

INVITATION FOR BIDS  
FOR  
SCHENECTADY MUNICIPAL HOUSING AUTHORITY

**Tree Trimming and Removal Services  
Routine and Emergency**

RELEASE DATE AND TIME:  
May 13, 2019, at 2:00 PM

**RESPONSE DATE AND TIME:  
June 11, 2019, at 2:00 PM**

SOLICITATION NO: 2019-03

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**ATTACHMENTS: (Complete attachments where applicable and returned with proposal)**

- A) Bid Price Form
- B) Non-Collusive Affidavit
- C) Representations, Certifications, and Other Statements of Bidders (form HUD-5369-A)
- D) Instructions to Offerors – Non-Construction (form HUD 5369-B)
- E) General Conditions for Non Construction Contracts Section 1 (HUD 5370-C1)
- F) General Conditions for Non Construction Contracts Section 2 (HUD 5370-C2)
- G) HUD Wage Decision

**AMENDMENTS:** If it becomes necessary to amend this IFB, amendments will be posted at <http://www.smha1.org/>. It is the responsibility of the bidder to check this website throughout the open IFB period. Bidders shall acknowledge receipt of any amendments to this solicitation as defined in Section 3 of Attachment-D, Instructions to Offerors – Non-Construction (form HUD 5369-B). The Authority will not be responsible for incorrect proposals due to Bidders noncompliance with amendments.

## **SECTION I – GENERAL TERMS AND CONDITIONS**

### **1.1 SUMMARY STATEMENT**

The Municipal Housing Authority of the City of Schenectady, hereinafter referred to as “Authority,” has a need for a contractor for Tree Trimming and Removal Services: Routine and Emergency at the following Authority Sites: Schonowee Village, Lincoln Heights, Ten Eyck Apartments, Steinmetz Homes, MacGathan Townhouses, Yates Village and Maryvale Apartments.

The intent of this Invitation for Bids (IFB) is to award a contract to the lowest responsible and responsive bidder whose bid meets the requirements of the IFB.

Bidders shall make all investigations necessary to thoroughly inform themselves about the Authority's operations. No plea of ignorance by the bidder of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the IFB, will be accepted as a basis for varying the requirements of the Authority or the compensation to the vendor.

The conditions set forth in this IFB and the resultant contract with the successful bidder are in addition to form HUD-5370C Section I and form HUD-5370C Section II, which are Attachments E & F of this IFB.

### **1.2 PROCUREMENT METHOD**

This contract will be awarded in accordance with the Sealed Bid procurement method per the Authority's Procurement Policy, with the intent of awarding a contract to the lowest responsible and responsive bidder whose bid meets the requirements of the IFB.

### **1.3 CONTRACT TYPE**

The contract that results from this IFB will be a Fixed Price Indefinite Quantity Contract.

The Authority reserves the right to make multiple contract awards for any or all of the services required pursuant to this IFB.

### **1.4 CONTRACT DURATION**

The contract resulting from this IFB shall be for a period of one (1) year with one (1) one (1) year option, commencing on or about July 1, 2019. The options are exclusively the Authority's right to exercise.

### **1.5 INDEPENDENT CONTRACTOR**

It is expressly understood and agreed by both parties hereto that the Authority is contracting with the successful bidder as an independent contractor. The parties hereto understand and agree that the Authority shall not be liable for any claims

which may be asserted by any third party occurring in connection with the services to be performed by the successful bidder under this contract and that the successful bidder has no authority to bind the Authority.

**1.6 CONTRACTOR RESPONSIBILITY**

Procurements shall be conducted only with responsible parties, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity (including a review of eligible contractors on the System for Award Management website [www.sam.gov](http://www.sam.gov) published by the General Service Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other Authorities), and have all applicable State licenses and financial and technical resources. If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

Contracts shall not be awarded to debarred, suspended or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (2 CFR Part 2424) when necessary to protect the Authority in its business dealings.

**1.7 CONDITIONS FOR SUBCONTRACTING AND APPROVALS**

The Contractor may not subcontract any portion of the services provided under this IFB without obtaining the prior written approval of the Authority, which approval the Authority may withhold or condition in its sole and absolute subjective discretion. The Authority shall not be responsible for the fulfillment of the Contractor's obligations to their subcontractors.

**1.8 MANDATORY CONTRACTUAL TERMS**

By submitting a bid in response to this IFB, a bidder, if selected for award, shall be deemed to have accepted the terms of this IFB, and any revisions thereto, and this IFB shall be made a part of the engagement contract with the successful bidder.

**1.9 INDEMNITY**

Contractor covenants and agrees to fully indemnify and hold harmless the Authority and the elected officials, employees, officers, directors, and representatives of the Authority, individually or collectively, from and against any and all costs, claims, liens, damages losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the Authority, directly or indirectly arising out of resulting from or related to contractor's activities under this contract, including any acts or omissions of contractor, any agent, officer, director, representative, employee, consultant or subcontractor of contractor, and their respective officers, agents,

employees, directors and representatives while in the exercise or performance of the rights or duties under this contract, all without, however, waiving any governmental immunity available to the Authority under New York State law and without waiving any defenses of the parties under New York State law. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall promptly advise the authority in writing of any claim or demand against the Authority or contractor known to contractor related to or arising out of contractor's activities under this contract and shall see to the investigation and defense of such claim or demand at contractor's cost. The Authority shall have the right, at its option and at its own expense, to participate in such defense without relieving contractor of any of its obligations under this paragraph.

It is the express intent of the parties to this contract, that the indemnity provided for in this section, is an indemnity extended by contractor to indemnify, protect and hold harmless the Authority from consequences of the Authority's own negligence, provided however, that the indemnity provided for in this section shall apply only when the negligent act of the Authority is a contributory cause of the resultant injury, death, or damage, and shall have no application when the negligent act of the Authority is the sole cause of the resultant injury, death, or damage. Contractor further agrees to defend, at its own expense and on behalf of the Authority and in the name of the Authority, any claim or litigation brought against the Authority and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this indemnity shall apply, as set forth above.

#### **1.10 PROFESSIONAL LIABILITY AND WORKERS COMPENSATION INSURANCE**

Prior to the commencement of any work, contractor shall furnish copies of all required endorsements and an original completed certificate(s) of insurance to the Authority, which shall be clearly labeled "Tree Trimming and Removal Services." The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The Authority will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the Authority. The Authority shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the Authority. No officer or employee shall have authority to waive this requirement. The contractor shall provide the Authority with current certificates of insurance for all coverage required by the terms of this contract, naming the Municipal Housing Authority of the City of Schenectady and the U.S. Department of Housing and Urban Development as Additional Insured.

The Authority reserves the right to review the insurance requirements of this



binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the Authority at the address listed below within 10 days of the requested change. Contractor shall pay any costs incurred resulting for said changes.

Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the Authority and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the Authority, with the exception of the workers' compensation and professional liability policies;
- Provide thirty (30) calendar days advance written notice directly to the Authority of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to the Authority. The Authority shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this agreement.

It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the Authority for liability arising out of operations under this contract.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

#### **1.11 INVOICING**

Invoices for the payment of services shall be submitted to the Authority in a monthly summary format for work performed in the preceding month. At a minimum, invoices shall list the work performed at each location. The Contractor shall itemize their bill with a labor and material breakdown for each service at each location at the contracted rates agreed to. Bidder must comply with the

Authority's local wage rate determination as identified in Attachment G - Prevailing Wage Rate Requirements, of this IFB. Certified Payrolls must be delivered on a weekly basis. The Authority reserves the right to conduct employee interviews as necessary throughout the contract.

**1.12 SECTION 3**

If the successful bidder or a subcontractor of the successful bidder has the need to hire new persons to complete their contract responsibilities, they are required to direct their newly created employment and/or subcontracting opportunities to Section 3 residents and business concerns. In addition, the successful bidder must notify the recipient agency about their efforts to comply with Section 3 and submit any required documentation.

Section 3 Business Concern means a business concern that is (1) 51 percent or more owned by Section 3 residents; or (2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "Section 3 business concern." Section 3 resident means: (1) A public housing resident; or (2) An individual who resides in the City of Schenectady and who is: (i) A low-income person, as defined to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by HUD, with adjustments for smaller and larger families; or (ii) *A very low-income person*, as defined to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by HUD with adjustments for smaller and larger families.

**1.13 PREVAILING WAGE RATE DETERMINATION**

The Authority is Federally funded, and therefore requires all contractors to pay not less than the minimum salaries and wages set forth in Attachment G.

Certified Payrolls are required to be submitted by the contractor on a weekly basis. The payrolls are to be original and signed in blue ink. The Authority reserves the right to conduct employee interviews as necessary throughout the contract term.

The wages outlined in Attachment G are applicable for both years of this contract.

The Contractor shall be responsible for maintaining payroll records and must make such records available to the PHA and/or to HUD, on request.

**1.14 OSHA COMPLIANCE**

Each bidder must comply with all applicable OSHA Regulations.

Bidders not meeting this criterion will be eliminated without further evaluation.

**1.15 TAXES**

The Owner is exempt from payment of Federal, State and Local taxes on all materials and supplies sold to the Owner pursuant to this contract and are not to be included in bids. The Owner shall supply the Contractor with copies of the Owner's Certificate of Exemption from New York State Sales Tax. (Section 116A1 of the NY State Tax Law.)

**1.16 PRE-BID CONFERENCE**

Pre-bid walk through will only be scheduled at bidders request. No walk throughs will be scheduled after May 29, 2019.

## **SECTION II – SCOPE OF WORK**

### **SCOPE OF WORK**

#### **2.1 BACKGROUND AND PURPOSE**

Background: The Authority requires the services of a qualified contractor for the purpose of tree trimming and removal services at the following Authority Sites: Steinmetz Homes, MacGathan Townhouses, Maryvale Apartments, Schonowee Village, Lincoln Heights, Ten Eyck Apartments and Yates Village.

Purpose: The Authority requests bids from qualified contractors for the provision of tree trimming and removal services.

For emergency service calls, the contractor(s) must be able to respond twenty-four (24) hours a day, seven (7) days a week.

#### **2.2 BIDDER QUALIFICATIONS**

Bidders must certify that the following minimum qualifications are met: Bidders must demonstrate that they have three (3) years minimum experience in the tree trimming business within the last five (5) years; list five (5) commercial facilities and/or municipalities references for which work has been completed in the past 12 months.

References and Experience shall be indicated as an attachment to Attachment A: Bid Price Form.

Bidders not meeting these criteria will be eliminated without further evaluation.

The Contractor shall be a full time, commercial tree trimming and removal company. Contractors not meeting this requirement will not be considered. The Authority does not consider general contractors as meeting this requirement.

#### **2.3 SCOPE OF PROJECT**

The Contractor will provide all necessary labor, materials and equipment to provide quality tree trimming and removal service at the following Authority public housing properties located in Schenectady: Steinmetz Homes, MacGathan Townhouses, Maryvale Apartments, Schonowee Village, Lincoln Heights, Ten Eyck Apartments and Yates Village.

The selected Contractor will be required to perform and complete the proposed tree trimming and removal work in a thorough, professional and expert manner, and to provide all labor, tools, equipment, materials and supplies necessary to complete the contracted work in a timely manner.

All tree branches, brush, tree trunks and other materials produced as a result of the Contractor's services under this contract become the property of the Contractor. The Contractor will be required to reduce, reuse, recycle and/or transform all materials whenever possible. Disposal of all green waste and any other material generated from this work shall be disposed at the Contractor's expense and shall be included in the Contractor's pricing.

Work shall be performed by the Contractor on an as-needed basis.

The contractor will perform various tree services including but are not limited to:

- Tree Removal
- Trimming and Topping
- Stump Grinding
- Cabling
- Complete Cleanups
- Storm Damage
- Brush Chipping
- Pruning and Shading

All work will conform to all applicable Federal, State, and local regulations, laws and codes.

Work shall be performed by the Contractor on an as-needed basis.

The Authority makes no representation as to the amount of work that may be required during the contract period.

#### **2.4 SITE CONTROL**

Any areas being worked in shall be secured from public access, clearly marked, and barricaded, if necessary. Contractor shall make best effort that the work will not interfere with ingress or egress of the building or normal operations by tenants, Authority employees or vehicles. All surrounding surfaces and vegetation shall be protected from contact with any materials used in this project.

The contractor is solely responsible for damage to surrounding surfaces, facilities, vegetation, vehicles, or persons caused by its materials, equipment, workers, or agents. The contractor shall make every effort to maintain a clean, quiet, and orderly work area throughout the term of this project. Any materials or equipment left on site when contractor's workers are not present are the responsibility of the contractor to secure. The contractor is responsible for protecting the work from damage from any source prior to final acceptance.

#### **PROJECT COORDINATION**

The Contractor's first point of contact is the Project Manager for the site, who can be contacted via telephone numbers, and email, which will be provided to the awarded contractor(s). Except for emergencies, any work at the site shall be scheduled through the Authority's applicable Project Manager or designee at least forty-eight (48) hours in advance of the work commencing.

The contractor's Project Coordinator shall have a cellular telephone, which number shall be provided to the Authority. The Contractor shall establish a routine for communications with Authority to provide a prompt and timely response to any concerns or problems that may arise. Time and frequency of direct meetings may vary as determined by Authority. When the contractor or its agents are on the site, the Contractor shall contact the applicable Project Manager or designee at least daily to review overall performance, receive special instructions regarding the scope of work or other pertinent items regarding the contract, and the contractor's performance.

Before the work commences, the contractor must provide a work schedule that is approved by Authority.

## **2.5 PERMITS & INSPECTIONS**

The Contractor is responsible to obtain any applicable permits required by the City of Schenectady. The Contractor is responsible to schedule inspections required by the City of Schenectady. The City of Schenectady's Code Office can be reach by telephone (518) 382-5050.

The contractor will provide the Authority with the permit before the project starts and provide the completed permit once the City of Schenectady has completed their inspection.

The Authority will reimburse the Contractor the cost of the permit with no markup.

## **2.6 WORK SCHEDULE**

With the exception of an emergency service call as defined in 2.7, the Contractor must respond to the Authority within 48 hours of being contacted to visit a job site to inspect a potential project. The Contractor shall perform work when needed and requested. If the contractor does not respond to the Authority, If the Contractor fails to respond in the allotted time without notification, the Authority shall then have the right to contact another firm to address the problem. The contractor will be charged the difference between what the contractor would be paid and the cost of the tree trimming and removal contractor the Authority hires to complete the work.

The Contractor shall be required to visit the potential job site and submit a written quotation prior to the authorization of work, at no additional charge to the Authority. The quotation shall be provided within three (3) business days of the original request, and shall include a detailed labor and material summary in accordance with the contract rates. If the quotation is accepted and the work performed, the Contractor's invoice shall not exceed the quote. Any changes to the original scope of work during the course of the work must be approved by the Authority before the work begins. A written proposal will be submitted to the Project Manager. Changes invoiced but not approved by the Authority shall not be reimbursed.

Start and completion dates will be scheduled with the Project Manager. Start dates cannot be more than 10 business days from the acceptance of the quote without the approval of the Authority.

## **2.7 EMERGENCY SERVICE CALLS**

Emergency service requests made to the Contractor shall be responded to within three (3) hours of notification. If the Contractor fails to respond in the allotted time without notification, the Authority shall then have the right to contact another firm to address the problem.

Emergency work can include day and night hours as well as weekends and holidays. Emergency work can proceed with a verbal approval from the Project Manager should it impact the health and safety of tenants and/or employees. Detailed billing must be submitted within 24 hours of completion if this option is exercised.

If the contractor does not respond to the Authority, the contractor will be charged the difference between what the contractor would be paid and the cost of the contractor the Authority hires to complete the work.

In an emergency situation if requested by the Authority the contractor must be on site within 4 hours of authorization by the Authority. The Contractor will be reimbursed at the Emergency Rate per Attachment A Bid Price Form.

## **2.8 CLEAN UP**

Contractor shall clean up their own debris daily. Contractor will quote a dumpster in their job proposal if it is necessary. If no dumpster is used, debris must be hauled away at the end of each day. Dumpsters shall be coverable and securable. The Authority is not responsible for garbage thrown into dumpsters by others not directly associated with this project.

At the completion of work, remove waste materials, rubbish, tools, equipment, machinery and surplus materials. Broom clean paved surfaces, rake clean other surfaces of grounds. Complete removal of wood chips after stump grinding. Clean all floors, walls, glass, and finish surfaces at construction areas. Equipment and furniture shall be free of construction dust and stains.

## **2.9 CONTRACT PRICING**

The contracted prices submitted on the Bid Price Form included in this IFB as Attachment A shall remain firm for the duration of this contract.

- Cost shall include all materials, equipment and labor for standard application.
- Contractor shall provide rates for: Standard Work Rates, Overtime Rates, Holiday Rates, Emergency Rates and Weekend Rates. Overtime, Weekend, Emergency and Holiday work shall be performed only upon the Authority's request.
- If applicable, supplies and materials shall be provided to the Authority at manufacturer's suggested retail price. The Authority reserves the right to ask for receipts from the contractors purchase of supplies, materials and sub-contracted work.
- The following shall apply to all hourly rate pricing:
  - Standard time is defined as the Authority's normal business hours, 8:00 a.m. to 4:00 p.m., Monday through Friday.
  - Overtime, Weekend, Emergency and Holiday work shall be performed only upon the Authority's request by the Project Manager or their designee.
- Holiday work shall be performed only upon the Authority's request. Holidays that qualify for holiday rate billing are as follows:
  - New Year's Day (January 1<sup>st</sup> or observed on closest weekday)
  - Martin Luther King Jr. Day (Third Monday of January)
  - Presidents Day (Third Monday in February)
  - Memorial Day (Last Monday in May)
  - Independence Day (July 4<sup>th</sup> or closest weekday)
  - Columbus Day (2<sup>nd</sup> Monday in October)
  - Veterans Day (November 11<sup>th</sup> or observed on closest weekday)
  - Thanksgiving Day (4<sup>th</sup> Thursday of November)

- Christmas Day (December 25<sup>th</sup> or observed on closest weekday)
- All hourly rates quoted “must include” overhead, profit, and all administrative costs. Trip charges are not permitted under this contract.
- The Contractor may be required to have the hours worked certified by Authority personnel at the job site.

## SECTION III – EVALUATION FACTORS

### **3.1 RATING CRITERIA**

Proposals shall be evaluated only on the criteria stated in this IFB in accordance with the Sealed Bid procurement method.

In order to assist bidders in the preparation of their bids and to comply with the requirements of this solicitation, Attachment A - Bid Price Form has been prepared. Bidders shall submit their bids using the Attachment A - Bid Price Form and in accordance with the instructions on the form and as specified herein.

The Bid Price Form is to be completed by an individual who is authorized to bind the bidder to the unit prices as noted on Attachment A.

References and Experience shall be indicated as an attachment to Attachment A: Bid Price Form.

#### EXAMPLE OF LOW BID EVALUATION:

$(\text{Standard Rate} * 80\%) + (\text{Emergency Rate} * 5\%) + (\text{Overtime Rate} * 5\%) + (\text{Weekend Rate} * 5\%) + (\text{Holiday Rate} * 5\%)$

## **SECTION IV – BID INSTRUCTIONS**

### **4.1 POINT OF CONTACT**

The sole point of contact in the Authority for purposes of this Invitation for Bids (IFB) prior to the award of a contract is the Authority's Procurement Administrator. All contact relative to this IFB should be made in writing and directed to:

Steve Tama, Procurement Administrator  
Schenectady Municipal Housing Authority  
375 Broadway  
Schenectady, NY 12305  
E-mail: [stama@smha1.org](mailto:stama@smha1.org)

### **4.2 REQUEST FOR INFORMATION**

Any prospective bidder desiring an explanation or interpretation of this IFB must request in writing, e-mail or regular mail, such request for information must be received no later than seven (7) days prior to the proposal due date. Requests shall be directed to the Procurement Administrator at the address listed or email provided in Section 4.1, herein. Any information given to a prospective bidder concerning the solicitation will be furnished promptly to all known prospective bidders, and available online, if that information is necessary in submitting a bid or if the lack of it would be prejudicial to any other prospective bidder. Oral explanations or instructions given before the award of the contract will not be binding on contract performance. It is the bidders responsibility to check the website, [www.smha1.org](http://www.smha1.org) regularly throughout the bid process for any addenda issued. No plea of ignorance will be accepted by the Authority for not receiving any addendum.

### **4.3 GENERAL INFORMATION**

- A. Prepare your bid in a practical, legible, clear, and straightforward manner. All prices and amounts must be written in ink or machine printed. Bids containing any conditions, omissions, unexplained erasures or alterations, or irregularities of any kind, may be rejected by the Authority.
- B. Refer to Section III, Evaluation Factors, for the criteria that will be used to evaluate bids.
- C. The bid shall be signed by an official authorized to bind the company.
- D. Bids submitted are irrevocable for 90 days following the closing date. This period may be extended at the Authority's request only with the bidder's written consent.

- E. Unless there is no need for negotiations with any other bidder, negotiations shall be conducted with bidders who submit bids determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the IFB. Such bidders shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of their bids. The purpose of negotiations shall be to seek clarification with regard to and advise bidders of the deficiencies in both the technical and price aspects of their bids so as to assure full understanding of the conformance to the IFB requirements. No bidder shall be provided any information about any other bidder's bid, and no bidder shall be assisted in bringing its bid up to the level of any other bid. Bidders shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt or bid revisions based on negotiations.
- F. Any actual or prospective contractor may protest the IFB or award of a contract for serious violations of the principles of this Statement. Any protest against a bidder must be received before the due date for receipt of bids, 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 bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may at his discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.
- G. Cancellation of IFB: This IFB may be canceled before bids are due if: The Authority no longer requires the supplies, services or construction; the Authority can no longer reasonably expect to fund the procurement; proposed amendments to the IFB would be of such magnitude that a new IFB would be desirable; or similar reasons.

An IFB may be canceled and all bids that have already been received may be rejected if: the supplies, services, or construction are no longer required; ambiguous or otherwise inadequate specifications were part of the IFB; the IFB did not provide for consideration of all factors of significance to the Authority; prices exceed available funds; there is reason to believe that bids may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or for good cause of a similar nature when it is in the best interest of the Authority.

The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any bidder solicited.

A notice of cancellation shall be sent to all bidders solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any solicitation or future procurement of similar items.

If all otherwise acceptable bids received in response to an IFB are at unreasonable prices, or only one bid is received and the price is unreasonable, the Authority shall cancel the IFB and either: a) Re-solicit using a request for proposals; or b) Complete the procurement by using the competitive proposals method (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method (when only one bid is received at an unreasonable price); provided, that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of the Authority's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

- H. If it becomes necessary to revise this IFB, amendments will be provided to all prospective bidders that were sent this IFB or otherwise are known by the Authority to have obtained this IFB. It is the bidder's responsibility to frequently check the Authority's website, [www.smha1.org](http://www.smha1.org) to check for any addendums. Acknowledgement of the receipt of all amendments to the IFB must accompany the bidder's bid. Failure to acknowledge receipt does not relieve the bidder from complying with all terms of any such amendment.

## **SECTION V – BID SUBMITTAL**

### **5.1 FORM OF SUBMITTAL**

Submit one (1) clearly labeled original and three (3) copies of your bid and completed Attachments A, B, C, in a sealed package with the company bidding identified on the package, addressed as follows:

Schenectady Municipal Housing Authority  
375 Broadway  
Schenectady, NY 12305

Attention: Steve Tama, Procurement Administrator  
SEALED BID - DO NOT OPEN  
Tree Trimming and Removal Services: Routine and Emergency  
Solicitation No.: 2019-03

### **5.2 DELIVERY OF BID**

The bid shall be properly addressed as shown in 5.1, and delivered or mailed so that the bid is received on or before the response date and time.

Requests for extension of this date or time shall not be granted. Bidders mailing bids should allow sufficient mail delivery time to ensure timely receipt by the Authority; please note that daily mail through the U.S. Post Office often arrives at the Authority after 4:00 PM. Bids received by the Authority after the closing time and date will not be considered, unless conditions apply per Section 6 of form HUD-5369-B, "Instructions to Offerors – Non-Construction." Bids delivered by e-mail or facsimile shall not be considered. The Authority does not accept responsibility for late or mis-delivered proposals.

### **5.3 RESPONSE DATE AND TIME**

The response date and time is:

**Tuesday, June 11, 2019 @ 2:00 PM**

**Attachment A - Bid Price Form**

**IFB: Tree Trimming and Removal Services**

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

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

Main Contact Number: \_\_\_\_\_

Emergency Contact Number: \_\_\_\_\_

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

Fax Number: \_\_\_\_\_

The undersigned hereby proposes to furnish all labor, materials, equipment and services required to provide such service(s) described in the Scope of Work in accordance therewith, for the sum of:

All hourly rates quoted "must include" overhead, profit, and all administrative costs. Trip charges are not permitted under this contract.

Tree Service Technician	Rate:
Standard Rate Per Hour	
Weekend Rate Per Hour	
Overtime Rate Per Hour	
Holiday Rate Per Hour	
Emergency Rate Per Hour (Contractor must be onsite within 4 Hours of notification upon request of the Authority)	

Receipt of the following addenda is hereby acknowledged and have been taken into account in preparing this Bid. It is the contractor's responsibility to check the Authority's website, [www.smha1.org](http://www.smha1.org) for any addendum that have been issued. The authority will not accept any plea of ignorance for not receiving any addendum to this contract.

Addendum No.

Date

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IFB: Tree Trimming and Removal Services

This proposal shall be signed by an official who is authorized to bind the Company to all statements, including pricing, and must sign the Authorized Signature line below.

---

Print Name

---

AUTHORIZED SIGNATURE

TITLE

DATE

# NON-COLLUSIVE AFFIDAVIT

By submission of this bid or proposal, the bidder certifies that:

- a) This bid or proposal has been independently arrived at without collusion with any other bidder or with any competitor or potential competitor;
- b) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids or proposals for this project, to any other bidder, competitor, or potential competitor;
- c) No attempt has been or will be made to induce any other person, partnership, or corporation to submit or not to submit a bid or proposal or to fix overhead, profit, or cost element of said bid price, or that of any other or to secure any advantage against the Housing Authority;
- d) The person, signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing in its behalf;
- e) That attached hereto (if a corporate bidder) is a certified copy of the resolution authorizing the execution of this certificate by the signator of this bid or proposal in behalf of the corporate bidder.

\_\_\_\_\_, deposes and says that he is \_\_\_\_\_

the party making the foregoing proposal or bid for \_\_\_\_\_ (Project description), that such proposal or bid is genuine and not collusive and that all stats herein are true.

Signature:

\_\_\_\_\_

Bidder (if the bidder is an Individual

\_\_\_\_\_

Partner ( if the bidder is a Partnership)

\_\_\_\_\_

Officer (if the bidders is a Corporation)

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

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

\_\_\_\_\_

Notary Public

(Seal)

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

Office of Public and Indian Housing

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

# Representations, Certifications, and Other Statements of Bidders

## Public and Indian Housing Programs

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### 1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

\_\_\_\_\_ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

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

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

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

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

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

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

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

### 2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

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

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

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

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

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

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

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

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

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

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

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

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

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

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

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

#### 4. Organizational Conflicts of Interest Certification

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

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

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

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

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

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

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

#### 6. Minimum Bid Acceptance Period

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

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

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

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

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

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

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

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

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

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

(c) [ ] is, [ ] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

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

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

The bidder represents and certifies that it:

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

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

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

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

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

The bidder certifies that:

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

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

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

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

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

(b) A fully executed "Previous Participation Certificate" [ ] is, [ ] is not included with the bid.

**13. Bidder's Signature**

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

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

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

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

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

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

# 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:]

# General Conditions for Non-Construction Contracts

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

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

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 3/31/2020)

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

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

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$105,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

### Section I - Clauses for All Non-Construction Contracts greater than \$150,000

#### 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.

# General Conditions for Non-Construction Contracts

## Section II – (With Maintenance Work)

**U.S. Department of Housing and Urban Development**  
Office of Public and Indian Housing  
Office of Labor Relations  
OMB Approval No. 2577-0157 (exp. 3/31/2020)

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

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

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) 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.

in the classification under this Contract from the first day on which work is performed in the classification.

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

#### 1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
  - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
  - (2) The classification is utilized in the area by the industry; and
  - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

#### 2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

#### 3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
  - (i) Name, address and Social Security Number;
  - (ii) Correct work classification or classifications;
  - (iii) Hourly rate or rates of monetary wages paid;
  - (iv) Rate or rates of any fringe benefits provided;
  - (v) Number of daily and weekly hours worked;
  - (vi) Gross wages earned;
  - (vii) Any deductions made; and
  - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

#### 4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
  - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
- (iii) A training/trainee program that has received prior approval by HUD.

- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**5. Disputes concerning labor standards**

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
  - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

**6. Contract Work Hours and Safety Standards Act**

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

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subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

## **7. Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

## **8. Non-Federal Prevailing Wage Rates**

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

<b>Maintenance Wage Rate Decision</b>	<b>U.S. Department of Housing and Urban Development Office of Labor Relations</b>	<b>HUD FORM 52158 (06/2006)</b>
Agency Name: <b>Schenectady Municipal Housing Authority</b> <b>375 Broadway</b> <b>Schenectady, NY 12305</b>	LR 2000 Agency ID No:  Effective Date: <b>04/26/19</b>	Wage Decision Type: <input type="checkbox"/> Routine Maintenance <input checked="" type="checkbox"/> Nonroutine Maintenance  Expiration Date: <b>10/31/19</b>
<p>The following wage rate determination is made pursuant to Section 12(a) of the U.S. Housing Act of 1937, as amended, (public housing agencies), or pursuant to Section 104(b) of the Native American Housing Assistance and Self-determination Act of 1996, as amended, (Indian housing agencies). The agency and its contractors may pay to maintenance laborers and mechanics no less than the wage rate(s) indicated for the type of work they actually perform.</p>		
<u><b>Gary J. Kinsel</b></u> HUD Labor Relations (Name, Title, Signature)	<u><b>04/26/19</b></u> Date	
<b>WORK CLASSIFICATION(S)</b>	<b>HOURLY WAGE RATES</b>	
	<b>BASIC WAGE</b>	<b>FRINGE BENEFIT(S) (if any)</b>
<b>Laborer/Landscaper/Lawn Maintenance</b>  <b>Tree Trimmer</b>  <b>Power Equipment Operator</b>	<b>\$12.00</b>  <b>\$17.53</b>  <b>\$29.76</b>	  <b>NONE REQUIRED</b>          <input type="checkbox"/> The agency employee benefit program has been determined by HUD to be acceptable for meeting the prevailing fringe benefit requirements.  <small>(HUD Labor Relations: If applicable, check box and initial below.)</small>  _____ LR Staff Initial
		<b>FOR HUD USE ONLY</b> <b>LR2000:</b>  <b>Log in:</b>  <b>Log out:</b>