

REQUEST FOR PROPOSALS
For
Hand Held Computer Services

Danville Redevelopment and Housing Authority

Gary M. Wasson, CEO/Executive Director

P.O. Box 2669

135 Jones Crossing

Danville, Virginia 24541

An Equal Opportunity Employer

An Equal Housing Provider

DRHA Hand Held Computer Services
RFP# 20100505HC

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REQUEST FOR PROPOSALS

The Danville Redevelopment and Housing Authority is requesting proposals from qualified, responsible, professional firms, manufacturing companies, or individuals, interested in being selected by the Authority to provide approximately two (2) hand held computers and training to employees. Document packages will be available on Thursday, May 6, 2010. There will be a Pre-Proposal conference on Wednesday, May 26, 2010 at 3:00 p.m. Proposals are due by 5:00 p.m. local time, June 30, 2010. Firms and individuals interested in submitting proposals should fax or email your request for a RFP package to:

Carol Love, Maintenance and Modernization Secretary

Office 434/799-5544 Fax 434-799-8249 or e-mail clove@drhava.com

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PART I: GENERAL BACKGROUND INFORMATION

A. Executive Summary Notice

The Danville Redevelopment and Housing Authority (DRHA) is seeking proposals from qualified, responsible, professional firms, manufacturing companies or individuals, interested in being selected by the Authority to provide approximately two (2) hand held computers to employees and train them to use the computers and software.

B. Danville Redevelopment and Housing Authority

The Danville Redevelopment and Housing Authority administers approximately 839 Housing Choice Voucher units. A seven member Board of Commissioners appointed by the City of Danville governs the Danville Redevelopment and Housing Authority.

C. Statement of Work

The Danville Redevelopment and Housing Authority is requesting proposals from hand held computer service providers with expertise in the Housing Choice Voucher hand held computer industry. Assistance is needed in the purchase of and implementation of the hand held computers at DRHA's offices. The successful organization will have verifiable knowledge and experience of implementing hand held computers in business office properties. They will also provide on-site comprehensible training on the use of the computers and software provided.

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PART II: SCOPE OF SERVICES

A. General Overview

The Danville Redevelopment and Housing Authority (DRHA) is seeking proposals from qualified, responsible, professional firms, manufacturing companies or individuals, interested in being selected for the Authority's hand held computers project.

B. Experience Criteria

The selected firm or individual must demonstrate the knowledge, skills, and expertise to perform all aspects of work outlined in the Scope of Services below, in accordance with professional standards, HUD regulations, criteria and requirements, and local codes, regulations, ordinances, and statutes. The selected firm or individual must also be sensitive to the roles of DRHA staff and Board, public housing residents, residents of the surrounding neighborhoods, and the City of Danville in the development and approval process.

C. Scope of Work/Service

1. Existing System: The Danville Redevelopment and Housing Authority (DRHA) has desktop computers and some laptops.
2. Proposed System: The new system will allow DRHA to carry hand held computers with them in the field.

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D. General Requirements

DRHA will carefully monitor and audit performance to ensure compliance with all the requirements set forth in this RFP.

PART III: PROPOSAL REQUIREMENTS

A. Proposal Organization

Respondents shall submit proposals incorporating the following elements:

• **Organizational information**

- DRHA is seeking an all inclusive turnkey price for hand held computers and training. All pricing shall include labor, material, tax, bonds, permits, inspections, design, general conditions, and any other costs involved with installing and setting up a complete and working hand held computer system. Profit and Overhead shall be listed separately.
- Each proposal shall include a written summary of the proposed system, pricing, specification sheets of the individual computers, specification sheets for any required software, instructions on how the system is used and incorporated into DRHA's existing billing software, training and setup costs, and any other pertinent information describing the new system.
- Each proposal shall also include an estimation of ongoing annual software or other maintenance charges and fees that the provider or related party may assess on an annual or as needed basis.
- Award will be governed by DRHA evaluation of proposals to determine the hand held computer system that best suits DRHA needs at a reasonable cost.

1. Personnel

- a. Provide a cover page to the proposal listing firm's name, firm's responsible contact person, telephone/fax numbers and email addresses for firm principals and individuals working on the firm's proposal and the mailing address of the firm.

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- b. Provide an organizational chart and assignment of key responsibilities.
 - c. Provide resumes for staff assuming responsibilities as proposed in the response (training on software, etc.).
2. Provide a concise description of the managerial and financial capacity to deliver the proposed services and of the technical competence of the principals, proposed project manager, and the staffing team who will direct and perform the reviews, development of recommendations and implementation.
 3. Experience of firm – History of the firm’s experience providing similar services.
 4. Business references.
 5. Examples of similar projects, recommendations and designs at similar organizations and brief narrative description of those specific designs indicating scope, size, cost, principal elements and special features, along with the name, title and phone number of a qualified contact at the organization.
 6. The firm’s proposed fee structure for the services outlined. A cost per hour of all principals and staff individuals proposed for involvement of completion of scope of work services. Also, a price per unit for the hand held computers, themselves. Additionally, a proposed overall “not to exceed” cost to complete all services requested in the scope of work, with a timeline & estimated total hours to complete each phase of the project. Although proposed fees will be taken into account, DRHA reserves the right to negotiate a lower or different fee structure during the offer process.

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7. The respondent shall identify whether or not any subcontractors will be used for this project, if awarded and/or if the proposal is a joint venture with another firm. Please remember that all information required from the respondent is also required for any major subcontractor (10% or more) or from any joint venture.

8. Submit a cover letter on the responding firm's letterhead which describes their understanding of the services which are being solicited in this bid package and acknowledges their intent to comply with all terms, conditions, regulations and requirements set forth in this RFP.

9. Other information: The respondent may include any other general information that the respondent believes is appropriate to assist the DRHA in its evaluation.

B. Incurred Costs

Respondents will be responsible for all costs incurred in preparing a response to this RFP. All material and documents submitted by prospective Investors will become the property of DRHA and will not be returned. All proposals are subject to negotiation of terms.

C. Submission Responsibilities

It shall be the responsibility of each respondent to be aware of and to abide by all dates, times, conditions, requirements and specifications set forth within all applicable documents issued by the DRHA, including the RFP document, and any addenda and required attachments submitted by the respondent. By virtue of completing, signing and submitting the completed documents, the respondent is stating his/her agreement to comply with the all conditions and requirements set forth within those documents. Failure to submit all information as required in this RFP may render a proposal non-responsive and eliminate the proposal from the possibility of award of a contract. It is the responsibility of the firms responding to the proposal to address all communication

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and correspondence pertaining to this RFP process to Carol Love, Modernization/Maintenance Secretary. Respondents must not make inquiry or communicate with any other DRHA staff member or official (including members of the Board of Commissioners) pertaining to this RFP. Failure to abide by this requirement may be cause for the DRHA to consider the respondent non-responsive and/or non-responsible.

D. Proposal Submission

All proposals must be submitted and time-stamped received in the DRHA's Slade Building, located at 135 Jones Crossing, Danville, VA, by no later than the submittal deadline stated herein (or within any ensuing addendum). A total of 1 original signature copy (marked "ORIGINAL") and 3 exact copies of the proposal submittal, shall be placed unfolded in a sealed package and addressed to:

Danville Redevelopment and Housing Authority
Attention: Carol Love
135 Jones Crossing
Danville, Virginia 24541

The package exterior must have the respondent's name and return address, and be labeled as: DRHA Proposal for Hand Held Computer Services. Proposals submitted after the published deadline will not be accepted.

PART IV: DRHA'S RESERVATION OF RIGHTS

A. The DRHA reserves the right to reject any or all proposals, to waive any informalities in the RFP process, or to terminate the RFP process at any time, if determined that such rejection or cancellation is in the best interest of DRHA or the public.

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- B.** The DRHA reserves the right not to award a contract pursuant to this RFP.

- C.** The DRHA reserves the right to terminate any contract awarded pursuant to this RFP, for convenience upon 10 days written notice to the successful respondent(s).

- D.** The DRHA reserves the right to determine the days, hours and locations that the successful respondent(s) shall provide the services called for in this RFP.

- E.** The DRHA reserves the right to retain all proposals submitted and not permit withdrawal for a period of 60 days subsequent to the deadline for receiving proposals without the written consent of the DRHA Contracting Officer.

- F.** The DRHA reserves the right to negotiate the fees proposed by the respondent entity.

- G.** The DRHA reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.

- H.** The DRHA shall have no obligation to compensate any respondent for any costs incurred in responding to this RFP.

- I.** The determination of the criteria and process whereby proposals are evaluated and the decision as to who shall receive a contract award or whether or not an award shall be made as a result of this RFP shall be at the sole and absolute discretion of DRHA and its Board of Commissioners.

- J.** The respondent agrees that he/she will inform the DRHA Contracting Officer in writing within 5 days of the discovery of any item listed herein or of any item that is issued thereafter by the DRHA that he/she feels needs to be addressed. Failure to

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abide by this time frame shall relieve the DRHA, but not the prospective respondent, of any responsibility pertaining to such issue.

PART V: PROCUREMENT PROCESS

A. RFP Purpose

It is desired that the RFP process will ensure cost competitiveness among respondents. DRHA urges all interested respondents to carefully review the requirements of this RFP. Written proposals containing the requested information will serve as the primary basis for final selection.

B. Review and Selection Process

All proposals will be reviewed by DRHA based on the evaluation criteria contained in this RFP. DRHA will select the top firm based upon their proposal and ranking, the results of reference checks, the price proposal (not necessarily the lowest pricing), the attractiveness of other business terms, and willingness to work with the DRHA's needs will be major considerations for those in the competitive range. The specific evaluation criteria and respective weighting are detailed below. DRHA reserves the right to conduct negotiations with one or more respondents if, in the sole opinion of DRHA, that method will provide the greatest benefit to DRHA. Proposals from small business enterprises and business enterprises owned by women and minorities are encouraged.

C. Procurement Schedule

DRHA anticipates the selection of a hand held computer provider will occur according to the following schedule:

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DATE	ACTIVITY
5/06/2010	RFP issued and available
5/26/2010	Pre-Proposal Conference
6/23/2010	Final day to provide written questions
6/25/2010	Final addendum to RFP issued
6/30/2010	Proposals due at or before 5:00 p.m. local time
7/9/2010	DRHA completes proposal reviews, reference checks and ranking.
7/16/2010	Proposal submitted for Board approval

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D. Proposal Evaluation Criteria

NO. POINT VALUE		CRITERION DESCRIPTION
1	15 points	SPECIALIZED EXPERIENCE: Based upon the opinion of the evaluators, demonstrated ability to complete the scope of work, services and requirements.
2	15 points	QUALITY OF WORK: Based upon the opinion of the evaluators, demonstrated ability to provide high quality hand held computers that are functional, cost effective, and that minimize maintenance and monitoring costs.
3	10 points	QUALITY OF REFERENCES: Based upon the DRHA responses from contacting references given by responders.
3	10 points	COST CONTROL: Based upon the opinion of the evaluators, demonstrated ability to provide valid cost estimates and maintain budget and cost control of proposed hand held computer service improvements and recommendations in similar sized projects.
4	10 points	PROJECT APPROACH AND PRELIMINARY DESIGN: Based upon the opinion of the evaluators does the respondent demonstrate an understanding and needs of the scope of work and services needed.
5	10 points	PROFESSIONAL QUALIFICATIONS: Based upon the opinion of the evaluators, the technical competence of the principal in charge and proposed staffing team that will direct and perform the requested services.
6	30 points	PRICING: Based on the opinion of the evaluators, is the price offered justified when compared to the scope, size and other needs of the proposed services.
	100 points	Total Points

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DRHA will select the top firm based on their ranking and begin any necessary contract negotiations.

E. Responses Due

Respondents must submit one (1) original copy of their proposal, signed in blue ink, and three (3) copies of their proposals to DRHA at the following address:

Danville Redevelopment and Housing Authority
Attention: Gary Wasson
135 Jones Crossing
Danville, Virginia 24541

In order to be considered, proposals must be received no later than 5:00 p.m. local time on June 30, 2010 by mail or delivery. Proposals must be sealed in a box or envelope marked with the title of this RFP and the respondent's name, address and telephone number. All material must be submitted in 8-1/2 x 11 formats.

The above stated deadline is firm as to date and hour, unless altered by an authorized addendum. A respondent may select any mode of delivery; however, the risk of non-delivery shall remain with the respondent. DRHA will treat as ineligible for consideration and will return unopened any submission that is received after the deadline. Upon receipt of each proposal, DRHA will date and stamp it to evidence timely or late receipt, and upon request, provide the respondent with an acknowledgment of receipt. Faxed submissions will not be accepted. All timely submissions become the property of DRHA and will not be returned. Proposals will be held in confidence and not released in any manner until after contract award.

F. Selection Committee

DRHA will appoint a selection committee. This selection committee will be responsible for overseeing the selection process and making a recommendation to the DRHA

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Executive Director and Board of Commissioners. The committee will consist of representatives from the DRHA and others as deemed appropriate by the Executive Director.

G. Interpretation

The intent of this RFP is to establish the general specifications for the professional services needed and to provide prospective respondents with sufficient information to enable them to provide an acceptable response to this RFP. Every effort has been made to outline requirements and to provide information in a format that is clear and concise. Nevertheless, questions may arise, or additional information may be needed. Questions and inquiries regarding this RFP must be submitted in writing and should refer to the specific paragraph in question. All inquiries must be received no later than 5:00 p.m. local time on April 21, 2010 and should be submitted to Carol Love at the address listed on page 15.

Answers will be provided as written addenda to this RFP which will be on file and available for inspection at DRHA offices not later than four (4) days prior to the proposal submission date. DRHA will endeavor to provide copies of addenda to all potential respondents to whom this RFP has been mailed, but it will be the responsibility of each respondent to make inquiry as to the existence and content of addenda, as the same shall become part of this RFP and all respondents will be bound thereby, whether or not the addenda are actually received by the respondent.

H. Rules, Regulations and Licensing Requirements

The respondent and their staff must possess all of the required State of Virginia licenses. In addition, the respondent shall comply with all laws; ordinances and regulations applicable to the services contemplated herein, especially those applicable to conflict of interest. Respondents are presumed to be familiar with all federal, state and local laws, ordinances, codes, rules and regulations that may in any way affect the services to be provided.

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I. Equal Opportunity Employment

Respondents agree that there will not be discrimination as to race, sex, religion, color, age, creed or national origin in regard to obligations, work and services performed under the terms of any contract ensuing from this RFP. Respondents must agree to comply with Executive Order #11246 entitled "Equal Employment Opportunity" and as amended by Executive Order #11375, as supplemented by the Department of Labor Regulations (41 CFR Part 60).

**FORM OF PROPOSAL
(Attachment A)**

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

Instructions: Unless otherwise specifically required, the items listed below must be completed and included in the proposal submittal. Please complete this form by marking an "X," where provided, to verify that the referenced completed form or information has been included within the "hard copy" proposal submittal submitted by the proposer. Also, complete the Section 3 Statement and the Proposer's Statement as noted below:

X=ITEM INCLUDED	SUBMITTAL ITEMS <i>(Three copies of each proposal, including one with original signatures)</i>
_____	Tab 1 Form of Proposal (Attachment A)
_____	Tab 2 Form HUD-5369-C & HUD-51915 (Attachment B)
_____	Tab 3 Profile of Firm Form (Attachment C)
_____	Tab 4 Proposed Services
_____	Tab 5 Managerial Capacity/Financial Viability, including resumes
_____	Tab 6 Client Information
_____	Tab 7 Equal Employment Opportunity Statement
_____	Tab 8 Subcontractor/Joint Venture Information (Optional)
_____	Tab 9 Section 3 Business Preference Documentation (Optional; Attachment D)
_____	Tab 10 Other Information (Optional)

SECTION 3 STATEMENT

Are you claiming a Section 3 business preference? YES___ or NO___. If "YES," pursuant to the Section 3 portion within the Conditions and Specifications, and pursuant to the documentation justifying such submitted under Tab No. 9, which priority are you claiming?
_____.

PROPOSER'S STATEMENT

The undersigned proposer hereby states that by completing and submitting this Form and all other documents within this proposal submittal, he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and that if the HA discovers that any information entered herein to be false, such shall entitle the HA to not consider or make award or to cancel any award with the undersigned party. Further, by completing and submitting the proposal submittal, and by entering and submitting the costs where provided within the noted Internet System, the undersigned proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by the HA, either in hard copy or on the noted Internet System, including an agreement to execute the attached Sample Contract form. Pursuant to all RFP Documents, this Form of Proposal, and all attachments, and pursuant to all completed Documents submitted, including these forms and all attachments, the undersigned proposes to supply the HA with the services described herein for the fee(s) entered within the areas provided within the noted Internet System pertaining to this RFP.

Signature Date Printed Name Company

Certifications and Representations of Offerors

Non-Construction Contract

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

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

1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

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

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

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

4. Organizational Conflicts of Interest Certification

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

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

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

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

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

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

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

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

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

OMB Approval No. 2577-0157 (exp.3/31/2010)

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

Model Form of Agreement Between Owner and Design Professional

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

OMB Approval No. 2577-0157
(exp. 3/31/2010)

Public reporting burden for this collection of information is estimated to average 3 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. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 24 CFR 85.36. These contractual agreements are required by Federal law or regulation pursuant to 24 CFR Part 85.36. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

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Introduction to Agreement

Agreement

made as of the _____ day of _____ in the year (yyyy) of _____

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

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

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

The Owner and Design Professional agree as set forth below.

Article A: Services

A 1.0 Design Professional's Basic Services

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

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

A 1.2 Phases and Descriptions of Basic Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. 2.0 Design Professional's Additional Services

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

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

Article B: Compensation and Payment

B. 1.0 Basic Services

B. 1.1 Fixed Fee for Basic Services. The Owner will pay the Design Professional for Basic Services performed as defined by A.1.2, a Fixed Fee (stipulated sum) of \$ _____ plus Reimbursable Expenses identified in Article B.2.0. Such

payment shall be compensation for all Basic Services required, performed, or accepted under this Contract.

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

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

B. 2.0 Reimbursables

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

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

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

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

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

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

B. 3.0 Additional Services

B. 3.1 Payment for Additional Services. The Owner will pay the Design Professional only for Additional Services agreed to in an addendum or amendment to this Agreement executed by the Owner and the Design Professional pursuant to A.2. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such Additional Services is to be on an hourly basis or other unit pricing method, for a

maximum amount; each such amendment or addendum shall also provide for a method of payment, including, at a minimum, whether payment will be made in partial payments or in lump sum and whether it will be based upon percentage of completion or services billed for.

B. 4.0 Invoicing and Payments

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

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

Article C: Responsibilities

C. 1.0 Design Professional's Responsibilities

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

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

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

C. 1.4 Designing Within Funding Limitations. The Design Professional shall perform services required under this Contract in such a manner so as to cause an award of a Construction Contract(s) that does not exceed (1) \$ _____ or (2) an amount to be provided by the Owner in writing to the Design Professional prior to the commencement of Design Professional services. This fixed limit shall be called the Maximum Construction Contract Cost. The amount may be increased by the Owner, but only with written notice to the Design Professional. If the increase results in a change to the scope of work, an amendment to this Agreement will be required. The Design Professional and the Owner may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement. Should bids for the Construction Contract(s) exceed the Maximum Construction Contract Cost, the Owner has the right to require the Design Profes-

sional to perform redesigns, rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost without additional compensation or reimbursement.

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

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

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

C. 2.0 Owner's Responsibilities

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

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

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

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

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

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

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

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

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

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

Article D: Contract Administration

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

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

D. 1.2 Substitutions.

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

B. The Design Professional’s personnel identified below are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Design Professional shall notify the Owner reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the contract. No diversion or substitution of such key personnel shall be made by the Design professional without the prior written consent of the Owner.

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

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

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

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

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

Insurance	Limits or Amount
_____	_____
_____	_____
_____	_____

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

Article E: Additional Requirements

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

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

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

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

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

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

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

E. 1.7 Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner, or
- (iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of

his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

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

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

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

E. 1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

E. 1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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

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

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

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. Reserved.

H. Reserved.

E. 1.13 Reserved.

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

E. 1.15 Energy Efficiency. Pursuant to Federal regulations (24 C.F.R 85.36(i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

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

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

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

Article F: Other Owner Requirements (if any)

(Continue on additional pages as necessary)

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

Owner

Design Professional

(Housing Authority)

(Firm)

(Signature)

(Signature)

(Print Name)

(Print Name)

(Print Title)

(Print Title)

Addendum (If any)

(Additional Services and other modifications)

This is an Addendum to a Standard Form of Agreement between Owner and Design Professional signed and dated the _____ day of _____ in the year (yyyy) of _____ between the Owner _____ and Design Professional _____ on Project _____. The parties to that Agreement agree to modify the Agreement by the above delineated Additional Services and modifications.

This Addendum is dated this _____ day of _____ in the year (yyyy) of _____.

Owner

Design Professional

(Housing Authority)

(Firm)

(Signature)

(Signature)

(Print Name)

(Print Name)

(Print Title)

(Print Title)

REQUEST FOR PROPOSALS (RFP) NO. 20100506HC, Hand Held Computer Services

PROFILE OF FIRM FORM (Attachment C)
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(This Form must be fully completed and placed under Tab No. 3 of the "hard copy" tabbed proposal submittal.)

- (1) Prime ____ Sub-contractor ____ (This form must be completed by and for each).
- (2) Name of Firm: _____ Telephone: _____ Fax: _____
- (3) Street Address, City, State, Zip: _____
- (4) Please attached a brief biography/resume of the company, including the following information:
 (a) Year Firm Established; (b) Year Firm Established in [JURISDICTION]; (c) Former Name and Year Established (if applicable); (d) Name of Parent Company and Date Acquired (if applicable).
- (5) Identify Principals/Partners in Firm (submit under Tab No. 5 a brief professional resume for each):

NAME	TITLE	% OF OWNERSHIP

- (6) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; please submit under Tab No. 5 a brief resume for each. (Do not duplicate any resumes required above):

NAME	TITLE

- (7) Proposer Diversity Statement: You must circle all of the following that apply to the ownership of this firm and enter where provided the correct percentage (%) of ownership of each:

Caucasian American (Male) _____%
 Public-Held Corporation _____%
 Government Agency _____%
 Non-Profit Organization _____%

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise (Qualifies by virtue of 51% or more ownership and active management by one or more of the following:

Resident-Owned* _____%
 African American _____%
 **Native American _____%
 Hispanic American _____%
 Asian/Pacific American _____%
 Hasidic Jew _____%
 Asian/Indian American _____%

Woman-Owned (MBE) _____%
 Woman-Owned (Caucasian) _____%
 Disabled Veteran _____%
 Other (Specify): _____%

WMBE Certification Number: _____

Certified by (Agency): _____

(NOTE: A CERTIFICATION/NUMBER NOT REQUIRED TO PROPOSE - ENTER IF AVAILABLE)

 Signature Date Printed Name Company

**PROFILE OF FIRM FORM
(Attachment C)**

(This Form must be fully completed and placed under Tab No. 3 of the "hard copy" tabbed proposal submittal.)

- (8) Federal Tax ID No. : _____
- (9) Business License No. (If Applicable) : _____
- (10) State of _____ License Type and No. : _____
- (11) Worker's Compensation Insurance Carrier: _____
Policy No. : _____ Expiration Date: _____
- (12) General Liability Insurance Carrier: _____
Policy No. _____ Expiration Date: _____
- (13) Professional Liability Insurance Carrier: _____
Policy No. _____ Expiration Date: _____
- (14) Debarred Statement: Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of _____, or any local government agency within or without the State of _____? Yes No
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.
- (15) Disclosure Statement: Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the HA? Yes No
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.
- (16) Non-Collusive Affidavit: The undersigned party submitting this proposal hereby certifies that such proposal is genuine and not collusive and that said proposer entity has not colluded, conspired, connived or agreed, directly or indirectly, with any proposer or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price of affiant or of any other proposer, to fix overhead, profit or cost element of said proposal price, or that of any other proposer or to secure any advantage against the HA or any person interested in the proposed contract; and that all statements in said proposal are true.
- (17) Verification Statement: The undersigned proposer hereby states that by completing and submitting this form he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and agrees that if the HA discovers that any information entered herein is false, that shall entitle the HA to not consider nor make award or to cancel any award with the undersigned party.

Signature

Date

Printed Name

Company

(Attachment D)

**CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3 BUSINESS PREFERENCE
IN CONTRACTING AND DEMONSTRATION OF CAPABILITY**

NAME OF BUSINESS: _____

ADDRESS OF BUSINESS: _____

TYPE OF BUSINESS: Corporation Partnership Sole Proprietorship Joint Venture

Attached is the following documentation as evidence of status:

For business claiming status as a Section 3 resident-owned Enterprise:

Copy of resident lease Other evidence Copy of evidence of participation in a public assistance program

For the business entity as applicable:

- | | |
|--|---|
| <input type="checkbox"/> Copy of Articles of Incorporation | <input type="checkbox"/> Certificate of Good Standing |
| <input type="checkbox"/> Assumed Business Name Certificate | <input type="checkbox"/> Partnership Agreement |
| <input type="checkbox"/> List of owners/stockholder and % of each | <input type="checkbox"/> Corporation Annual Report |
| <input type="checkbox"/> Latest Board minutes appointing officers | <input type="checkbox"/> Additional documentation |
| <input type="checkbox"/> Organization chart with names and titles and brief functional statement | |

For business claiming Section 3 status by subcontracting 25% of the dollar awarded to qualified Section 3 business:

List of subcontracted Section 3 business and subcontract amount

For business claiming Section 3 status, claiming at least 30% of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:

- | | |
|--|---|
| <input type="checkbox"/> List of all current full time employees | <input type="checkbox"/> List of all employees claiming Section 3 status |
| <input type="checkbox"/> PHA Residential lease (less than 3 years from date of employment) | <input type="checkbox"/> Other evidence of Section 3 status (less than 3 years from date of employment) |

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- | | |
|---|--|
| <input type="checkbox"/> Current financial statement | <input type="checkbox"/> List of owned equipment |
| <input type="checkbox"/> Statement of ability to comply | <input type="checkbox"/> List of all contracts for the past 2 years with public policy |

Corporate Seal

Authorizing Name and Signature

Notary

Title

My term expires: _____

Signature

Date

Printed Name

(Attachment D)

SUGGESTED AFFIRMATIVE ACTION PLAN FOR UTILIZATION OF PROJECT AREA BUSINESSES
(con'd)

SUGGESTED SECTION 3 PRELIMINARY WORKFORCE STATEMENT UTILIZATION OF LOWER INCOME PROJECT AREA RESIDENTS AS REGULAR, PERMANENT EMPLOYEES, TRAINEES, APPRENTICES.

COMPANY NAME: _____

ADDRESS: _____

PROJECT: _____

	PRESENT PERMANENT EMPLOYEES (At Time of Contract Signing)	SECTION 3 WORKFORCE PROJECTION (Residents)	TOTAL PROJECTED WORKFORCE INCREASE
TRAINEES			
APPRENTICES			
JOURNEYPersons			
LABORERS			
SUPERVISORY			
SUPERINTENDENT			
PROFESSIONAL			
CLERICAL			

NOTE: RESIDENTS ARE THOSE LOWER INCOME PROJECT AREA RESIDENTS WHO HAVE BEEN QUALIFIED AS ELIGIBLE.

Signature _____

Date _____

Printed Name _____

SECTION 3 BUSINESS PREFERENCE CLAUSE (Attachment D)

This contract is subject to the following conditions under Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).

- 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 or organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The contractor will certify that any vacant employment positions, including training positions that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprise. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

PREFERENCE FOR SECTION 3 BUSINESS CONCERNS IN CONTRACTING OPPORTUNITIES

(Attachment D)

The HA has established the following priority for preference when providing contracting opportunities to Section 3 Businesses:

Priority I

Category 1a Business

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

Priority II

Category 1b Business

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

Priority III

Category 2a Business

Business concerns that are 51 percent or more owned by residents of any other housing development or developments.

Priority IV

Category 2b Business

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

Priority V

Category 3 Business

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

Priority VI

Category 4a Business

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

Priority VII

Category 4b Business

Business concerns that subcontract in excess of 25 percent of the total amount of subcontracts to Section 3 business concerns.

Eligibility for Preference

A business concern seeking to qualify for a Section 3 contracting preference shall certify or submit evidence that the business concern is a Section business concern.

(Attachment D)

HUD directs within 24 CFR 135 that the HA may make award to qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid is:

- (a) within the maximum total contract price established by the HA; or
- (b) not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

"X" = LESSOR OF:	
When the lowest responsive bid is less than \$100,000	10% of that bid, or \$9,000.00
When the lowest responsive bid is at least:	
\$100,000.00, but less than \$200,000.00	9% of that bid, or \$16,000.00
\$200,000.00, but less than \$300,000.00	8% of that bid, or \$21,000.00
\$300,000.00, but less than \$400,000.00	7% of that bid, or \$24,000.00
\$400,000.00, but less than \$500,000.00	6% of that bid, or \$25,000.00
\$500,000.00, but less than \$1,000,000.00	5% of that bid, or \$40,000.00
\$1,000,000.00, but less than \$2,000,000.00	4% of that bid, or \$60,000.00
\$2,000,000.00, but less than \$4,000,000.00	3% of that bid, or \$80,000.00
\$4,000,000.00, but less than \$7,000,000.00	2% of that bid, or \$105,000.00
\$7,000,000.00, or more	1.5% of the lowest responsive and responsible bid with no dollar limit

Instructions To Proposers & Contractors (ITPC) (Attachment F)

1.0 GENERAL CONDITIONS:

- 1.1 **Applicability:** If referred to within the text of such, these ITPC shall be applicable to all Requests For Proposals (RFP) solicitations that the Danville Redevelopment and Housing Authority, Virginia (DRHA) conducts and shall be applicable to any contract that the DRHA awards to or signs with any firm, agency or individual pursuant to that RFP. A copy of these ITPC shall be made available to any actual or prospective proposer, or contractor who does business with or intends to do business with the DRHA.
 - 1.1.2 Unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within these ITPC, the provision in RFP or contract document shall govern.
- 1.2 **Definitions** (pertaining to all RFP documents issued by the DRHA pertaining to this RFP, including the attachments and the ensuing contract):
 - 1.2.1 "CPM" is the DRHA Contracts & Purchasing Manager (or in his/her absence, his/her designated replacement).
 - 1.2.2 "Contracting Officer" when named within an RFP document shall refer to the DRHA CPM (as delegated by the DRHA ED who is the DRHA Contracting Officer).
 - 1.2.3 "Contract" refers to the written agreement that ensues from the RFP. Whereas all RFP documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within an RFP document, such is referring to both the RFP documents and the ensuing contract document.
 - 1.2.4 "Contractor" and the term "successful proposer" may be used interchangeably.
 - 1.2.5 "Days" unless otherwise directed, shall refer to calendar days.
 - 1.2.6 "ED" is the DRHA Executive Director.
 - 1.2.7 "HA" is the "Housing Authority" or the DRHA.
 - 1.2.8 "Herein" shall refer to all documents issued pursuant to the noted RFP, including the RFP documents and the attachments.
 - 1.2.9 "HUD" is the United States Department of Housing and Urban Development. HUD is the Federal agency that the DRHA receives funding from; however, pertaining to this RFP, correspondences, including proposal submittals, received from each proposer must exhaust all provisions contained herein prior to contacting HUD (i.e. in the case of a protest).

- 1.2.10 "DRHA" is the Danville Redevelopment and Housing Authority, Virginia, Unless otherwise defined herein or within the ensuing contract, whenever the term "the DRHA" is used without clearly designating a responsible DRHA staff person, the proposer(s) may assume that responsibility for that item rests with the DRHA CO.
- 1.2.11 "Offer" is the proposal submittal referred to within the following Section 1.2.14 that the proposer delivers to the DRHA in response to the RFP.
- 1.2.12 "Offeror" or "Offerors" are the proposer or proposers.
- 1.2.13 "Parties" When "the parties," "both parties" or "either party" is stated within the RFP documents or the contract, such refers to the DRHA and the successful proposer(s).
- 1.2.14 "Proposal" and/or "Proposal Submittal" is the "hard copy" document that the proposer is required to, as detailed within the RFP document, deliver to the DRHA.
- 1.2.15 "Protestant" is a prospective proposer or proposer who feels that he/she has been treated inequitably by the DRHA and wishes the DRHA to correct the inequitable condition or situation. To be eligible to file a protest with the DRHA pertaining to an RFP or contract, the protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents).
- 1.2.16 "Prospective Proposer" or "Proposer" A prospective proposer is a firm or individual who has been notified of the RFP solicitation and/or who has requested and/or received the RFP documents and is considering responding with a proposal; a proposer is a firm or individual who has submitted a proposal in response to the RFP. All terms and conditions shall apply equally to all prospective proposers as well as proposers, though prospective proposers may not, after the deadline set for receiving proposals, receive further notices pertaining to that RFP--meaning, certain notices (such as the Notice of Results of Evaluation) are only delivered to proposers and not to prospective proposers.
- 1.2.17 "Request For Proposals" (RFP) is the competitive proposal process allowed by HUD, especially as defined within Chapter 4-17 on pages 4-15 through 4-23 of HUD Procurement Handbook 7460.8 REV-1.
- 1.2.18 "RFP Document(s)" Whether stated in the singular or the plural, such refers to the body of documents, including attachments and the information posted on the nahro.economicengine.com internet site, that the DRHA makes available to all prospective proposers wherein is detailed the DRHA's requirements.

2.0 CONDITIONS TO PROPOSE:

2.1 **Pre-Qualification of Proposers:** Prospective proposers will not be required to pre-qualify in order to submit a proposal. However, all proposers will be required to submit adequate information showing that the proposer is qualified to perform the required work (i.e. Profile of Firm Form and required resumes). Failure by the prospective proposer to provide the requested information may, at the DRHA's discretion, eliminate that proposer from consideration, provided that all proposers were required to submit the same information.

2.2 RFP Forms, Documents, Specifications and Drawings:

2.2.1 It shall be each prospective proposer's responsibility to, prior to submitting a proposal in response to the RFP, examine carefully and, as may be required, properly complete all documents issued pursuant to this RFP.

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

2.2.3 The DRHA shall reserve the right to, prior to award, revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the RFP documents issued, within any attachment or drawing, or within any addenda issued; such notice shall be delivered in writing to each prospective and/or actual proposer. Such changes that are issued before the deadline for receipt of proposals shall be binding upon all prospective proposers. Such changes that are issued after the receipt of proposals, but prior to award shall be binding upon all parties that have submitted proposals; however, such parties shall be allowed to reject such changes by, within 5 days of receipt of such written notice, withdrawing his/her proposal. Such withdrawal must be delivered, in writing, to the DRHA CPM within the 5-day deadline period.

2.3 Proposal Preparation, Submission and Receipt by the DRHA:

2.3.1 **Required Forms:** All required forms furnished by the DRHA as a part of the RFP document issued shall, as instructed, be fully completed and submitted by the proposer. Such forms may be completed in a legible hand-written fashion, by use of a typewriter, or may be download and completed on a computer. If, during the download, a form becomes changed in any fashion, the proposer must "edit" the form back to its originally form (for example, signature lines must appear on the page the line was originally intended to be on).

2.3.2 **Manner of Submission:** The proposal submittal shall be submitted in the manner detailed within the RFP document. Failure to submit the proposal in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that proposal, and may, at the

discretion of the DRHA CPM, eliminate that proposer from consideration for award.

- 2.3.3 Time for Receiving Proposals:** Proposals received prior to the time set as the deadline for the receipt by the DRHA of the proposal submittal shall be securely kept, unopened, by the DRHA. The CPM, whose duty it is to open such proposals, will decide when the specified time has arrived. No proposal received after the designated deadline shall be considered, except as detailed within Section 6 of Form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*.
- 2.3.3.1** Proposers are cautioned that any proposal submittal that may be time-stamped as being received by the DRHA after the exact time set as the deadline for the receiving of proposals shall be returned unopened to the proposer. Any such proposals inadvertently opened shall not be considered, but shall be ruled to be invalid. No responsibility will attach to the DRHA or any official or employee thereof, for the pre-opening of, or the failure to open a proposal not properly addressed and identified.
- 2.3.4 No Public Opening of Proposals:** Pursuant to the competitive proposals or RFP process, proposals are not publicly opened, but are held secure until the submittal deadline has passed. The proposals are then opened in private by the DRHA CPM (or his/her designee) and are, pursuant to the evaluation plan, examined for minimal responsiveness (i.e. minimum compliance with the requirements of the RFP). Persons other than DRHA staff involved in this process are not allowed to be present during the opening, nor may they at any time inspect the proposals, either prior to or after award.
- 2.3.5 Withdrawal of Proposals:** Proposals may be withdrawn as detailed within Section 6(h) of Form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*. Negligence on the part of the proposer in preparing his/her proposal confers no right of withdrawal or modification of his/her proposal after such proposal has been received and opened.
- 2.3.6 Conflicting Conditions:** Any provisions detailed within any of the RFP documents which may be in conflict or inconsistent with any of the paragraphs in any of the other RFP documents, including attachments, shall be void to the extent of any such conflict or inconsistency. Further, as stated within Section 1.1.1 of this ITP, unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within this ITP, the provision in the RFP or contract document shall govern.
- 2.3.7 Interpretations:** No official oral interpretation can be made to any proposer as to the meaning of any instruction, condition, specifications drawing (if any), or any other document issued pertaining to this RFP. Every request for an official interpretation shall be made by the prospective proposer, in writing, pursuant to the schedule set within the RFP document issued and as directed by the DRHA. Official

interpretations will be issued in the form of addenda, which will be delivered to each proposer; but it shall be the prospective proposer's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the RFP documents and the proposed contract with the successful proposer and all proposers shall be bound by such addenda, whether or not received by the prospective or successful proposer(s).

2.4 Exceptions to Specifications:

2.4.1 A proposer may take exception to any of the proposal documents or any part of the information contained therein, by submitting, in writing to the DRHA CPM, at least 20 days prior to the proposal deadline, a complete and specific explanation as to what he/she is taking exception to. Proposed alternate documents or information must also be included. A response by the DRHA will be issued in writing within 5 days of receipt of such exception request. The DRHA reserves the right to agree with the prospective proposer and issue a revision to the applicable RFP requirements, or may reject the prospective proposer's request.

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

2.5 Lump Sum Cost Breakdown (LSCB):

2.5.1 The DRHA reserves the right to, at any time, request and receive from any or all proposers a LSCB of any or all of the costs proposed. The proposal documents constitute an outline of the work to be completed by the proposer. These documents are intended to include all major items, and the lump sum cost breakdown computed there from will be the maximum compensation for all work and materials whatsoever furnished by the proposer in order to comply with the proposal documents in their present form, whether or not indicated in the approximate quantities or pertaining to the items of work as listed.

2.5.1.1 The purpose of this LSCB will serve the DRHA in 2 distinct areas:

2.5.1.1.1 **Prior to award of proposals:** The DRHA may request a LSCB for any or all items reflected within the RFP document as "lump sum" for the purpose of determining an unbalanced cost proposal. The DRHA CPM, using acceptable

methods dictated by the industry, shall conduct the analysis.

2.5.1.1.2 **After award:** The DRHA may request a LSCB for any or all items reflected within the RFP document as “lump sum” for the purpose of making partial payments to the successful proposer.

2.5.1.1.3 Under no circumstances, may any cost item reflected as “lump sum” be increased/decreased as a result of the LSCB analysis.

3.0 PROPOSAL EVALUATION:

3.1 **Proposal Opening Results:** It is understood by all proposers/prospective proposers that the proposals received are not publicly opened and the results will not be a matter of public record until the DRHA has concluded all evaluations, has chosen a final top-rated proposer and is ready to issue such results. When the DRHA issues such notice, the DRHA will inform all proposers as to each proposers placement as a result of the evaluation (i.e. 1st, 2nd, 3rd, etc.) and the proposed costs submitted by each proposer.

3.1.1 All proposal documents submitted by the proposers are not necessarily a matter of public record and as a matter of normal course, the proposals submitted by each proposer will not, at any time, be viewed by any interested parties except as approved by the DRHA Legal Counsel (i.e. a proposer will not be allowed to challenge an apparent top-rated proposer by inspecting the proposal that the apparent top-rated proposer submitted). The DRHA shall, however, upon request, verify that the proposal documents submitted are/were complete and correct.

3.2 **Award of Proposal(s):** The successful proposer shall be determined by the top-rated responsive and responsible proposer as determined by the evaluation process detailed within the RFP document issued, provided his/her proposal is reasonable, he/she is able to deliver the specified items in a timely manner and it is, in the opinion of the DRHA, to the bests interests of the DRHA to accept the proposal. All proposers will be notified of the results of the evaluation at the earliest practicable date.

3.3 Rejection of Proposals:

3.3.1 The DRHA reserves the right to, at any time during the proposal process, reject any or all proposals received. In the case of rejection of all proposals, the DRHA reserves the right to advertise for new proposals or to proceed to do the work otherwise, if in the judgment of the DRHA, the best interest of the DRHA will be promoted.

3.3.2 Prospective proposers acknowledge by downloading and receiving the RFP documents and/or by submitting a proposal that the submission of a proposal to the DRHA is not a right by which to be awarded that proposal, but merely an offer by the prospective proposer to perform the

requirements of the RFP documents in the event the DRHA decides to consider an award to that proposer.

3.4 Cancellation of Award: The DRHA reserves the right to, without any liability, cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties.

3.5 Mistake in Proposal Submitted:

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

3.5.2 Unless otherwise prohibited within the RFP documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at the DRHA's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to the DRHA CPM, for his/her review. This mistake must be corrected before the issuance of contract documents.

3.6 Irregular Proposal Submittal: A proposal shall be considered irregular for any one of the following reasons, any one or more of which may, at the DRHA's discretion, be cause for rejection:

3.6.1 If the forms furnished by the DRHA are not used or are altered or if the proposed costs are not submitted as required and where provided (especially within the internet e-procurement system).

3.6.2 If all requested completed attachments do not accompany the proposal submitted.

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

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

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

- 3.7 Disqualification of Proposers:** Any one or more of the following shall be considered as sufficient for the disqualification of a prospective proposer and the rejection of his/her proposal:
- 3.7.1** Evidence of collusion among prospective proposers. Participants in such collusion will receive no recognition as bidders or proposers for any future work of the DRHA until such participant shall have been reinstated as a qualified bidder or proposer. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.
 - 3.7.2** More than one proposal for the same work from an individual, firm, or corporation under the same or different name(s).
 - 3.7.3** Lack of competency, lack of experience and/or lack of adequate machinery, plant and/or other resources.
 - 3.7.4** Unsatisfactory performance record as shown by past work for the DRHA or with any other local, State or Federal agency, judged from the standpoint of workmanship and progress.
 - 3.7.5** Incomplete work, which in the judgment of the DRHA, might hinder or prevent prompt completion of additional work, if awarded.
 - 3.7.6** Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
 - 3.7.7** Failure to comply with any qualification requirement of the DRHA.
 - 3.7.8** Failure to list, if required, all subcontractors (if subcontractors are allowed by the DRHA) who will be employed by the successful proposer(s) to complete the work of the proposed contract.
 - 3.7.9** As required by the RFP documents, failure of the successful proposer to be properly licensed by the City of Las Vegas and/or the State of Nevada and/or to be insured by a general liability and/or worker's compensation policy.
 - 3.7.10** Any reason to be determined, in good faith, to be in the best interests of the DRHA.
- 3.8 Burden of Proof:** If requested by the DRHA, it shall be the responsibility of the proposer(s) to furnish the DRHA with sufficient data or physical samples, within a specified time, so that the DRHA may determine if the goods or services offered conform to the Specifications.
- 3.9 Product Evaluations:**
- 3.9.1** Unless authorized otherwise by the ensuing contract, all items/services proposed by the proposer shall be as specified within the RFP documents issued. If the RFP document authorizes item(s) to be proposed by the proposers that are unfamiliar to the DRHA, the proposer will be given at

least 10 days to provide a sample of the item(s) proposed. This time frame must be complied with and resolved at least 10 days before the date and time established as the deadline for the submission of proposals.

3.9.2 The DRHA reserves the right, at any time before the award, to have any item(s) proposed by a prospective proposer or proposer (hereinafter referred to as "proposer") subjected to an independent laboratory test and/or actual field testing by the DRHA or other personnel. The field-testing application shall be accomplished under the direction of the proposer and may be attended by other proposers. The DRHA reserves the right to either approve or disapprove any item that is field-tested and does not meet the DRHA's expectations or specifications. Items will be judged on any or all of the following criteria:

3.9.2.1 Ability to do the job intended;

3.9.2.2 Reduction of time and effort that goes into the job through easier application and better performance;

3.9.2.3 Assurance that the product will continue to perform in the same manner from one purchase to another.

3.9.3 **Substitutions:** No product will be accepted by the DRHA that differs from the item that the successful proposer specifies within the proposal submittal, unless the DRHA so authorizes such substitution in writing prior to delivery. Such substitutions must be "equal to" or "better than" the originally proposed item(s). Any approved substitution shall be invoiced at the contract price or at a lower price if the successful proposer's substitution is sold at a lower price on line contracts. The DRHA reserves the right to approve or disapprove any proposed substitution.

3.9.4 **Conforming Goods and/or Services:** The items and/or services shall minimally conform in all respects with the specifications issued. In the event of nonconformity, and without limitation upon any other remedy, the DRHA shall have no financial obligation in regard to the nonconforming.

3.9.5 **New Goods:** It is understood and agreed that, unless otherwise instructed within the RFP documents, any and all items offered or shipped shall be new and in first-class condition, and that all containers shall be new and suitable for storage or shipment.

4.0 Right to Protest:

4.1 Any prospective or actual proposer, offeror, or contractor who is allegedly aggrieved in connection with the solicitation of a proposal or award of a contract, shall have the right to protest. An alleged aggrieved protestant claiming this right is hereby informed that these regulations do not provide for administrative appeal as a matter of right for that alleged aggrieved protestant.

4.1.1 An alleged aggrieved "protestant" is a prospective proposer or proposer who feels that he/she has been treated inequitably by the DRHA and wishes the DRHA to correct the alleged inequitable condition or situation. To be eligible to file a protest with the DRHA pertaining to an RFP or

contract, the alleged aggrieved protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents) when the alleged situation occurred. The DRHA has no obligation to consider a protest filed by any party that does not meet these criteria.

- 4.2 It is totally within the administrative powers of the DRHA ED to grant or deny any requests for administrative appeal. If, in the opinion of the ED, the alleged aggrieved protestant merits an administrative review, the ED shall direct that alleged aggrieved protestant to submit additional data.
- 4.3 **Procedure to Protest:** An alleged aggrieved protestant shall comply with the following protest procedures, and failure to comply in the manner prescribed shall automatically relieve the DRHA from accepting or considering that protest:
 - 4.3.1 The alleged aggrieved protestant must file, in writing, to the DRHA CPM the exact reason for the protest, attaching any supportive data. The protestant must state within the written protest document specifically (not by inference) what action by the DRHA or condition is being protested as inequitable, making, where appropriate specific reference to the RFP documents issued. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve the DRHA from any responsibility to take any corrective action.
 - 4.3.2 The written instrument containing the reason for the protest must be received by the CPM within 10 days after the occurrence of the following:
 - 4.3.2.1 the deadline for receiving proposals;
 - 4.3.2.2 receipt of notification of the results of the evaluation or the award; or
 - 4.3.2.3 the alleged aggrieved protestant knows or should have known the facts.
 - 4.3.3 In any case, protests shall be filed no more than 10 days after any of the above (unless the occurrence being protested occurred in its entirety after the proposal deadline). Protests received after these dates shall not be considered.
 - 4.3.4 The DRHA CPM shall review the written protest and supportive data, if any. He/she shall, within 10 days after receipt of the written protest, issue a written opinion and decision. This document shall state the reasons for the action taken as well as inform the alleged aggrieved protestant of the right of further administrative review. A copy of this written opinion and decision shall be forwarded to the DRHA ED.
 - 4.3.5 **Administrative Appeal:** If the alleged aggrieved protestant does not agree with the written opinion and decision issued by the DRHA CPM, the alleged aggrieved protestant may, after receipt of the written opinion and decision issued by the DRHA CPM request an administrative appeal hearing be granted. The following procedures must be complied with in the manner prescribed; failure by the alleged aggrieved protestant to comply

shall automatically relieve the DRHA from accepting or acting on that request for administrative hearing:

- 4.3.5.1 The alleged aggrieved protestant must file, in writing, his/her request for an administrative hearing, to the DRHA ED. This request must be filed within 10 calendar days after the receipt of the DRHA CPM's written opinion and decision.
- 4.3.5.2 The request for an administrative appeal hearing must contain the specific reasons for the appeal and all supporting data for those reasons.
- 4.3.5.3 It shall be within the administrative powers of the DRHA ED to, after review of the request submitted, grant or deny any request for administrative appeal.
- 4.3.5.4 If the DRHA ED, after complete review of the alleged aggrieved protestant's written request and supporting data, decides that the request does not merit further consideration, he/she shall render his/her decision in writing to the alleged aggrieved protestant. A decision rendered under this paragraph shall be made within 10 days after the receipt of the alleged aggrieved protestant's request for an administrative hearing. This decision shall be final without further administrative recourse.
- 4.3.5.5 If the DRHA ED, after review of the alleged aggrieved protestant's written request, decides that the request merits further consideration, he/she shall forward the protestant's written request, along with a cover letter explaining why it merits further consideration and with a recap of all proposals submitted and a copy of the original written protest, to the DRHA Legal Counsel for consideration. The DRHA Legal Counsel shall issue to the alleged aggrieved protestant a decision, in writing, within 10 days of his/her receipt of such documents.
- 4.3.5.5 Such written decision delivered to the alleged aggrieved protestant shall exhaust the DRHA internal protest and administrative appeal process available to the alleged aggrieved protestant.

5.0 Disputed Billings (Charges):

- 5.1 In the event that the DRHA disputes any portion of its billing(s), the DRHA shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:
 - 5.1.1 The DRHA's representative shall, within 10 days after the DRHA's receipt of such billing, formally notify the contractor's representative of all

particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.

5.1.2 If such dispute cannot be resolved by the contractor's response, within 10 days after such notification is given, the DRHA CPM and the contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution.

5.1.3 If the DRHA CPM and the contractor's representative are unable to resolve the dispute through such discussion within 10 days, the DRHA shall, within 10 days thereafter, either:

5.1.3.1 pay the disputed charges and reserve the right to submit the matter to arbitration; or,

5.1.3.2 not pay the disputed charge and submit the matter to arbitration; or,

5.1.3.3 not pay the disputed charge and allow the contractor to submit the matter to arbitration.

5.1.4 The decision from arbitration will be binding upon both parties. If the decision is adverse to the DRHA, the DRHA shall pay the DRHA's receipt of the decision. If the decision is in favor of the DRHA, the contractor will either:

5.1.4.1 clear the amount which is ordered from the DRHA account; or

5.1.4.2 repay to the DRHA the amount ordered;

Either option shall be completed within 10 days after the contractor's receipt of the arbitrator's decision.

6.0 Additional Considerations:

6.1 Right of Joinder Pursuant to NRS 332.195:

6.1.1 Any political subdivision within the State of Nevada may be granted the privilege of joining the awarded contract, only at the option of the successful proposer. If the successful proposer so grants such a privilege, the terms and conditions of the RFP documents, including the ensuing contract, may be passed on to the joining political subdivision by the successful proposer.

- 6.1.2 The successful proposer shall retain the unilateral right to allow or disallow any political subdivision the privilege of joining the awarded contract. In the event the successful proposer allows another political subdivision to join the DRHA contract, it is expressly understood that the DRHA shall in no way be liable for the joining political subdivision obligations to the successful proposer in any manner whatsoever.
- 6.2 **Non-Escalation:** Unless otherwise specified within the RFP documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.
- 6.3 **Funding Restrictions and Order Quantities:** The DRHA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the DRHA, if:
- 6.3.1 funding is not available;
- 6.3.2 legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,
- 6.3.3 the DRHA's requirements in good faith change after award of the contract.
- 6.4 Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either the DRHA or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the successful proposer and any costs submitted by the proposer shall reflect all costs required by the successful proposer to procure and provide such necessary permits.
- 6.5 **Taxes:** All persons doing business with the DRHA are hereby made aware that the DRHA is exempt from paying Nevada State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.
- 6.6 **Government Standards:** It is the responsibility of the prospective proposer to ensure that all items and services proposed conform to all local, State and Federal law concerning safety (OSHA and NOSHA) and environmental control (EPA and Clark County Pollution Regulations) and any other enacted ordinance, code, law or regulation. The successful proposer shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the successful proposer for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.
- 6.7 **Freight On Bill and Delivery:** All costs submitted by the successful proposer shall reflect the cost of delivering the proposed items and/or services to the location(s) specified within the RFP documents or within the contract.

- 6.7.1 The successful proposer agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful proposer. Upon default, the successful proposer agrees that the DRHA may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.
- 6.8 **Backorders:**
- 6.8.1 The DRHA CPM or his/her designated alternate, must be notified within 10 days of the following:
- 6.8.1.1 Any and all backordered materials;
- 6.8.1.2 Any incomplete services; and the
- 6.8.1.3 Estimated delivery date.
- 6.8.2 Unless otherwise stipulated in the contract, any order that will take more than a maximum of 10 days past the original agreed upon delivery date, may at the option of the DRHA, be canceled and ordered from another source, if, in the opinion of the DRHA CPM, it is in the best interests of the DRHA to do so.
- 6.9 **Literature:** Proposers may be required to furnish, either as a part of their proposal submittal or at another specified time during the proposal process, specification sheets, brochures, product literature, or other such materials which contain sufficient data to enable the DRHA staff to properly evaluate the items being submitted for consideration. Failure to submit such data, if required, may cause rejection of that proposal without consideration. If the proposer has a question as to whether or not such materials should be submitted, it shall be his/her responsibility to make inquiry of the DRHA.
- 6.9.1 **Instruction Manuals:** If requested by the DRHA, the successful proposer shall furnish, at no additional cost to the DRHA, upon delivery of the proposed items, 2 complete instruction manuals and parts breakdowns.
- 6.9.2 **Training:** If directed by the DRHA, the successful proposer shall provide a qualified factory-trained instructor for up to 8 hours of theory and practical instruction. The training shall be equivalent to that provided to manufacturer's field service personnel.
- 6.10 **Communication:** If during the period of the contract, it is necessary that the DRHA place toll or long distance telephone calls or telegrams in connection therewith (for complaints, adjustments, shortages, failure to deliver, etc.), it is understood that the successful proposer will bear the charge or expense for all such calls and/or telegrams.
- 6.11 **Work on DRHA Property:** If the successful proposer's work under the contract involves operations by the successful proposer on DRHA premises, the successful

proposer shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the DRHA's negligence, shall indemnify the DRHA, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful proposer, its agents, employees, or subcontractors.

6.12 Estimated Quantities: Unless otherwise indicated, the quantities reflected within the RFP documents, to the best of the DRHA's knowledge, reflect projected consumption data. These quantities are not meant to infer or imply actual consumption figures or quantities that will be purchased by the DRHA under the finalized contract; but, pursuant to all RFP documents, these quantities will be used as calculation figures to determine the successful proposer.

6.13 Warranty:

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

6.13.2 Unless otherwise stated within the RFP document, all materials, workmanship and title shall be guaranteed by the successful proposer to be free of defects for a minimum period of 1 calendar year from the date of acceptance by the DRHA.

6.13.3 All freight costs incurred for shipment to and from the contractors designated place of business to correct warranty defects during the warranty period shall be borne by the successful proposer.

6.13.4 The liability of the successful proposer to the DRHA (except as to title) arising out of the furnishing of the item(s) and/or services or of its use under the terms of the contract shall not exceed the correcting of the defect(s) in the item(s) and/or services as provided under the contract, and upon expiration of the warranty period all such liability shall terminate except under the warranty for merchantability and the warranty of fitness for a particular purpose.

6.13.5 Warranty Exclusions Prohibited: The DRHA will not accept, and the proposer shall not propose, any warranty clause from either the successful proposer or from a manufacturer which states:

6.13.5.1 that the warranty of merchantability and/or the warranty of fitness for a particular purpose are excluded from the offer to the DRHA; and

6.13.5.2 that the manufacturer's and/or successful proposer's warranty is in lieu of all other warranties that are either expressed or implied.

- 6.13.6 In addition to the above restrictions, the warranty requirements of the RFP documents shall run from the manufacturer to the DRHA, as well as from the successful proposer to the DRHA if the item(s) and/or services are sold by a distributor or agent of the manufacturer.
- 6.13.7 **Correction of Warranty Defects:**
- 6.13.7.1 If required by the RFP documents, the successful proposer shall, within 10 days after the award and prior to the delivery of the item(s) and/or services, appoint a firm in the immediate Las Vegas area of his/her own choosing who will be the immediate contact for the correction of warranty defects.
- 6.13.7.2 Unless otherwise stated in the RFP document, or unless otherwise agreed upon by the DRHA at the time of occurrence, the local firm shall address and correct any warranty defects within 24 hours of notification. Any warranty defect that requires more than 24 hours to correct shall require the direct intervention by the successful proposer and must be corrected within 5 days after notification by the DRHA.
- 6.13.7.3 Failure to comply with the requirements of the provisions of this provision (6.13.6) shall be just cause for the DRHA declaring the contract in default under the applicable default clause, and shall allow the DRHA to seek remedy at law.
- 6.14 **Official, Agent and Employees of the DRHA Not Personally Liable:** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the DRHA in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 6.15 **Subcontractors:** Unless otherwise stated within the RFP documents, the successful proposer may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the DRHA CPM.
- 6.16 **Salaries and Expenses Relating to the Successful Proposers Employees:** Unless otherwise stated within the RFP documents, the successful proposer shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The successful proposer further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 6.17 **Attorney's Fees:** In the event that litigation is commenced by one party hereto against the other in connection with the enforcement of any provision of this agreement, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including attorneys' fees, in a reasonable amount, to be determined by the court. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.

- 6.18 Independent Contractor:** Unless otherwise stated within the RFP documents or the contract, the successful proposer is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 6.19 Severability:** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 6.20 Waiver of Breach:** A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 6.21 Time of the Essence:** Time is of the essence under this agreement as to each provision in which time of performance is a factor.
- 6.22 Limitation of Liability:** In no event shall the DRHA be liable to the successful proposer for any indirect, incidental, consequential or exemplary damages.
- 6.23 Indemnity:**
- 6.23.1** The successful proposer shall protect, indemnify and hold the DRHA, its officers, employees, agents, consulting engineers and other retained consultants harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character which the DRHA, its officers, employees, agents, consulting engineers or other retained consultants may suffer, or which may be sought against, recovered from or obtainable against the DRHA, its officers, employees, agents, consulting engineers or other retained consultants such as:
- 6.23.1.1** as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act on the part of the successful proposer, its subcontractors or agents, or anyone directly or indirectly employed by any subcontractor or agent, in the fulfillment or performance of the terms, conditions or covenants that are contained in this contract or agreement, regardless of whether or not the occurrence which gave rise to such claim, damage, loss, suit, action, judgment or expense was caused, in part, by any party indemnified hereunder; or
- 6.23.1.2** as a result of, or by reason of, or arising out of, or on account of, or in consequence of, any neglect in safeguarding the work; or

6.23.1.3 through the use of unacceptable materials or products, or both, which may be defective or manufactured, designed or installed so as to give rise to a claim; or

6.23.1.4 because of any claim or amount recovered under the Commonwealth of Virginia law, or any other law, ordinance, or decree, which claim or recovery arose out of or is attributable to any act or failure to act on the part of the successful proposer in the fulfillment or performance of the terms, conditions and covenants that are contained in this contract. Any money due by the successful proposer under and by virtue of this contract which is considered necessary by the DRHA for such purpose, may be retained by the DRHA for its protection; or in case no money is due, its surety may be held until all such claims, damages, losses, suits, actions, decrees, judgments, attorney's fees and court costs and other expenses of any kind or character as aforesaid shall have been settled and suitable evidence to that effect furnished to the DRHA provided, however, that money due the successful proposer will not be withheld when the successful proposer produces satisfactory evidence that it is adequately protected by public liability and property damage insurance, if required.

6.23.2 In this connection, it is expressly agreed that the successful proposer shall, at its own expense, defend the DRHA, its officers, employees, agents, consulting engineers and other retained consultants, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the successful proposer has indemnified the DRHA, its officers, employees, agents, consulting engineers and other retained consultants against, and if the successful proposer shall fail to do so, the DRHA shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the successful proposer including attorney's fees and court costs; provided, however, that if the forum in which such claim suit or action is heard determines that the occurrence that gave rise to the same was caused, in whole or in part, by any party who is indemnified hereunder, the DRHA shall reimburse the successful proposer for all, or the indemnified party's proportionate share, as the case may be, of the costs of such defense.

6.23.3 Reimbursement to the successful proposer by the DRHA, in whole or in part, for the costs of protecting traffic shall not serve to relieve the successful proposer of its responsibility as set forth in the RFP documents.

6.23.4 The successful proposer guarantees the payment of all just claims for materials, supplies and labor, and all other just claims against it or any subcontractor, in connection with the contract.

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

- 6.24.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of an Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- 6.24.2 If any funds other than 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 an Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- 6.24.3 The successful proposer shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 6.24.4 This clause is a material representation of fact upon which reliance was placed when the award was made or entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, and U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.
- 6.25 **24 CFR 85.36(i), Procurement:** Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the DRHA and the contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this RFP will include the following clauses, whether actually inserted or by reference:
- 6.25.1 **Remedies for Contractor Breach:** Pertaining to contract-related issues, it is the responsibility of both the DRHA and the contractor to communicate with each in as clear and complete a manner as possible. If at any time during the term of this contract the DRHA or the contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the DRHA has the right to issue unilateral addendums to this contract, but the contractor does not have the same right). The other party shall, within 10 days, respond in writing to the other party (however, the DRHA shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, the DRHA shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

- 6.25.1.1 If the contractor is in material breach of the contract, the DRHA may promptly invoke the termination clause detailed within Section 4 of attachment F-1 hereto and terminate the contract for cause. Such termination must be delivered to the contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.
- 6.25.1.2 Prior to termination, the DRHA may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the contractor on probation, thereby giving the contractor a certain period of time to correct the deficiencies or potentially suffer termination. The DRHA shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the contractor does not agree with such action, the contractor shall have ten 10 days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the DRHA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the DRHA's alleged incorrect action(s).
- 6.25.1.3 After termination, if the contractor does not agree with the DRHA's justification for the termination, the contractor shall have 10 days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the DRHA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the DRHA's alleged incorrect action(s).
- 6.25.1.4 The response to any protest received shall be conducted in accordance with Section C (7-9) of the DRHA Instructions to Bidders.
- 6.25.2 **Termination For Cause and Convenience:** As detailed within Section 4 of Attachment F-1 hereto.
- 6.25.3 **Executive Order 11246:** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- 6.25.4 **Copeland "Anti-Kickback" Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 6.25.5 **Davis-Bacon-Act:** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties

hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).

- 6.25.6 **Sections 103 and 107 of the Contract Work Hours and Safety Standards Act:** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 6.25.7 **Reporting:** Both parties hereby agree to comply with any reporting requirements that may be detailed herein.
- 6.25.8 **Patent Rights:** Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.
- 6.25.9 **Copy Rights/Rights in Data:** The DRHA has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:
 - 6.25.9.1 Except as provided elsewhere in this clause, the DRHA shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.
 - 6.25.9.2 The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.
 - 6.25.9.3 For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CPM, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants the DRHA and others

acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the DRHA.

- 6.25.9.4 The contractor shall not, without the prior written permission of the contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants the DRHA a license of the same scope as identified in the preceding paragraph.
- 6.25.9.5 The DRHA agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, the DRHA may either return the data to the contractor, or cancel or ignore the markings.
- 6.25.9.6 The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 6.25.9.7 Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees the DRHA shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.
- 6.25.9.8 The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by the DRHA except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any DRHA location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.

- 6.25.10 **Access to Records:** Both parties hereby agree that the contractor will make available to the DRHA, HUD, the Comptroller General of the United States, or any of their duly authorized representatives (including retained auditors), any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 6.25.11 **Record Retention:** The contractor further agrees that he/she shall retain all such records pertaining to this contract for a period of not less than 3 years after final payment, the completion of any services provided pursuant to this contract, or after all pending matters are closed.
- 6.25.12 **Clean Air Act:** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- 6.25.13 **Energy Policy and Conservation Act:** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 6.26 **Additional Federally Required Orders/Directives:** Both parties agree that they will comply with the following laws and directives that the DRHA has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this RFP:
- 6.26.1 Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 6.26.2 Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The DRHA hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et.seq.).
- 6.26.3 Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, the DRHA requires that the Contractor administer

all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.

- 6.26.4 The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 6.26.5 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 6.26.6 HUD Information Bulletin 909-23 which is the following:
 - 6.26.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;
 - 6.26.6.2 Clean Air and Water Certification; and
 - 6.26.6.3 Energy Policy and Conversation Act.
- 6.26.7 That the funds that are provided by the DRHA and HUD hereunder shall not be used, directly or indirectly, to employ, award contract to, or otherwise engage the services of any debarred, suspended or ineligible contractor.
- 6.26.8 That none of the personnel who are employed in the administration of the work required by this contract shall, in any way or to any extent, be engaged in the conduct of political activities in violation of Title V, Chapter 15, of the United States Code.
- 6.26.9 That neither party has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, to fix overhead, profit or cost element of said bid price, or that of any other bidder, or to secure any advantage against either party or any person interested in the proposed contract; and that all statement in said proposal or bid are true.
- 6.26.10 The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either par