity, Immigration and Naturalization, The Americans with Disabilities Act, State Tax and Insurance Law, and the Fair Housing Act.,
4. Proposer agrees that this RFQ submittal shall remain open and valid for at least a period of 90 days from the date of the RFQ Opening and that this RFQ submittal shall constitute an offer, which, if accepted by SMHA and subject to the terms and conditions of such acceptance, shall result in a contract between SMHA and the undersigned Proposer,
5. He/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this RFQ.
6. Proposer, nor the firm, corporation, partnership, or institution represented by the Proposer, or anyone acting for such firm, corporation or institution has violated the antitrust laws of the State of Ohio or the Federal Antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business,
7. Proposer has not received compensation for participation in the preparation of the specifications for this RFQ,
8. **Non-Collusive Affidavit:** The undersigned party submitting this Proposer hereby certifies that such submittal is genuine and not collusive and that said Proposer has not colluded, conspired, connived or agreed, directly or indirectly, with any Proposer or person, to put in a sham proposal 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 proposal price of affiant or of any other Proposer, to fix overhead, profit or cost element of said proposal price, or that of any other Proposer or to secure any advantage against SMHA or any person interested in the proposed contract; and that all statements in said proposal are true.
9. He/she has full authority to bind Proposer and that no member of Proposer's organization is disbarred, suspended or otherwise prohibited from contracting with any federal, state or local agency, and the individual or business entity named in this proposal is eligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
10. **Lobbying Prohibition:** The Proposer agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and 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; or the modification of any Federal contract, grant, loan, or cooperative agreement.

SIGNED: \_\_\_\_\_ PRINT NAME: \_\_\_\_\_

\_\_\_\_\_  
(Print Company Name) (Company Phone & Fax & Email Address)

\_\_\_\_\_ (Seal if by Corporation) Date: \_\_\_\_\_

# **ATTACHMENT D**

## **HUD FORMS**

**HUD Form 5369-B Instructions to Offerors**

**HUD Form 5369-C Certifications & Representations**

**HUD Form 5370-C General Conditions for Non-Construction Contracts**

**HUD Form 51915 Model Form of Agreement Between Owner and  
Design Professional**

# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date 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 mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

#### **7. Contract Award**

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

(b) The HA may

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

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

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

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

#### **8. Service of Protest**

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

#### **9. Offer Submission**

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

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

[Describe bid or proposal preparation instructions here:]

# Certifications and Representations of Offerors Non-Construction Contract

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

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

## 1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

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

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

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

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

#### 4. Organizational Conflicts of Interest Certification

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

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

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

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

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

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

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

#### 6. Conflict of Interest

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

#### 7. Offeror's Signature

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

---

Signature & Date:

---

Typed or Printed Name:

---

Title:

---

# General Conditions for Non-Construction Contracts

## Section I – (With or without Maintenance Work)

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

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/31/2017)

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**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.

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

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

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

#### 6. Energy Efficiency

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

#### 7. Disputes

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

#### 8. Contract Termination; Debarment

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

#### 9. Assignment of Contract

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

#### 10. Certificate and Release

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

#### 11. Organizational Conflicts of Interest

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

#### 12. Inspection and Acceptance

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

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

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

### 13. Interest of Members of Congress

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

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

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

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

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

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## 16. Equal Employment Opportunity

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

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

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

## 17. Dissemination or Disclosure of Information

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

## 18. Contractor's Status

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

## 19. Other Contractors

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

## 20. Liens

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

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

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

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

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

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

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

**Model Form of Agreement Between  
Owner and Design Professional**

# Model Form of Agreement Between Owner and Design Professional

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

OMB Approval No. 2577-0015 (exp. 7/31/98)

**Public reporting burden** for this collection of information is estimated to average 0.25 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, Paperwork Reduction Project (2577-0015), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

**Do not send this form to the above address.**

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## Introduction to Agreement

**Agreement** made as of the                      day of                      in the year of

Between the **Owner** (Name & Address)

and the **Design Professional** (Name, Address and Discipline)

For the following **Project** (Include detailed description of Project, Location, Address, Scope and Program Designation)

The Owner and Design Professional agree as set forth below.

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## Article A: Services

### A 1.0 Design Professional's Basic Services

A. 1.1 Areas of Professional's Basic Services. Unless revised in a written addendum or amendment to this Agreement, in planning, designing and administering construction or rehabilitation of the Project, the Design Professional shall provide the Owner with professional services in the following areas:

- Architecture
- Site Planning
- Structural Engineering
- Mechanical Engineering
- Electrical Engineering
- Civil Engineering
- Landscape Architecture
- Cost Estimating
- Construction Contract Administration

### A 1.2 Phases and Descriptions of Basic Services.

A. 1.2.1 Schematic Design/Preliminary Study Phase. After receipt of a Notice to Proceed from the Owner, the Design Professional shall prepare and deliver Schematic Design/Preliminary Study Documents. These documents shall consist of a presentation of the complete concept of the Project, including all major elements of the building(s), and site design(s), planned to promote economy both in construction and in administration and to comply with current program and cost limitations. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. Additionally, the Design Professional shall make an independent assessment of the accuracy of the information provided by the Owner concerning existing conditions. Documents in this phase shall include:

- Site plan(s)
- Schedule of building types, unit distribution and bedroom count
- Scale plan of all buildings, and typical dwelling units
- Wall sections and elevations
- Outline specifications
- Preliminary construction cost estimates
- Project specific analysis of codes, ordinances and regulations
- Three dimensional line drawings

A. 1.2.2 Design Development Phase. After receipt of written approval of Schematic Design/Preliminary Study Documents, the Design Professional shall prepare and submit to the Owner Design Development Documents. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. These documents shall include the following:

- Drawings sufficient to fix and illustrate project scope and character in all essential design elements
- Outline specifications
- Cost estimates and analysis
- Recommendations for phasing of construction
- Site plan(s)
- Landscape plan
- Floor plans
- Elevations, building and wall sections
- Updated three dimensional line drawings
- Engineering drawings

A. 1.2.3 Bidding, Construction and Contract Document Phase. After receipt of the Owner's written approval of Design Development Documents, the Design Professional shall prepare Construction Documents. After consultation with the Owner and Owner's attorney, if requested by the owner, the Design Professional shall also prepare and assemble all bidding and contract documents. The Design Professional shall revise these Bidding, Construction and Contract documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. They shall, include in a detailed, manner all work to be performed; all material; workmanship; finishes and equipment required for the architectural, structural, mechanical, electrical, and site work; survey maps furnished by Owner; and direct reproduction of any logs and subsurface soil investigations. These documents shall include:

- Solicitation for Bids
- Form of Contract
- Special Conditions
- General Conditions
- Technical Specifications
- Plans and drawings
- Updated cost estimates

A. 1.2.4 Bidding and Award Phase. After written approval of Bidding, Construction and Contract Documents from the Owner, the Design Professional shall assist in administering the bidding and award of the Construction Contract. This shall include:

- Responding to inquiries
- Drafting and issuing addendum approved by Owner
- Attending prebid conference(s)
- Attending public bid openings
- Reviewing and tabulating bids
- Recommending list of eligible bids
- Recommending award
- Altering drawings and specifications as often as required to award within the Estimated Construction Contract Cost

A. 1.2.5 Construction Phase. After execution of the Construction Contract, the Design Professional shall in a prompt and timely manner administer the Construction Contract and all work required by the Bidding, Construction and Contract Documents. The Design Professional shall endeavor to protect the Owner against defects and deficiencies in the execution and performance of the work. The Design Professional shall:

- Administer the Construction Contract.
- Conduct pre-construction conference and attend dispute resolution conferences and other meetings when requested by the Owner.
- Review and approve contractor's shop drawings and other submittals for conformance to the requirements of the contract documents.
- At the Owner's written request, and as Additional Service, procure testing from qualified parties.
- Monitor the quality and progress of the work and furnish a written field report  weekly,  semi monthly,  monthly, or  \_\_\_\_\_. This service shall be limited to a period amounting to 110% of the construction period as originally established under the construction contract unless construction has been delayed due to the Design professional's failure to properly perform its duties and responsibilities. The Owner may direct additional monitoring but only as Additional Services.
- Require any sub-consultant to provide the services listed in this section where and as applicable and to visit the Project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Design Professional.
- Review, approve and submit to Owner the Contractor Requests for Payment.
- Conduct all job meetings and record action in a set of minutes which are to be provided to the Owner.
- Make modifications to Construction Contract Documents to correct errors, clarify intent or to accommodate change orders.
- Make recommendations to Owner for solutions to special problems or changes necessitated by conditions encountered in the course of construction.
- Promptly notify Owner in writing of any defects or deficiencies in the work or of any matter of dispute with the Contractor.
- Negotiate, prepare cost or price analysis for and countersign change orders.
- Prepare written punch list, certificates of completion and other necessary construction close out documents.
- Prepare a set of reproducible record prints of Drawings showing significant changes in the work made during construction, including the locations of underground utilities and appurtenances referenced to permanent surface improvements, based on marked-up prints, drawings and other data furnished by the contractor to the Design Professional.

A. 1.2.6 Post Completion/Warranty Phase. After execution of the Certificate of Completion by the Owner, the Design Professional shall:

- Consult with and make recommendations to Owner during warranties regarding construction, and equipment warranties.
- Perform an inspection of construction work, material, systems and equipment no earlier than nine months and no later than ten months after completion of the construction contract and make a written report to the Owner. At the Owner's request, and by Amendment to the Additional Services section of this contract, conduct additional warranty inspections as Additional Services.
- Advise and assist Owner in construction matters for a period up to eighteen months after completion of the project, but such assistance is not to exceed forty hours of service and one nonwarranty trip away from the place of business of the Design Professional.

A. 1.3 Time of Performance. The Design Professional's schedule for preparing, delivering and obtaining Owner's approval for Basic Services shall be as follows:

- Schematic Design/Preliminary Study Documents within \_\_\_\_\_ calendar days for the date of the receipt of a Notice to Proceed.
- Design Development Documents within \_\_\_\_\_ calendar days from the date of receipt of written approval by the Owner of Schematic Design/Preliminary Study documents.
- Bidding, Construction and Contract Documents within \_\_\_\_\_ calendar days from the date of receipt of written approval by the Owner of Design Development Documents.

A. 2.0 Design Professional's Additional Services

A. 2.1 Description of Additional Services. Additional Services are all those services provided by the Design Professional on the Project for the Owner that are not defined as Basic Services in Article A, Section 1.2 or otherwise required to be performed by the Design Professional under this Agreement. They include major revisions in the scope of work of previously approved drawings, specifications and other documents due to causes beyond the control of the Design Professional and not due to any errors, omissions, or failures on the part of the Design Professional to carry out obligations otherwise set out in this Agreement.

A. 2.2 Written Addendum or Contract Amendment. All additional services not already expressly required by this agreement shall be agreed to through either a written addendum or amendment to this Agreement.

## Article B: Compensation and Payment

B. 1.0 Basic Services

B. 1.1 Fixed Fee for Basic Services. The Owner will pay the Design Professional for Basic Services performed as defined by A.1.2, a Fixed Fee (stipulated sum) of \$ \_\_\_\_\_ plus Reimbursable Expenses identified in Article B.2.0. Such payment shall be compensation for all Basic Services required, performed, or accepted under this Contract.

B. 1.2 Payment Schedule. Progress payments for Basic Services for each phase of work shall be made in proportion to services performed as follows:

Phase	Amount
Schematic Design/Preliminary Study Phase	\$ _____
Design Development Phase	\$ _____
Bidding, Construction & Contract Document Phase	\$ _____
Bidding & Award Phase	\$ _____
Construction Phase	\$ _____
Post Completion/ Warranty Phase	\$ _____
Total Basic Services	\$ _____

**B. 2.0 Reimbursables**

B. 2.1 Reimbursable Expenses. The Owner will pay the Design Professional for the Reimbursable Expenses listed below up to a Maximum Amount of \$ \_\_\_\_\_. Reimbursable Expenses are in addition to the Fixed Fee for Basic Services and are for certain actual expenses incurred by the Design Professional in connection with the Project as enumerated below.

B. 2.1.1 Travel Costs. The reasonable expense of travel costs incurred by the Design Professional when requested by Owner to travel to a location that lies outside of a 45 mile radius of either the Project site, Design Professional’s office (s), and Owner’s office.

B. 2.1.2 Long Distance Telephone Costs. Long distance telephone calls and long distance telefax costs.

B. 2.1.3 Delivery Costs. Courier services and overnight delivery costs.

B. 2.1.4 Reproduction Costs. Reproduction and postage costs of required drawings, specifications, Bidding and Contract documents, excluding the cost of reproductions for the Design Professional or Subcontractor’s own use.

B. 2.1.5 Additional Reimbursables. The Design Professional and Owner may agree in an addendum or amendment to this Agreement to include certain other expenses not enumerated above as Reimbursable Expenses. These Reimbursables shall not be limited by the Maximum Amount agreed to above. A separate Maximum Amount for these Reimbursables shall be established.

**B. 3.0 Additional Services**

B. 3.1 Payment for Additional Services. The Owner will pay the Design Professional only for Additional Services agreed to in an addendum or amendment to this Agreement executed by the Owner and the Design Professional pursuant to A.2. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such Additional Services is to be on an hourly basis or other unit pricing method, for a maximum amount; each such amendment or addendum shall also provide for a method of payment, including, at a minimum, whether payment will be made in partial payments or in lump sum and whether it will be based upon percentage of completion or services billed for.

**B. 4.0 Invoicing and Payments**

B. 4.1 Invoices. All payments shall require a written invoice from the Design Professional. Invoices shall be made no more frequently than on a monthly basis. Payments for Basic Services shall be in proportion to services completed within each phase of work. When requesting such payment, the invoice shall identify the phase and the portion completed. All invoices shall state the Agreement, name and address to which payment shall be made, the services completed and the dates of completion, and whether the invoice requests payment for Basic Services, Reimbursable or Additional Services. Invoices seeking payment for Reimbursable or Additional Services must provide detailed documentation.

B. 4.2 Time of Payment. Upon the Design Professional’s proper submission of invoices for work performed or reimbursable expenses, the Owner shall review and, if the work is in conformance with the terms of the Agreement, make payment within thirty days of the Owner’s receipt of the invoice.

**Article C: Responsibilities**

**C. 1.0 Design Professional’s Responsibilities**

C. 1.1 Basic Services. The Design Professionals shall provide the Basic Service set out in Article A.1.0.

C. 1.2 Additional Services. When required under this Agreement or agreed to as set out in A.2.0, the Design Professional shall provide Additional Services on the Project.

C. 1.3 General Responsibilities. The Design Professional shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services, furnished by the Design Professional under this Agreement. The Owner’s review, approval, acceptance of, or payment for Design Professional services shall not be construed as a waiver of any rights under this Agreement or of any cause of action for damages caused by Design Professional’s negligent performance under this Agreement. Furthermore, this Agreement does not restrict or limit any rights or remedies otherwise afforded the Owner or Design Professional by law.

C. 1.4 Designing Within Funding Limitations. The Design Professional shall perform services required under this Contract in such a manner so as to cause an award of a Construction Contract(s) that does not exceed (1) \$ \_\_\_\_\_ or (2) an amount to be provided by the Owner in writing to the Design Professional prior to the commencement of Design Professional services. This fixed limit shall be called the Maximum Construction Contract Cost. The amount may be increased by the Owner, but only with written notice to the Design Professional. If the increase results in a change to the scope of work, an amendment to this Agreement will be required. The Design Professional and the Owner may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement. Should bids for the Construction Contract(s) exceed the Maximum Construction Contract Cost, the Owner has the right to require the Design Professional to perform redesigns, rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost without additional compensation or reimbursement.

C. 1.5 Compliance with Laws, Codes, Ordinances and Regulations. The Design Professional shall perform services that conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. If the Project is within an Indian reservation, tribal laws, codes and regulations shall be substituted for state and local laws, codes, ordinances and regulations. However, on such a Native American Projects, the Owner may additionally designate that some or all state and local codes shall apply. In some of these circumstances, a model national building code may be selected by the Indian or Native American Owner. The Design Professional shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all construction documents required for approval by all governmental agencies having jurisdiction over the project. The Design professional shall make all changes in the Bidding and Construction Documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations. If subsequent to the date the Owner issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their change, and such notification shall be required in order for the Design Professional to be entitled to any additional compensation or reimbursement.

C. 1.6 Seal. Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Agreement when required by law or when the project is located on an Indian Reservation.

C. 1.7 Attendance at Conferences. The Design Professional or designated representative shall attend project conferences and meetings involving matters related to basic services covered under this contract. Attendance at community wide meetings shall be considered an additional service.

#### C. 2.0 Owner's Responsibilities

C. 2.1 Information. The Owner shall provide information regarding requirements for the project, including a program that shall set forth the Owner's objectives and schedule. The Owner shall also establish and update the Maximum Construction Cost. This shall include the Owner's giving notice of work to be performed by the Owner or others and not included in the Construction Contract for the Project. The Design Professional, however, shall be responsible to ascertain and know federal requirements and limitations placed on the Project.

C. 2.2 Notice of Defects. If the Owner observes or otherwise becomes aware of any fault or defect in the construction of the project or nonconformance with the Construction Contract, the Owner shall give prompt written notice of those faults, defects or nonconformance to the Design Professional.

C.2.3 Contract Officer. The Owner shall designate a Contract Officer authorized to act on its behalf with respect to the design and construction of the Project. The Contract Officer shall examine documents submitted by the Design Professional and shall promptly render decisions pertaining to those documents so as to avoid unreasonably delaying the progress of the Design Professional's work.

C. 2.4 Duties to Furnish. The Owner shall provide the Design Professional the items listed below.

C. 2.4.1 Survey and Property Restrictions. The Owner shall furnish topographic, property line and utility information as and where required. The Owner may at its election require the Design Professional to furnish any of these items as an Additional Service.

C. 2.4.2 Existing Conditions. The Owner shall provide the Design Professional any available "as built" drawings of buildings or properties, architect surveys, test reports, and any other written information that it may have in its possession and that it might reasonably assume affects the work.

C. 2.4.3 Waivers. The Owner shall provide the Design Professional information it may have obtained on any waivers of local codes, ordinances, or regulations or standards affecting the design of the Project.

C. 2.4.4 Minimum Wage Rates. The Owner shall furnish the Design Professional the schedule of minimum wage rates approved by the U.S. Secretary of Labor for inclusion in the solicitation and Contract Documents.

C. 2.4.5 Tests. When expressly agreed to in writing by both the Owner and the Design Professional, the Owner shall furnish the Design Professional all necessary structural, mechanical, chemical or other laboratory tests, inspections and reports required for the Project.

C. 2.4.6 Contract Terms. The Owner or its legal counsel may provide the Design Professional text to be incorporated into Bidding and Construction Contract Documents.

#### Article D: Contract Administration

D. 1.0 Prohibition of Assignment. The Design Professional shall not assign, subcontract, or transfer any services, obligations, or interest in this Agreement without the prior written consent of the Owner. Such consent shall not unreasonably be withheld when such assignment is for financing the Design Professional's performance.

D. 1.1 Ownership of Documents. All drawings, specifications, studies and other materials prepared under this contract shall be the property of the Owner and at the termination or completion of the Design Professional's services shall be promptly delivered to the Owner. The Design Professional shall have no claim for further employment or additional compensation as a result of exercise by the Owner of its full rights of ownership. It is understood, however, that the Design Professional does not represent such data to be suitable for re-use on any other project or for any other purpose. If the Owner re-uses the subject data without the Design Professional's written verification, such re-use will be at the sole risk of the Owner without liability to the Design Professional.

D. 1.2 Substitutions.

A. The Design Professional shall identify in writing principals and professional level employees and shall not substitute or replace principals or professional level employees without the prior approval of the Owner which shall not unreasonably be withheld.

B. The Design Professional's personnel identified below are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Design Professional shall notify the Owner reasonably in advance and shall

submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the contract. No diversion or substitution of such key personnel shall be made by the Design professional without the prior written consent of the Owner.

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D. 1.3 Suspension. The Owner may give written notice to the Design Professional to suspend work on the project or any part thereof. The Owner shall not be obligated to consider a claim for additional compensation if the Design Professional is given written notice to resume work within 120 calendar days. If notice to resume work is not given within 120 calendar days, the Design Professional shall be entitled to an equitable adjustment in compensation.

D. 1.4 Subcontracts. The Design Professional will cause all applicable provisions of this Agreement to be inserted in all its subcontracts.

D. 1.5 Disputes. In the event of a dispute arising under this Agreement, the Design Professional shall notify the Owner promptly in writing and submit its claim in a timely manner. The Owner shall respond to the claim in writing in a timely manner. The Design Professional shall proceed with its work hereunder in compliance with the instructions of the Owner, but such compliance shall not be a waiver of the Design Professional's rights to make such a claim. Any dispute not resolved by this procedure may be determined by a court of competent jurisdiction or by consent of the Owner and Design Professional by other dispute resolution methods.

D. 1.6 Termination. The Owner may terminate this Agreement for the Owner's convenience or for failure of the Design Professional to fulfill contract obligations. The Owner shall terminate by delivering to the Design Professional a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Design Professional shall immediately discontinue all services affected and deliver to the Owner all information, reports, papers, and other materials accumulated or generated in performing this contract whether completed or in process. If the termination is for convenience of the Owner, the Owner shall be liable only for payment for accepted services rendered before the effective date of termination.

D. 1.7 Insurance. The Design professional shall carry Commercial or Comprehensive General Liability Insurance, Professional Liability Insurance (for a period extending two years past the date of completion of construction), and other insurance as are required by law, all in minimum amounts as set forth below. The Design Professional shall furnish the Owner certificates of insurance and they shall state that a thirty day notice of prior cancellation or change will be provided to the Owner. Additionally, the Owner shall be an additional insured on all Commercial or Comprehensive General liability policies.

Insurance	Limits or Amount
_____	_____
_____	_____
_____	_____

D. 1.8 Retention of Rights. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Design Professional shall be and remain liable to the Owner in accordance with the applicable law for all damages to the Owner caused by the Design professional's negligent performance of any of the services furnished under this contract.

**Article E: Additional Requirements**

E. 1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

E. 1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

E. 1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 24 CFR 85.36 (f) prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

E. 1.3 Restrictive Drawings and Specifications. In accordance with 24 CFR 85.36(c)(3)(i) and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

E. 1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 968.235, 905.260 and 905.639), the Design Professional shall provide such a certification to the Owner.

E. 1.5 Retention and Inspection of Records. Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

E. 1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

E. 1.7 Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) 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 or her immediate family,
- (iii) His or her partner, or
- (iv) An organization that 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, or parties to sub-agreements. Grantees 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.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

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

E. 1.8 Disputes. In part because of HUD regulations (24 CFR 85.36(i)(1)), this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

E. 1.9 Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Design Professional Agreement, unless it is for an amount of \$10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

E. 1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, 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 from it.

E. 1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee 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.

E. 1.12 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

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).

H. Pursuant to 24 CFR 905.170(b), compliance with Section 3 requirements shall be to the maximum extent consistent with, but not in derogation of compliance with section 7(b) of the Indian Self-Determination and Education Assistance, 25 U.S.C. section 450e(b) when this law is applicable.

E. 1.13 Indian Preference in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.165 and Federal law, the Design Professional shall provide Indian Preference in its contracting, training, and employment practices when this contract is with an Indian Housing Authority and shall incorporate the following language into all of its subcontracts:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). 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) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(ii) The parties to this contract shall comply with the provisions of said section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)) and all HUD requirements adopted pursuant to section 7(b).

(iii) In connection with this contract, the parties shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(iv) This section 7(b) clause shall be incorporated into every subcontract in connection with the project.

(v) Upon a finding by the IHA or HUD that any party to the contract is in violation of the section 7(b) clause, said party shall at the direction of the IHA, take appropriate remedial action pursuant to the contract.

E. 1.14 Clean Air and Water. (Applicable to contracts in excess of \$100,000). Because of 24 CFR 85.36(i)(12) and Federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of \$100,000.

E. 1.15 Energy Efficiency. Pursuant to Federal regulations (24 C.F.R 85.36(i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the 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 codified at 42 U.S.C.A. § 6321 et. seq.).

E. 1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

E. 1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

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E. 1.18 Prohibition Against Liens. The Design professional is Prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all design professional subcontracts.

**Article F: Other Owner Requirements** (if any)

(Continue on additional pages as necessary)

---

This Agreement is entered into as of the day and year first written above.

Owner

Design Professional

\_\_\_\_\_  
(Housing Authority)

\_\_\_\_\_  
(Firm)

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

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

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

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

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

---

Addendum (If any)

(Additional Services and other modifications)

This is an Addendum to a Standard Form of Agreement between Owner and Design Professional signed and dated the \_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_ between the Owner, \_\_\_\_\_, and Design Professional \_\_\_\_\_ on Project \_\_\_\_\_.

The parties to that Agreement agree to modify the Agreement by the above delineated Additional Services and modifications. This Addendum is dated this \_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_.

Owner

Design Professional

\_\_\_\_\_  
(Housing Authority)

\_\_\_\_\_  
(Firm)

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

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

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

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

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

**ATTACHMENT E**  
**SMHA VENDOR REGISTRATION FORM**



# VENDOR REGISTRATION FORM

## GENERAL INFORMATION (All fields required except Fax#)

Vendor Name: \_\_\_\_\_ Legal Name W9: \_\_\_\_\_

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

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ Other Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_ Fax#: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Signature & Title: \_\_\_\_\_

Number of Years Company has been in Service: \_\_\_\_\_

Number of Employees: \_\_\_\_\_

Taxpayer Identification Number or Social Security Number: \_\_\_\_\_

## BUSINESS CLASSIFICATION (Select all that apply; must select at least 1)

- |                                                         |                                         |
|---------------------------------------------------------|-----------------------------------------|
| <input type="checkbox"/> Individual/Sole Proprietorship | <input type="checkbox"/> Partnership    |
| <input type="checkbox"/> Joint Venture                  | <input type="checkbox"/> Not-for-Profit |
| <input type="checkbox"/> Corporation                    | <input type="checkbox"/> Other          |
| <input type="checkbox"/> Resident Owned Business        |                                         |

### FOR INTERNAL USE ONLY:

For Operations:  
Staff Requesting: \_\_\_\_\_ Date: \_\_\_\_\_

For Accounting Dept:  
Finance Staff: \_\_\_\_\_ Date: \_\_\_\_\_  
Finance Review: \_\_\_\_\_ Date: \_\_\_\_\_

Yardi vendor code: \_\_\_\_\_



**REFERENCES** (Must enter 3 references)

Please provide references (within the last 12 months) for the services or goods that your business provides:

1 Company:  
Contact Name:  
Phone:  
Physical Address:  
E-mail:

2 Company:  
Contact Name:  
Phone:  
Physical Address:  
E-mail:

3 Company:  
Contact Name:  
Phone:  
Physical Address:  
E-mail:

**DISCLAIMER**

*The completion and submission of the Vendor Registration Form does not guarantee any minimum or maximum amount of work for a Vendor. It simply means that a Vendor is registered to conduct business with SMHA as opportunities are made available. At that time, the Vendor may have the opportunity to submit a bid, quote or proposal. Likewise, the submission of a bid, quote or proposal does not guarantee any Vendor the right to an award as all procurement activity conducted by SMHA must be in full compliance with the following regulations:*

- 2 CFR 200
- HUD Procurement Handbook 7460.8 REV 2
- SMHA's Procurement Policy and Procedures

**You must submit a W-9 Form and a copy of your insurance certificate**

# Stark Metropolitan Housing Authority

Dear SMHA vendor:

It is Stark Metropolitan Housing Authorities (SMHA) goal and responsibility to treat organizations (vendors / contractors) providing services and or goods fairly and appropriately. Our vendors are critical in order for SMHA to achieve its mission statement:

*"PEOPLE HOUSING PEOPLE: The Stark Metropolitan Housing Authority provides eligible residents of Stark County with quality housing in decent, safe, nourishing neighborhoods, by working in partnership with public and private sector. SMHA provides families with housing choices and opportunities to achieve self-sufficiency.*

Vendors must submit invoices electronically to [invoices@starkmha.org](mailto:invoices@starkmha.org) or mail to 400 East Tuscarawas Street Canton, Ohio 44702, Attention Accounts Payable. SMHA payment terms is **"NET 30 DAYS"**. Net 30 days is common and typical industry and business payment standard. Net 30 days allows adequate time for SMHA to process transactions for payment with vendors. SMHA will deviate from net 30 days for vendors offering payment discounts for timelier payment. SMHA will attempt to take advantage of all payment discounts. Payment process typically involves staff forwarding appropriate supporting documentation, receipt of invoice and approval of invoice for payment. Vendors or contractors subject to provisions of Davis Bacon Act, SMHA is not permitted to make final complete payment until all required Davis Bacon documents have been received and verified.

Vendor must submit invoice electronically to [invoices@starkmha.org](mailto:invoices@starkmha.org) or mail to 400 East Tuscarawas Street Canton, Ohio 44702, Attention Accounts Payable. **Invoices sent to any other post office address, employee or email might delay timely payment.** SMHA finance department will make payment within 30 days of invoice date. For timely payment of correctly dated vendor invoices, SMHA's check to vendor will be dated and mailed within 30 days of vendor invoice date.

No staff, except for Executive Director, Deputy Director or Finance Director can waive, modify, adjust or amend **NET 30 DAY** payment term or requirement to submit invoices electronically to [invoices@starkmha.org](mailto:invoices@starkmha.org) or mailed to 400 East Tuscarawas Street Canton, Ohio 44702, Attention Accounts Payable.

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

**ATTACHMENT F**  
**SECTION 3 CONTRACTING POLICY & PROCEDURE**  
**SMHA CERTIFICATION**

## SECTION 3 CLAUSE

*This affidavit must display an original signature and notary seal.*

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

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Fax Number: \_\_\_\_\_

- 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).

I certify that I have read the above information and understand the Section 3 requirements and numerical goals.

**NOTARIZATION:** (Only sign in the presence of a Notary Public)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

State of \_\_\_\_\_ County of \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_,  
before me appeared \_\_\_\_\_ acknowledging that he/she has read and  
understands the Section 3 requirements and numerical goals set forth.

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Commission Expiration

Notary Seal

## SECTION 3 BUSINESS SELF-CERTIFICATION

*Optional, only to be submitted by those Businesses seeking to be Section 3 Certified.*

Business Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_  
Business Phone: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Contractor's License: Class \_\_\_\_ A \_\_\_\_ B \_\_\_\_ C \_\_\_\_ N/A License Number: \_\_\_\_\_  
Business License Number: \_\_\_\_\_ Federal ID Number: \_\_\_\_\_  
Type of Business: \_\_\_\_\_

### Types of Section 3 Business Enterprises

Please check "Yes" or "No". If you answer "Yes" to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. Is fifty-one percent (51%) of your business owned by a Section 3 resident\*; or

Yes                  No

2. Are at least thirty percent (30%) of your full time employees persons that are currently Section 3 residents\*, or within three (3) years of the date of first employment with the business concern were Section 3 residents\*; or

Yes                  No

3. Can you provide evidence, as required, of a commitment to subcontract in excess of twenty-five percent (25%) of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications in the above two paragraphs?

Yes                  No

**Verification-** The Company hereby agrees to provide, upon request, documents verifying the information provided on this form.

**I declare and affirm, under penalty of law, that the statements made herein are true and accurate to the best of my knowledge. I understand that falsifying information and incomplete statements will disqualify certification status.**

\_\_\_\_\_  
Signature of Business Owner or Authorized Representative

\_\_\_\_\_  
Date

\*Section 3 resident is: 1) Resident of Public and Indian Housing; or 2) Resident of the Metropolitan Area or Non-Metropolitan County that meet the definition of Low and Very Low Income.

## PRIORITIES & PREFERENCE FOR SECTION 3 BUSINESS CONCERNS IN CONTRACTING OPPORTUNITITES (REFERENCE)

**Section 3 Priorities:** SMHA has established the following Section 3 Priorities (as defined by 24 CFR §135.36). If any of the priority applies, the Bidder shall identify said priority on the Bid Fee Sheet (**Attachment C**). SMHA may request additional documentation from any Bidder claiming a Section 3 priority.

### **Priority I**

Business concerns that are fifty-one percent (51%) or more owned by residents of the housing development or developments for which the Section 3-covered assistance is expended.

### **Priority II**

Business concerns whose workforce includes thirty percent (30%) of residents of the housing development for which the Section 3-covered assistance is expended, or within three (3) years of the date of first employment with the business concern, were residents of the Section 3-covered housing development.

### **Priority III**

Business concerns that are fifty-one percent (51%) or more owned by residents of any other housing development or developments.

### **Priority IV**

Business concerns whose workforce includes thirty percent (30%) of residents of any other public housing development or developments, or within three (3) years of the date of first employment with the business concern, were Section 3 residents of any other public housing development.

### **Priority V**

Business concerns participating in HUD Youth-build programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended.

### **Priority VI**

Business concerns that are fifty-one percent (51%) or more owned by Section 3 residents in the metropolitan area, or whose permanent, full-time workforce includes no less than 30 percent of Section 3 residents in the metropolitan area, or within three (3) years of the date of employment with the business concern, were Section 3 residents in the metropolitan area.

### **Priority VII**

Business concerns that subcontract in excess of twenty-five percent (25%) of the total amount of subcontracts to Section 3 business concerns.

**Section 3 Preference:** HUD authorizes within 24 CFR 135 that SMHA may make award to qualified Section 3 business concerns with the highest priority ranking and the lowest responsive bid if:

- The bid is within the maximum total contract price established by SMHA; and
- The bid is not more than "x" higher than the total bid price of the lowest responsive bid from any responsible bidder. "x" is determined below:

**ATTACHMENT G**  
**Joint Venture/Subcontractors**

## LIST OF SUB-CONTRACTORS/JOINT VENTURE

### J1.0 Subcontractors

J1.1 Will this project have sub-contractors? (Check One) \_\_\_\_\_ Yes \_\_\_\_\_ No

J1.1.1 If "Yes", proceed to J1.2. If "No", proceed to J2.0.

J1.2 **Instructions:** Please list all sub-contractors (including contact information) that will be working on any projects resulting from this contract. Each subcontractor should provide: Contractor Profile Form and Section 3 Paperwork. Attach additional pages if needed.

#### J1.2.1 List of Subcontractors

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

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

Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_

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

Documentation Attached: \_\_\_\_\_ Yes \_\_\_\_\_ No

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

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

Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_

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

Documentation Attached: \_\_\_\_\_ Yes \_\_\_\_\_ No

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

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

Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_

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

Documentation Attached: \_\_\_\_\_ Yes \_\_\_\_\_ No

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

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

Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_

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

Documentation Attached: \_\_\_\_\_ Yes \_\_\_\_\_ No

**ATTACHMENT H**  
**SMALL MINORITY BUSINESS UTILIZATION PLAN**

