



**REQUEST FOR PROPOSALS (RFP)
TECHNICAL AND CONSULTING
ASSISTANCE SERVICES
FOR
REAL ESTATE DEVELOPMENT SERVICES**

RFP NO. HADC – 2012 - 002

Prepared by: Department of
Procurement
of the
Housing Authority of DeKalb County
750 Commerce Drive
Suite 201
Decatur, Georgia 30030

Executive Director Eugene P. Walker, Jr.



REQUEST FOR PROPOSALS (RFP)

**TECHNICAL AND CONSULTING ASSISTANCE SERVICES
FOR
REAL ESTATE DEVELOPMENT SERVICES**

**REQUEST FOR PROPOSALS
{RFP NO. HADC – 2012 – 002}**

The Housing Authority of DeKalb County requests proposals from qualified firms to provide support and technical assistance services for strategic planning related to urban development, from single-building projects and small sites to large, complex urban mixed-use developments. We are seeking particular expertise in projects that have an affordable housing component.

Beginning Friday, February 17, 2012 interested firms may download an electronic copy of the RFP from the HADC website at <http://dekalbhousing.org/currentbids.html>.

This Request for Proposals (RFP) contains submission requirements, scope of services, period of services, terms and conditions and other pertinent information for submitting a proper and responsive proposal. Firms are required to send confirmation of receipt of the downloaded proposal package to atp@dekalbhousing.org and it is the responsibility of the firm to periodically visit the website to retrieve any Addenda that may have been issued during this solicitation.

Prospective Proposers desiring any explanation or interpretation of the solicitation must submit requests in writing to the attention of “Alicia Pope” at atp@dekalbhousing.org. The deadline for questions is February 28, 2012.

Deadline for submission is March 5, 2012 at 2:00 p.m.

Submissions will be evaluated on the criteria stated in the RFP. After evaluation of the responses, the Contract will be awarded to the Proposer representing the “Best Value” to HADC after preferences for Section 3 business concerns are considered. The resulting Contract may be funded through Section 3 covered assistance and as such will be subject to Section 3, 24 CFR Part 135.

HADC and its affiliated entities reserve the right to reject any and all submissions.

Proposals should be plainly marked as “Proposal – Consulting & Technical Assistance” with the firm’s name and return address. Faxed or e-mailed proposals are not acceptable and late proposals will not be opened.

Please submit 1 original proposal and 3 copies to:

**Housing Authority of DeKalb County
Attention: Alicia Pope
750 Commerce Drive, Suite 201
Decatur, GA 30030**

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

HOUSING AUTHORITY OF DEKALB COUNTY

By: _____
Eugene P. Walker, Jr.
Executive Director

RFP Document**Table of Contents**

| Section | Description |
|----------------|---|
| | Introduction |
| | RFP Information at a Glance |
| 1.0 | HADC'S Reservation of Rights |
| 2.0 | Scope of Work/Technical Specifications |
| 3.0 | Proposal Format |
| 4.0 | Proposal Evaluation |
| 5.0 | Mistakes in Proposal Submittal |
| 6.0 | Disqualification of Proposers |
| 7.0 | Contract Award |
| 8.0 | Award of Proposals |
| 9.0 | Right to Protest |
| 10.0 | Disputes Under the Contract |
| 11.0 | Additional Considerations |
| Attachments | Mandatory HUD/HADC Forms |
| | Attachment A Form of Proposal |
| | Attachment B HUD Form 5370 C I/II (General Conditions for Non-Construction Contracts) |
| | Attachment C HUD Form 5369 B (Instruction to Offerors) |
| | Attachment D HUD Form 5369 C (Certification and Representation of Offerors) |
| | Attachment E Section 3 Explanation & Clause |
| | Attachment F Profile of Firm |
| | Mandatory Contract Clause for Small Purchase Other than Construction |

INTRODUCTION

The Housing Authority of DeKalb County (hereinafter, “HADC”) is a public entity that was formed in 1955 to provide federally subsidized housing and housing assistance to low-income families, within DeKalb County. The HADC is headed by an Executive Director (ED) and is governed by a seven-person Board of Commissioners and is subject to the requirements of Title 24 of the Code of Federal Regulations (hereinafter, “CFR”) and the HADC’s procurement policy.

The HADC administers rental assistance for 5,970 privately owned rental units through the Housing Choice Voucher Program, owns and manages 266 public housing units under Asset Management, 170 Section 8 new construction units and 514 multi-family housing units allocated in 4 properties and scattered sites throughout DeKalb County.

In keeping with its mandate to provide efficient and effective services, the HADC is now soliciting proposals from qualified, licensed and insured entities to provide the above noted services to the HADC. All proposals submitted in response to this solicitation must conform to all of the requirements and specifications outlined within this document and any designated attachments in its entirety.

The remainder of this page was left blank intentionally

INFORMATION AT A GLANCE

| | |
|---|---|
| HADC CONTACT PERSON | Alicia Pope 750 Commerce Drive, Suite 201 Decatur, GA 30030 atp@dekalbhousing.org Phone: (404) 270-2519 |
| HOW TO OBTAIN THE RFP DOCUMENTS ON THE HADC INTERNET SITE | <ol style="list-style-type: none"> 1. Access http://dekalbhousing.org/currentbids.html 2. Click on the RFP link. If you have any problems accessing the RFP, please contact atp@dekalbhousing.org. |
| PRE-SUBMITTAL QUESTIONS | Prospective Proposers desiring any explanation or interpretation of the solicitation <u>must submit requests</u> to the attention of “Alicia Pope” at atp@dekalbhousing.org . The deadline for questions is February 28, 2012. |
| HOW TO FULLY RESPOND TO THIS RFP BY SUBMITTING A PROPOSAL | As directed, submit 1 original and 3 exact copies of your proposal to the HADC Procurement Department following the instructed proposal format. |
| PROPOSAL DEADLINE | <p>March 5, 2012 at 2:00 p.m. HADC Procurement Department 750 Commerce Drive, Suite 201 Decatur, Georgia 30030</p> <p>*(The proposal must be received in-hand and time-stamped by the HADC by no later than 2:00 p.m. on this date).</p> |

GENERAL INFORMATION

Definitions: Throughout this Request for Proposals and all resulting documents, the terms below shall be defined as follows:

“Best Value” means that HADC will in an evaluation of each proposal submittal, consider factors other than just cost in making the award decision.

“Contracting Officer” when named within an RFP document shall refer to the Executive Director.

“Contract” refers to the fully executed 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.

“Contract Administrator (CA)” is the HADC Director of Administration or his/her designated representative.

“Contractor” and the term "successful Proposer" may be used interchangeably.

“Day(s)” unless otherwise specified, shall refer to calendar days.

“HUD” is the United States Department of Housing and Urban Development. HUD is the federal agency from which HADC receives funding; 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).

“Herein” shall refer to all documents issued pursuant to the noted RFP, including the RFP documents and the attachments.

“Executive Director” is the HADC Executive Director.

“Offer” is the proposal submittal that the Proposer delivers to HADC in response to the RFP.

“Offeror” or “Offerors” are the Proposer or Proposers.

“Parties” When “the parties,” “both parties” or “either party” is stated within the RFP documents or the contract, such refers to HADC and the successful Proposer(s).

“Proposal,” “Proposal Submittal” and/or “Bid” is the "hard copy" document that the Proposer is required to, as detailed within the RFP document, deliver to HADC.

“Protestant” is a prospective Proposer or Proposer(s) who feel(s) that he/she has been treated inequitably by HADC and wishes HADC to correct the inequitable condition or situation. To be eligible to file a protest with HADC pertaining to an RFP or contract, the protestant must have been involved in the RFP process in some manner as a prospective Proposer.

“Prospective Proposer,” “Proposer” or “Bidder” 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 are only delivered to Proposers and not to prospective Proposers.

“Request For Proposals” (RFP) is the competitive proposal process allowed by HUD, especially as defined within Chapter 7 of HUD Procurement Handbook 7460.8 REV 2.

The remainder of this page was left blank intentionally

1.0 HA'S RESERVATION OF RIGHTS:

- 1.1** The HADC reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by the HADC to be in its best interests.
- 1.2** The HADC reserves the right not to award a contract pursuant to this RFP.
- 1.3** The HADC reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon 10 days written notice to the successful Proposer(s).
- 1.4** The HADC reserves the right to determine the days, hours and locations that the successful Proposer(s) shall provide the services called for in this RFP.
- 1.5** The HADC 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 HADC Contracting Officer (CO).
- 1.6** The HADC reserves the right to negotiate the fees proposed by the Proposer entity.
- 1.7** The HADC 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.
- 1.8** The HADC shall have no obligation to compensate any Proposer for any costs incurred in responding to this RFP.
- 1.9** The HADC shall reserve the right to at any time during the RFP or contract process to prohibit any further participation by a Proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein. By accessing the HADC website and by downloading this document, each prospective Proposer is thereby agreeing to abide by all terms and conditions listed within this document and further agrees that he/she will inform the CO in writing within 5 days of the discovery of any item listed herein or of any item that is issued thereafter by the HADC that he/she feels needs to be addressed. Failure to abide by this time frame shall relieve the HADC, but not the prospective Proposer, of any responsibility pertaining to such issue.

2.0 Scope of Work

The Housing Authority of DeKalb County hereby requests proposals from qualified firms to provide support and technical assistance services for strategic planning and consulting services related to urban development, from single-building projects and small sites to large, complex urban mixed-use developments. We are seeking particular expertise in projects that have an affordable housing component.

We are seeking the following services that may include but not limited to the following:

- Development of a successful revitalization strategy
- Knowledge of Housing Authority Operations
- Redevelopment Planning
- Financing Requirements
- HUD Rules and Regulations
- Experience in Legal Issues Related to Mixed Income Housing Development
- Relocation Strategy Preparation and Implementation
- Community and Supportive Service Strategies
- Planning and Urban Design
- Land Acquisition Strategies
- Off-Site Development Strategies
- Resident and Community Participation and Involvement
- Stakeholder Development
- Development Partner Procurement
- Development Agreement Negotiation
- Site Master Planning
- Architectural Review
- Demolition and Disposition Planning and Management
- Mixed Income Housing Development
- Mixed Income Housing Finance

HADC may request other needs related to development.

3.0 Proposal Submittal Format

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

| RFP Section | Tab No. | Description |
|-------------|---------|---|
| 3.1.1 | | Form of Proposal: This 1-page form must be fully completed, executed where provided thereon and submitted under this tab as a part of the proposal submittal. |
| 3.1.2 | | Profile of Firm Form: This 2-page form must be fully completed, executed and submitted under this tab as a part of the proposal submittal. |
| 3.1.4 | | Proposed Services: As more fully detailed within Section 2.0, <i>Scope of Proposal/Technical Specifications</i> , of this document, the Proposer shall, at a minimum, clearly detail within the information submitted under this tab documentation showing: |
| 3.1.4.1 | | As detailed within the RFP, the Proposer's Demonstrated Understanding of the HADC's Requirements. |
| 3.1.4.2 | | As detailed within the RFP, the Proposer's Technical Approach (including, if appropriate, labor categories, estimated hours and skill mix) |
| 3.1.4.3 | | As detailed within the RFP, the Proposer's Technical Capabilities |
| 3.1.4.4 | | As detailed within the RFP, the Proposer's Demonstrated Experience in performing similar work and the Proposer's Demonstrated Successful Past Performance (including meeting costs, schedules and performance requirements) of contract work substantially similar to that required by this |

| | | |
|------------------|--|---|
| | | solicitation. |
| 3.1.4.4.1 | | As detailed within the RFP, the Proposer's Demonstrated Experience in performing the work, the firm or individual must include Documentation that the person or firm has at least five years of experience and that each of the Scope of Work duties described can be provided. |
| 3.1.4.5 | | The proposed quality control program; |
| 3.1.4.6 | | A complete description of the products and services the firm provides and resumes of all proposed individuals that will be working directly with HADC. |
| 3.1.5 | | Managerial Capacity/Financial Viability: The Proposer entity must submit under this tab a concise description of its managerial and financial capacity to deliver the proposed services, including brief professional resumes for the persons identified within areas (5) and (6) of <i>Profile of Firm Form</i> . Such information shall include the Proposer's qualifications to provide the services; a description of the background and current organization of the firm (including a current organizational chart). |
| 3.1.5.1 | | Describe the financial strength of the firm, and provide the most audited financial statement if you are willing to disclose them. financial information will remain confidential. |
| 3.1.6 | | Client Information: The Proposer shall submit a listing of former or current clients , including Public Housing Authorities, for whom the Proposer has performed similar or like services to those being proposed herein. The listing shall, at a minimum, include: |
| 3.1.6.1 | | The client's name; |
| 3.1.6.2 | | The client's contact name; |
| 3.1.6.3 | | The client's telephone number; |
| 3.1.6.4 | | The client's principle office and location; |
| 3.1.6.5 | | The size of the firm (number of offices and employees providing the the services; |
| 3.1.6.6 | | A brief narrative description and scope of the service(s) and the dates the services were provided, including rental housing units developed by the firm (including a breakdown between affordable and market rate, and provide a listing of the developments that includes the name of each development, the number of units, the city and the year of completion). Also, provide designs at similar organizations and a brief narrative description of those specific designs including scope; size; cost; principal elements and special features. |

RFP No. – HADC - 2012 – 002

| | | |
|-------|--|---|
| 3.1.7 | | Equal Employment Opportunity: The Proposer must submit under this tab a copy of its Equal Opportunity Employment Policy. |
| 3.1.8 | | Additional Requirements: Provide information pertaining to whether the firm has ever been terminated from a contract or filed suit against a client, and if so, described the circumstances and outcomes. Also, indicate whether the firm or any affiliates has ever been cited with non-compliance with any applicable State or Federal regulation in any prior transaction. |
| 3.1.9 | | HUD Attachments (Other Required Information): HUD Form 5370 <i>C-General Conditions for Non-Construction Contracts Section I (with or without Maintenance Work)</i> , HUD Form 5369 B <i>Instructions to Offerors, Non-Construction</i> , 5369 C - <i>Certifications and Representations of Offerors, Non-Construction Contract</i> , Section 3 <i>Explanation and HUD Form 50070, Drug-Free</i> |

3.1.11 If no information is to be placed under any of the above noted tabs (especially the "Optional" tabs), please place thereunder a statement such as "NO INFORMATION IS BEING PLACED UNDER THIS TAB" or "THIS TAB LEFT INTENTIONALLY BLANK." DO NOT eliminate any of the tabs.

3.1.12 Proposal Submittal Binding Method: It is preferable and recommended that the Proposer bind the proposal submittals in such a manner that the HADC can, if needed, remove the binding (i.e. "comb-type;" etc.) or remove the pages from the cover (i.e. 3-ring binder; etc.) to make copies then conveniently return the proposal submittal to its original condition.

3.2 Pre-Qualification of Proposer(s): 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 HADC's discretion, eliminate that Proposer from consideration, provided that all Proposers were required to submit the same information (in the case of a successful Proposer(s), these requirements shall also apply in the context of the successful Proposer or Proposers).

- 3.3 Proposal Submission:** All proposals must be submitted and time-stamped received in the designated HADC office 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 (each of the 4 separate proposal submittals shall have a cover and extending tabs) of the proposal submittal, shall be placed unfolded in a sealed package and addressed to:

Housing Authority of DeKalb County
Attention: Alicia Pope Procurement Specialist
750 Commerce Drive, Suite 201
Decatur, Georgia 30030

The package exterior must clearly denote the above noted RFP number and must have the Proposer's name and return address. Proposals received after the published deadline will not be accepted.

- 3.3.1 Submission Conditions:** DO NOT FOLD OR MAKE ANY ADDITIONAL MARKS, NOTATIONS OR REQUIREMENTS ON THE DOCUMENTS TO BE SUBMITTED! Proposers are not allowed to change any requirements or forms contained herein, either by making or entering onto these documents or the documents submitted any revisions or additions; and if any such additional marks, notations or requirements are entered on any of the documents that are submitted to the HADC by the Proposer, such may invalidate that proposal. If, after accepting such a proposal, the HADC decides that any such entry has not changed the intent of the proposal that the HADC intended to receive, the HADC may accept the proposal and the proposal shall be considered by the HADC as if those additional marks, notations or requirements were not entered on such. By accessing the HADC website and downloading these documents, each prospective Proposer that does so is thereby agreeing to confirm all notices that the HADC delivers to him/her as instructed, and by submitting a proposal, the Proposer is thereby agreeing to abide by all terms and conditions published herein and by addendum pertaining to this RFP.
- 3.3.2 Submission Responsibilities:** It shall be the responsibility of each Proposer to be aware of and to abide by all dates, times, conditions, requirements and specifications set forth within all applicable documents issued by the HADC, including the RFP document, the documents listed within the

following Section 3.5, and any addenda and required attachments submitted by the Proposer. By virtue of completing, signing and submitting the completed documents, the Proposer is stating his/her agreement to comply with the all conditions and requirements set forth within those documents. Written notice from the Proposer not authorized in writing by the CO to exclude any of the HADC requirements contained within the documents may cause that Proposer to not be considered for award.

3.4 Proposer's Responsibilities - Contact with the HADC: It is the responsibility of the Proposer to address all communication and correspondence pertaining to this RFP process to the Procurement Specialist only. Proposers must not make inquiry or communicate with any other HADC staff member (including members of the Board of Commissioners) pertaining to this RFP. Failure to abide by this requirement may be cause for the HADC to not consider a proposal submittal received from any Proposer who may has not abided by this directive.

3.4.1 Addendums: All questions and requests for information must be addressed in writing to Alicia Pope, Procurement Specialist. The Procurement Specialist will respond to all such inquiries in writing by addendum to all prospective Proposers (i.e. firms or individuals that have obtained the RFP Documents). During the RFP solicitation process, the Procurement Specialist will NOT conduct any *ex parte* (a substantive conversation— “substantive” meaning, when decisions pertaining to the RFP are made— between the HADC and a prospective Proposer when other prospective Proposers are not present) conversations that may give one prospective Proposer an advantage over other prospective Proposers. This does not mean that prospective Proposers may not call the Procurement Specialist—it simply means that, other than making replies to direct the prospective Proposer where his/her answer has already been issued within the solicitation documents, the Procurement Specialist may not respond to the prospective Proposer’s inquiries but will direct him/her to submit such inquiry in writing so that the Procurement Specialist may more fairly respond to all prospective Proposers in writing by addendum.

3.5 Recap of Attachments: It is the responsibility of each Proposer to verify that he/she has downloaded the following attachments pertaining to this RFP, which are hereby by reference included as a part of this RFP:

| RFP Section | Attachment | Attachment Description |
|-------------|------------|--|
| | A | Form of Proposal |
| | B | Form HUD-5370-C, <i>General Conditions for Non-Construction Contracts Section I (with or without Maintenance Work)</i> |
| | C | Form HUD-5369-B, <i>Instructions to Offerors, Non-Construction</i> |
| | D | Form HUD-5369-C, <i>Certifications and Representations of Offerors</i> |
| | E | Section 3 Forms, including explanation |
| | F | Profile of Firm Form |
| | G | Mandatory Contract Clause for Small Purchase Other than Construction |

4.0 PROPOSAL EVALUATION:

4.1 Evaluation Factors: The following factors will be utilized by the HADC to evaluate each proposal submittal received; award of points for each listed factor will be based upon the documentation that the Proposer submits within his/her proposal submittal:

| Evaluation Category | Evaluation Criteria | Max Points | Assigned Points |
|---|---|------------|-----------------|
| Qualifications and Technical Capabilities | Firm profile, Firm's managerial and financial capacity, work history, client lists, resumes and letters of reference | 20 | |
| Demonstrated Experience in Performing Similar Work | Based on work history of similar work providing such services to other PHAs, past performance and/or letter of recommendation | 20 | |
| Demonstrated Understanding of the Requirements | Specialized knowledge, capability and ability based on knowledge and understanding of Scope of Work, available resources, realistic approach to performance of work, and quality of proposed services | 30 | |
| Cost | Based on total costs Offeror proposes to charge and its value | 20 | |
| Overall Quality of Proposal | Based on the opinion of the evaluator | 10 | |
| Section 3 Participation | Based on Section 3 criteria | 10 | |
| Total Points Assigned | HOUSING AUTHORITY OF THE COUNTY OF DEKALB (HADC) | 110 | |

4.2 Evaluation Method:

- 4.2.1 Initial Evaluation for Responsiveness:** Each proposal received will first be evaluated for responsiveness (i.e. meets the minimum of the requirements).
- 4.2.2 Evaluation Packet:** An evaluation packet will be prepared for each evaluator, including the following documents:
- 4.2.2.1** Instructions to Evaluators;
 - 4.2.2.2** Proposal Tabulation Form;
 - 4.2.2.3** Written Narrative Form for each Proposer;
 - 4.2.2.4** Recap of each Proposer’s responsiveness;
 - 4.2.2.5** Copy of all pertinent RFP documents.
- 4.2.3 Evaluation Committee:** The HADC anticipates that it will select a minimum of a three-person committee to evaluate each of the responsive “hard copy” proposals submitted in response to this RFP. PLEASE NOTE: No Proposer shall be informed at any time during or after the RFP process as to the identity of any evaluation committee member. If, by chance, a Proposer does become aware of the identity of such person(s), he/she SHALL NOT make any attempt to contact or discuss with such person anything related to this RFP. As detailed within Section 3.5 of this document, the designated Procurement Specialist is the only person at the HADC that the Proposers shall contact pertaining to this RFP. Failure to abide by this requirement may (and most likely will) cause such Proposer(s) to be eliminated from consideration for award.
- 4.2.4 Evaluation:** The Procurement Specialist will evaluate and award points pertaining to evaluation factors. The appointed evaluation committee, independent of the Procurement Specialist or any other person at the HADC, shall evaluate the responsive proposals submitted and award points pertaining to Evaluation Factors. Upon final completion of the proposal evaluation process, the evaluation committee will forward the completed evaluations to the Procurement Specialist.

- 4.2.5 Potential “Best and Final” Negotiations:** The HADC reserves the right to, as detailed within Section 7.2.N through Section 7.2.R of HUD Procurement Handbook 7460.8 REV 2, conduct a “Best and Final” Negotiation, which may include oral interviews, with all firms deemed to be in the competitive range. Any firm deemed not to be in the competitive range shall be notified of such in writing by the HADC in a timely manner as possible, but in any case within no longer than 5 days after the beginning of such negotiations with the firms deemed to be in the competitive range.
- 4.2.6 Determination of Top-Ranked Proposer:** The points awarded by the evaluation committee shall be combined with the points awarded by the Procurement Specialist to determine the final rankings, which shall be forwarded by the Procurement Specialist to the ED for approval. If the evaluation was performed to the satisfaction of the ED, the final rankings may be forwarded to the Housing Authority Board of Commissioners (BOC) at a scheduled meeting for approval. Contract negotiations may, at the HADC's option, be conducted prior to or after the BOC approval.
- 4.2.6.1 Minimum Evaluation Results:** To be considered to receive an award a Proposer must receive a total calculated average of at least 70 points (of the 110 total possible points detailed within Section 4.1 herein).
- 4.2.6.2 Ties:** In the case of a tie in points awarded, the award shall be decided as detailed within Section 6.12.C of HUD Procurement Handbook 7460.8 REV 2, by “drawing lots or other random means of selection.”
- 4.2.7 Notice of Results of Evaluation:** If an award is completed, all Proposers will receive by e-mail a Notice of Results of Evaluation. Such notice shall inform all Proposers of:
- 4.2.7.1** Which Proposer received the award;
- 4.2.7.2** Where each Proposer placed in the process as a result of the evaluation of the proposals received;
- 4.2.7.3** The cost or financial offers received from each Proposer;
- 4.2.7.4** Each Proposer’s right to a debriefing and to protest.

4.2.8 Restrictions: All persons having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a Proposer entity will be excluded from participation on the HA evaluation committee. Similarly, all persons having ownership interest in and/or contract with a Proposer entity will be excluded from participation on the HADC evaluation committee.

- 5.0 Mistakes in Proposal Submitted:** 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 HADC discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to the HADC, for his/her review. This mistake must be corrected before the issuance of any contract documents. Such correction shall not operate to give any Proposer an advantage over another.
- 6.0 Disqualification of Proposers:** Any one or more of the following shall be considered as sufficient for the disqualification of a prospective Proposer and the rejection of his/her proposal:
- 6.1 Evidence of collusion among prospective Proposers:** Participants in such collusion will receive no recognition as Proposers or Proposers for any future work with HADC until such participant shall have been reinstated as a qualified bidder or Proposer. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.
- 6.2** More than one proposal for the same work from an individual, firm, or corporation under the same or different name(s).
- 6.3** Lack of competency, lack of experience and/or lack of adequate machinery, plant and/or other resources.
- 6.4** Unsatisfactory performance record as shown by past work for HADC or with any other local, state or federal agency, judged from the standpoint of workmanship and progress. Incomplete work, which in the judgment of HADC, might hinder or prevent prompt completion of additional work, if awarded.
- 6.5** Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
- 6.6** Failure to comply with any qualification requirements of HADC.

- 6.7** Failure to list, if required, all subcontractors (if subcontractors are allowed by HADC) who will be employed by the successful Proposer(s) to complete the work of the proposed contract.
- 6.8** As required by the RFP documents, failure of the successful Proposer to be properly licensed by the City, County and/or the State of Georgia and/or to be insured by a commercial general liability policy and/or worker's compensation policy and/or business automobile liability policy, if applicable. If a Proposer receives an award unless otherwise waived in the Contract, the Contractor will be required to provide an original Certificate of Insurance confirming the following minimum requirements to HADC within 10 days of contract signature
- 7.0 CONTRACT AWARD:**
- 7.1 Contract Award Procedure:** If a contract is awarded pursuant to this RFP, the following detailed procedures will be followed:
- 7.1.1** By completing, executing and submitting the Form of Proposal, the “Proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by the HADC, including the contract clauses already attached. Accordingly, the HADC has no responsibility to conduct after the submittal deadline any negotiations pertaining to the contract clauses already published.
- 7.1.2 Contract Conditions:** The following provisions are considered mandatory conditions of any contract award made by the HADC pursuant to this RFP:
- 7.1.3 Contract Form:** The HADC will not execute a contract on the successful Proposer’s form--contracts will only be executed on the HADC form and by submitting a proposal the successful Proposer agrees to do so (please note that the HADC reserves the right to amend this form as the HADC deems necessary). However, the HADC will during the RFP process (prior to the submittal deadline) consider any contract clauses that the Proposer wishes to include therein and submits in writing a request for the HADC to do so; but the failure of the HADC to include such clauses does not give the successful Proposer the right to refuse to execute the HADC's contract form. It is the responsibility of each prospective Proposer to notify the HADC, in writing, prior to submitting a proposal, of any contract clause that he/she is not willing to include in the final executed contract and abide by. The HADC will consider and respond to such written correspondence, and if the prospective Proposer is not willing to abide by the HADC's response

(decision), then the prospective Proposer shall be deemed ineligible to submit a proposal.

7.1.3.1 Please note that the HADC has no legal right or ability to (and will not) at any time negotiate any clauses contained within ANY of the HUD forms included as a part of this RFP.

7.1.4 Assignment of Personnel: The HADC shall retain the right to demand and receive a change in personnel assigned to the work if the HADC believes that such change is in the best interest of the HADC and the completion of the contracted work.

Unauthorized Sub-Contracting Prohibited: The successful Proposer shall not assign any right, nor delegate any duty for the work proposed pursuant to this RFP (including, but not limited to, selling or transferring the contract) without the prior written consent of the CO. Any purported assignment of interest or delegation of duty, without the prior written consent of the CO shall be void and may result in the cancellation of the contract with the HADC, or may result in the full or partial forfeiture of funds paid to the successful Proposer as a result of the proposed contract; either as determined by the CO.

7.2 Contract Period: The HADC anticipates that it will initially award a contract for the period of 1 year with the option, at the HADC's discretion, of 4 additional one-year option periods.

7.3 Licensing and Insurance Requirements: Prior to award (but not as a part of the proposal submission) the *successful Proposer* will be required to provide:

7.3.1 An original certificate evidencing the Proposer's current industrial (worker's compensation) insurance carrier and coverage amount;

7.3.2 An original certificate evidencing General Liability coverage, naming the HADC as an additional insured, together with the appropriate endorsement to said policy reflecting the addition of the HADC as an additional insured under said policy (minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$5,000,000, together with damage to premises and fire damage of \$50,000 and medical expenses any one person of \$5,000), with a deductible of not greater than \$1,000;

7.3.3 An original certificate showing the Proposer's professional liability and/or "errors and omissions" coverage (minimum of \$1,000,000 each occurrence,

general aggregate minimum limit of \$5,000,000), with a deductible of not greater than \$1,000;

7.3.4 An original certificate showing the Proposer's automobile insurance coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this program, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$50,000/\$100,000 and medical pay of \$5,000;

7.3.5 A copy of the Proposer's business license allowing that entity to provide such services within the State of Georgia;

7.3.6 If applicable, a copy of the Proposer's license issued by the State of Georgia licensing authority allowing the Proposer to provide the services detailed herein.

7.5 Right to Negotiate Final Fees: The HADC shall retain the right to negotiate the amount of fees that are paid to the successful Proposer, meaning the fees proposed by the top-rated Proposer may, at the HADC's discretion, be the basis for the beginning of negotiations. Such negotiations shall begin after the HADC has chosen a top-rated Proposer. If such negotiations are not, in the opinion of the CO successfully concluded within 5 business days, the HADC shall retain the right to end such negotiations and begin negotiations with the next-rated Proposer.

8.0 Award of Proposal(s): The award shall be to the top-rated responsive and responsible Proposer(s) determined by the evaluation process, presentations (if requested), negotiations, Best & Final Offers (BAFO), HADC's business needs, Proposer's ability to deliver within budget the specified items in a timely manner, and in HADC's opinion, it is in the best interest to accept the proposal after preferences for Section 3 business concerns are considered. HADC reserves the right to award multiple contracts and will not consider "All or None" proposals or bids.

9.0 Right to Protest:

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

- 9.1.1** An alleged aggrieved “Protestant” is a prospective Proposer or Proposer who feels that he/she has been treated inequitably by HADC and wishes HADC to correct the alleged inequitable condition or situation. To be eligible to file a protest with HADC 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. recipient of the RFP documents) when the alleged situation occurred. HADC has no obligation to consider a protest filed by any party that does not meet these criteria.
- 9.1.2** Any actual or prospective contractor may protest the solicitation or award of a contract for material violation of HADC’s Procurement Policy. Any protest against an HADC solicitation must be received before the due date for receipt of bids or proposals and any protest against the award of a contract must be received within ten calendar days after contract award or the protest will not be considered.

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

APPEAL OF RFP NO. HADC – 2012 - 002
Housing Authority of DeKalb County
Attn: Alicia Pope, Procurement Specialist
750 Commerce Drive,
Suite 201
Decatur GA., 30030

10.0 Disputes Under the Contract:

- 10.1 Procedures:** In addition to the procedures detailed within Form HUD-5370 C General Conditions for Non-Construction Contracts, in the event that any matter, claim, or dispute arises between the parties, whether or not related to this RFP or any resulting contract, both parties shall be subject to nonbinding mediation if agreed to by both parties within thirty days of either party making a request in writing.

- 10.2** The parties further agree that if the matter, claim or dispute is not settled during mediation, it shall thereafter be submitted to binding arbitration. The parties shall make a good-faith attempt to mutually agree upon an arbitrator. If the parties cannot mutually agree upon an arbitrator after reasonable efforts have been exerted, then the matter, claim or dispute shall be submitted to the American Arbitration Association for final and binding arbitration. Unless extended by the arbitrator for good cause shown, the final arbitration hearing shall begin no later than two months after selection of the arbitrator.
- 11.0 Additional Considerations:**
- 11.1 Escalation:** Unless otherwise specified within the RFP documents the percentage of gross receipts reflected in the proposal shall remain firm with no provision for changes during the term of any resulting contract.
- 11.2 Required Permits and Licenses:** Unless otherwise stated in the RFP documents, all federal, state or local permits and licenses which may be required to provide the services ensuing from any award of this RFP, whether or not they are known to either the HADC or the Proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the successful Proposer and all offers submitted by the Proposer shall reflect all costs required by the successful Proposer to procure and provide such necessary permits or licenses.
- 11.3 Taxes:** All persons doing business with HADC are hereby made aware that HADC is exempt from paying Georgia State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.
- 11.4 Government Standards:** It is the responsibility of the prospective Proposer to ensure that all items and services proposed conform to all local, state and federal law concerning safety (OSHA) and environmental control 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.
- 11.5 Delivery:** 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 HADC may, at its option, rescind the finalized contract under the termination clause herein and seek compensatory damages as provided by law.

- 11.6 Work on HADC Property:** If the successful Proposer's work under the contract involves operations by the successful Proposer on HADC premises, the successful Proposer shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, shall indemnify HADC, 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.
- 11.7 Official, Agent and Employees of the HADC 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 HADC 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.
- 11.8 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 HADC. Also, any substitution of subcontractors must be approved in writing by HADC prior to their engagement.
- 11.9 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 Social Security, 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.
- 11.10 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.
- 11.11 Severability:** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held invalid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 11.12 Waiver of Breach:** A waiver of either party of any terms or conditions of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of

them shall be in limitation of any other remedy, right, obligation or agreement of either party.

- 11.13 Time of the Essence:** Time is of the essence as to each provision in which a timeframe for performance is provided in this RFP. Failure to meet these time frames may be agreement or the remainder of such provision (as the case may be), and the application damages under the contract.
- 11.14 Limitation of Liability:** In no event shall HADC be liable to the successful Proposer for any indirect, incidental, consequential or exemplary damages.
- 11.15 Indemnity:** The Contractor shall indemnify and hold harmless HADC and its officers, agents, representatives, and employees from and against all claims, losses, damages, actions, causes of action and/or expenses resulting from, brought for, or on account of any personal injury or property damage received or sustained by any persons or property growing out of, occurring, or attributable to any work performed under or related to this Agreement, resulting in whole or in part from the negligent acts or omissions of the Contractor, any subcontractor, or any employee, agent or representative of the Contractor or any subcontractor, **AND REGARDLESS OF WHETHER CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF HADC. CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS INDEMNITY CONTROLS OVERALL OTHER PROVISIONS IN THE AGREEMENT, SURVIVES TERMINATION OF THIS AGREEMENT, AND APPLIES TO CLAIMS AND LIABILITY ARISING OUT OF THE SOLE OR CONCURRENT NEGLIGENCE OF HADC.**
- 11.16 Public/Contracting Statutes.** HADC is a governmental entity as that term is defined in the procurement statutes. HADC and this RFP and all resulting contracts are subject to federal, state and local laws, rules, regulations and policies relating to procurement.
- 11.17 Termination:** Any contract resulting from this RFP may be terminated under the following conditions:
- 11.17.1 For Termination for Cause:** As detailed within Form HUD-5370 C, General Conditions for Non-Construction Contracts, attached hereto:
- 11.17.1.1** HADC may terminate any and all contracts for default at any time in whole or in part, if the contractor fails to perform any of the provisions of any contract, so fails to pursue the work as to endanger performance in accordance with the terms of the RFP or any resulting contracts, and after receipt of written notice from HADC, fails to correct such failures within seven (7) days or such other period as HADC may authorize or require.

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

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

11.17.2 Termination for Convenience: In the sole discretion of the Contracting Officer, HADC may terminate any and all contracts resulting from This RFP in whole or part upon ten days prior notice to the Contractor when it is determined to be in the best interest of HADC.

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

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

Additional Information to Consider:

Executive Order 11061: Both parties agree that they will comply with this order, which directs the Secretary of HUD to take all action, which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.

Lapse in Insurance Coverage: In the event Contractor fails to maintain insurance as required by a resulting contract, the Contractor shall immediately cure such lapse in insurance coverage at the Contractor's expense, and pay HADC in full for all costs and expenses incurred by HADC under this Contract as a result of Contractor's failure to maintain insurance as required, including costs and reasonable attorney's fees relating to HADC's attempts to cure such lapse in insurance coverage. Such costs and attorney fees, not to exceed fifteen hundred and 00/100 dollars (\$1,500.00), shall be automatically deducted from monies or payments owed to Contractors. Moreover, HADC shall retain from monies or payments owed to Contractor by HADC five percent (5%) of the value of the Contract and place this retainage into an account to cover HADC's potential exposure to liability during the period of such lapse. This retainage shall be held by HADC until six (6) months after the term of the resulting contract has ended or has otherwise been terminated, cancelled or expired and shall be released if no claims are received or lawsuits filed against HADC for any matter that should have been covered by the required insurance.

The remainder of this page was left blank intentionally

ATTACHMENTS

| |
|---|
| Attachment A Form of Proposal |
| Attachment B HUD Form 5370 C I/II (General Conditions for Non-Construction Contracts) |
| Attachment C HUD Form 5369 B (Instruction to Offerors) |
| Attachment D HUD Form 5369 C (Certification and Representation of Offerors) |
| Attachment E Section 3 Explanation |
| Attachment F Profile of Firm |
| Attachment G Mandatory Contract Clause for Small Purchase Other than Construction |

Certifications and Representations of Offerors
Non-Construction Contract

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

TO: HOUSING AUTHORITY OF THE COUNTY OF DEKALB

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)

- Black Americans Asian Pacific Americans
- Hispanic Americans Asian Indian Americans
- Native Americans Hasidic Jewish Americans

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

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

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

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

4. Organizational Conflicts of Interest Certification

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

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

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

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

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

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

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

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

TO BE SUBMITTED WITH BID PROPOSAL

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 11/30/2008)

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

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

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- (d) proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

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

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

HOUSING AUTHORITY OF DEKALB COUNTY

Instructions to Bidders for Contracts

Public and Indian Housing Programs

Table of Contents

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

1. Bid Preparation and Submission

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

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

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

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

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

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

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

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

2. Explanations and Interpretations to Prospective Bidders

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

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

3. Amendments to Invitations for Bids

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

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

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

4. Responsibility of Prospective Contractor

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

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

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

5. Late Submissions, Modifications, and Withdrawal of Bids

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

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

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

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

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

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

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

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

6. Bid Opening

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

7. Service of Protest

(a) Definitions. As used in this provision:

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

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

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

HOUSING AUTHORITY OF DEKALB COUNTY
750 COMMERCE DRIVE, SUITE 201
DECATUR, GA 30030

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

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

8. Contract Award

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

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

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

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

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

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

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

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

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

10. Assurance of Completion

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

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

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

(3) a 20 percent cash escrow;

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

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

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

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

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

11. Preconstruction Conference (applicable to construction contracts)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Instructions to Offerors Non-Construction

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



- 03291 -

HOUSING AUTHORITY OF THE COUNTY OF DEKALB

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

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

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

Profile of Firm

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

(1) Prime ___ Joint Venture/Partner ___ 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 [Location]; (c) Former Name and Year Established (if applicable); (d) Name of Parent Company and Date Acquired (if applicable).

(5) Identify Principals/Partners in Firm (Provide resumes for each under Tab No. 3)

| 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. 3 a brief resume for each. (Do not duplicate any resumes required above):

| NAME | TITLE |
|------|-------|
| | |
| | |
| | |

(7) Bidder's Diversity Statement: You must check 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): _____%

SWMBE Certification Number: _____

Certified by (Agency): _____

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

PROFILE OF FIRM FORM continued (Attachment C)

(This Form must be fully completed and placed under Tab No. 3 of the "hard copy" tabbed proposal submittal.)
(Initial after each of the following where designated)

(8) Federal Tax ID No.: _____

(9) City of Decatur Business License No.: _____

(10) State of Georgia License Type and No.: _____

(11) Has your firm or any member of your firm been a party to litigation with a public entity? If yes, when, with whom and state the circumstances and any resolution.

(12) Has your firm or any member of your firm ever sued or been sued by the Housing Authority of DeKalb or its affiliated entities? If yes, when and state the circumstances and any resolution of the lawsuit.

(13) Has your firm or any member of your firm ever had a claim brought against because of breach of contract or nonperformance? If yes, when and state the circumstances and any resolution of the matter.

(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 Texas, or any local government agency within or without the State of Georgia? Yes No Initials _____
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 HADC? Yes No Initials _____
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 Offerer has not colluded, conspired, connived or agreed, directly or indirectly, with any Offerer 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 Offerer, to fix overhead, profit or cost element of said proposal price, or that of any other Offerer or to secure any advantage against the HADC or any person interested in the proposed contract; and that all statements in said proposal are true. Initials _____

(17) Verification Statement: The undersigned Offerer 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 HADC discovers that any information entered herein is false, that shall entitle the HADC to not consider nor make award or to cancel any award with the undersigned party.

Initials _____

(18) In performing this contract, the contractor(s) shall comply with any and all applicable federal, state or local laws including but not limited to: Occupational Safety & Health, Equal Employment Opportunity, Immigration and Naturalization, The Americans with Disabilities Act, State Tax and Insurance Law, and the Fair Housing Act. Initials _____

Section 3 Business Preference Explanation

- 1.0 Introduction: The purpose of this document is to, in simplified terms, explain to bidders/proposers major issues pertaining to the Section 3 Business Preference program required by the HA's funding source, the U.S. Department of Housing and Urban Development (HUD). Also, hereinafter, a Section 3 Business Preference will be referred to as "Preference."
- 2.0 What is Section 3?
- 2.1 Section 3 is a provision of the Housing and Urban Development Act of 1968, which recognizes that HUD funds are typically one of the largest sources of federal funding expended in communities, including DeKalb County, GA. Section 3 is intended to ensure that when a contractor has need to hire additional people as the result of receiving a contract from the DeKalb County Housing Authority (HADC), preference must be given to low- and very low-income persons residing in DeKalb County, GA (Section 3 resident), or Section 3 business concerns.
- 2.2 The requirements pertaining to Section 3 apply only to purchases and contracts the HA completes for work--the requirements of Section 3 DO NOT apply to purchases or contracts the HA completes solely for commodities or equipment; meaning, "no work provided, no Section 3 required."
- 2.3 Section 3 is race and gender neutral in that preferences are based on income-level and location.
- 3.0 What does the term "Section 3 resident" mean?
- 3.1 A "Section 3 resident" is:
- 3.1.1 a public housing resident of the HA; or
- 3.1.2 a low- or very low-income resident of DeKalb County, GA.
- 3.1.2.1 Low- and very low-income within DeKalb County, GA, are defined as residents within the following income levels for FY 2011 (Median Income = \$68,300):

| Income Limit Category | (1) Person | (2) Persons | (3) Persons | (4) Persons | (5) Persons | (6) Persons | (7) Persons | (8) Persons |
|-----------------------|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Very Low (50%) | \$23,950 | \$27,350 | \$30,750 | \$34,150 | \$36,900 | \$39,650 | \$42,350 | \$45,100 |
| Extremely Low (30%) | \$14,350 | \$16,400 | \$18,450 | \$20,500 | \$22,150 | \$23,800 | \$25,450 | \$27,100 |
| Low (80%) | \$38,300 | \$43,750 | \$49,200 | \$54,650 | \$59,050 | \$63,400 | \$67,800 | \$72,150 |

Section 3 Business Preference Explanation

- 4.0 What does the term "Section 3 business concern" mean?
- 4.1 A "Section 3 business concern" is a business that can provide evidence that it meets one of the following:
- 4.1.1 It is 51% or more owned by a Section 3 resident; or
 - 4.1.2 At least 30% of its full time employees include person that are currently Section 3 residents, or within 3 years of the date of first employment with the business concern were Section 3 residents; or
 - 4.1.3 Provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications within the preceding 3.1.1 or 3.1.2.
- 5.0 Is participation in Section 3 optional?
- 5.1 Except for purchases or contracts solely for commodities and equipment, as a part of the solicitation the HA will offer all bidders and proposers the option of a Preference.
- 5.2 In response to a competitive solicitation (quotes; bids; RFP's), bidders and proposers are not required to respond to the HA with a claim of a Preference (meaning, such claim is optional and failure to respond with a claim of a Preference will not cause the bidder or proposer to be deemed non-responsive); however, if a bidder or proposer does claim a Preference, then the HA will consider, investigate, and determine the validity of each such claim for a Preference.
- 5.3 Regardless of whether or not a bidder or proposer claims a Preference in response to a solicitation, the recipient of the award will be required to, "to the greatest extent feasible," implement the requirements of Section 3 during the ensuing awarded contract term.
- 6.0 Must a contractor receiving an award from the HA take part in the Section 3 program?
- 6.1 The short answer is "Yes," as detailed following, each contractor must, "to the greatest extend feasible," take part in the program.
- 6.1.1 If the contractor wishes, he/she may claim a Preference during the competitive solicitation process.
 - 6.1.1.1 Pertaining to Quotations for Small Purchases (QSP's), the HA will give a Preference of 10% to any quoter deemed to be eligible to receive such Preference ("deemed," based on

Section 3 Business Preference Explanation

information the quoter submits in response to the QSP issued). This means that for a quoter deemed eligible to receive a Preference, though he/she, for example, submits a quote of \$10,000, such quote will be considered by the HA to be \$9,000 (10% less), even though, if awarded, the HA will pay the quoter the full \$10,000 originally quoted.

6.1.1.2 Pertaining to Invitations For Bids (IFB's), the HA will give a Preference based upon the following:

| Preference = lesser of: | |
|---|---|
| When the lowest responsive bid is less than \$100,000 | 10% of that bid or \$9,000 |
| When the lowest responsive bid is: | |
| At least \$100,000 but less than \$200,000 | 9% of that bid, or \$16,000 |
| At least \$200,000 but less than \$300,000 | 8% of that bid, or \$21,000 |
| At least \$300,000 but less than \$400,000 | 7% of that bid, or \$24,000 |
| At least \$400,000 but less than \$500,000 | 6% of that bid, or \$25,000 |
| At least \$500,000 but less than \$1,000,000 | 5% of that bid, or \$40,000 |
| At least \$1,000,000 but less than \$2,000,000 | 4% of that bid, or \$60,000 |
| At least \$2,000,000 but less than \$4,000,000 | 3% of that bid, or \$80,000 |
| At least \$4,000,000 but less than \$7,000,000 | 2% of that bid, or \$105,000 |
| \$7,000,000 or more | 1 1/2% of lowest responsive bid, with no dollar limit |

6.1.1.3 Pertaining to Request For Proposals (RFP's) and Request For Qualifications (RFP/QBS), the HA will give a Preference based upon the following:

| MAX POINT VALUE | FACTOR TYPE | FACTOR DESCRIPTION |
|-----------------|-------------|--|
| | Objective | SECTION 3 BUSINESS PREFERENCE PARTICIPATION: (NOTE: A maximum of 15 points awarded). |
| 15 points | | Priority I, Category 1a: 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. |
| 13 points | | Priority II, Category 1b: 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 |

Section 3 Business Preference Explanation

| | | |
|-----------|--|--|
| | | date of first employment with the business concern, were residents of the Section 3-covered housing development. |
| 11 points | | Priority III, Category 2a: Business concerns that are 51 percent or more owned by residents of any other housing development or developments. |
| 9 points | | Priority IV, Category 2b: 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. |
| 7 points | | Priority V, Category 3: Business concerns participating in HUD Youth-build programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended. |
| 5 points | | Priority VI, Category 4a: 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. |
| 3 points | | Priority VII, Category 4b: Business concerns that subcontract in excess of 25 percent of the total amount of subcontracts to Section 3 business concerns. |
| 15 points | | Maximum Preference Points (Additional) |

- 6.1.2 It is possible that a contractor may demonstrate, to the HA's satisfaction, that he/she has made a good faith and reasonable effort to comply with the requirements of Section 3, but it is not feasible to implement any portion of the Section 3 program. Such failure must be fully documented by the contractor and approved by the HA or that contractor may be deemed not responsible by the HA and the contract may be, at the HA's discretion, not awarded or terminated.

Section 3 Business Preference Explanation

- 7.0 Be aware that, as detailed within §138.38, the following Section 3 Clause will be a part of every applicable contract the HA executes, and when a contractor executes the contract he/she is thereby agreeing to comply with the following:

SECTION 3 CLAUSE

- A. The work to be performed under this contract is project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and 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 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the Section 3 covered project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
- C. The contractor will send to each labor organization or representative of workers with which s/he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- D. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135, the contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of this regulation.
- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors and assigns to

Section 3 Business Preference Explanation

those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided and to such sanctions as are specified by 24 CFR, Part 135.

- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).



THE SECTION 3 CLAUSE

[24 CFR 135]

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

B. The parties to this contract agree to comply with HUD's regulation in 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 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 the 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 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 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 in 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 regulation in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section (7b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

I have read the above information and am fully aware of its contents.

Contractor:


Sign your name & date

Bidders are to sign and submit this page with bid proposal.

FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work®



Understanding the Georgia E-Verify Requirements and How it Impacts My Business

Presented by:

Jessica T. Cook, Esq.

Phone: (404) 231-1400

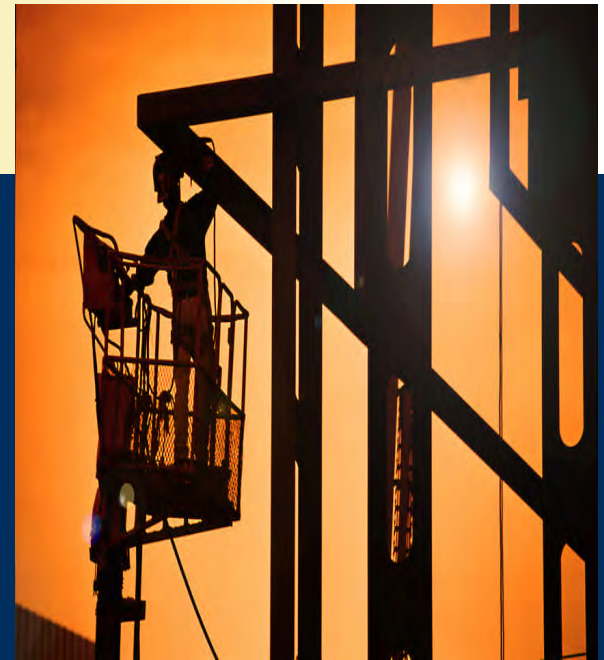
Email: jcook@laborlawyers.com

www.laborlawyers.com

Atlanta · Charlotte · Chicago · Columbia · Dallas · Denver · Fort Lauderdale · Houston · Irvine · Kansas City · Las Vegas
Louisville · New Jersey · New Orleans · Orlando · Philadelphia · Portland ME · Portland OR · San Diego · San Francisco · Tampa

Overview

- Requirements for Government and Public Contractors
- E-Verify for Georgia Employers
- I-9 Forms/E-Verify Pointers



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Important Dates



- HB 87 Passed April 14, 2011.
- Governor signed law on May 13, 2011.
- Effective Date: July 1, 2011.

- Private Employer E-Verify effective:
 - Jan. 1, 2012 – 500 or more employees;
 - July 1, 2012 – 100 to 499 employees;
 - July 1, 2013 – 11 to 99 employees.

FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Public Employer Contracts

- Public Employers:
 - Cannot enter into contract for physical performance of services unless contractor uses E-Verify.
 - Bid must include contractor's signed, notarized affidavit stating:
 - Uses E-Verify;
 - E-Verify ID # & authorization date;
 - Will obtain affidavit from subcontractors.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com • Phone (404) 231-1400

Public Employer Contracts - Subcontractors



- Subcontractors must:
 - Use E-Verify;
 - Submit signed, notarized affidavit to contractor at time of contract;
 - Provide contractor with affidavits/documents from any sub-subcontractor(s) within 5 business days of receipt.

FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

In Lieu of Affidavit

- Contractor, subcontractor, sub-subcontractor with no employees or will not hire employees to fulfill terms of contract, must provide:
 - Copy of state issued driver's license or ID card;
 - Driver's license or ID card must be issued by US state verifying lawful immigration status prior to issuance of document.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

In Lieu of Affidavit - Requirements

- Contractor is required to submit all documents received from subcontractor and sub-subcontractor to public employer within five days of receipt.
- Documents may be transmitted electronically.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Compliance Reports

- Each year by December 31, public employer must submit compliance report to state auditor containing:
 - Public Employer's E-Verify user # and authorization date;
 - Contractor's legal name, address , E-Verify number and date of contract.
- State auditor will conduct annual compliance audits & publish results on department's website.
- 30 days to correct any violations.



FISHER & PHILLIPS LLP

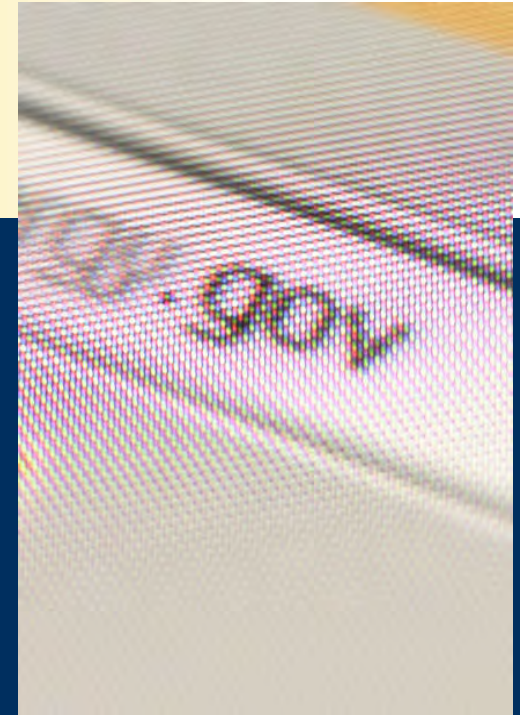
ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Enforcement

- Subject to funding, Commissioner required to conduct 100+ random audits per year of public employers and contractors.
- Commissioner also may conduct an audit based upon reasonable grounds to suspect a violation.
- Violators listed on State website – identity, nature of contract, date of conviction.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Penalties

- Contractors or subcontractors convicted for false statements - prohibited from bidding on or entering public contract for 12 months.
- No liability for unknowing or unintentional acceptance of a bid in violation of this section.
- Presumption of good faith in receiving and acting upon an affidavit that meets requirements – may rely on as true and correct.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Additional Penalties

- Any person knowingly or willfully making false statements in an affidavit guilty of crime against public administration.
- Punishment – fine of not more than \$1000 and/or imprisonment for not less than one year and not more than 5 years.



FISHER & PHILLIPS LLP

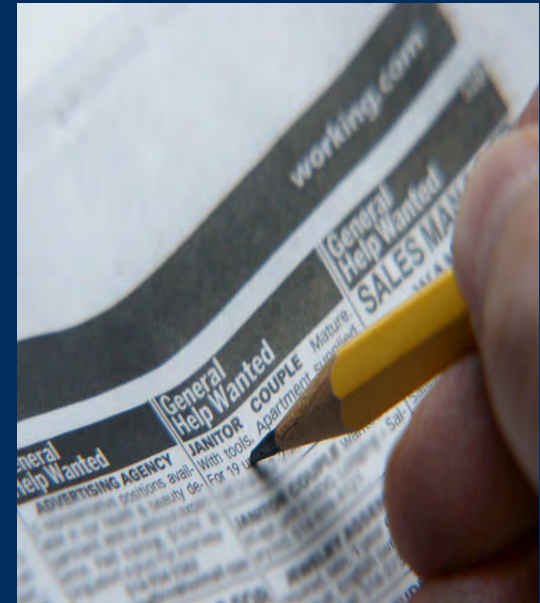
ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

E-Verify for Private Employers

- Georgia employers with more than ten employees must enroll in and use E-Verify as of the following dates:
 - 500 or more employees - 1/1/2012;
 - 100-499 employees - 7/1/2012;
 - 11-99 employees - 7/1/2013.
- Good faith violation may be corrected within 30 days.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Determining Number of Employees for E-Verify Requirement

- Employee is person:
 - Employed on Jan. 1;
 - Working no less than 35 hours per week;
 - Who works under the direction and supervision of an employer;
 - To whom you issue W-2 or for whom you withhold FICA, or federal or state income tax from compensation.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Enforcement of E-Verify Requirements

- Must prove E-Verify use or exemption to obtain/renew business license, occupational tax certificate, document to operate business - use standardized affidavit.
- Misdemeanor to provide false or misleading evidence in affidavit.
- Attorney General will be authorized to conduct an investigation and bring criminal or civil actions, as necessary, to enforce this provision.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Public Benefits

- Any agency or political subdivision providing or administering a public benefit must obtain at least one “secure and verifiable” document from every applicant for the benefit and execute sworn affidavit stating applicant is 18 yrs or older and is:
 - A US citizen or permanent resident; or
 - A qualified alien or nonimmigrant under the INA and lawfully present in the US and provide alien number .



FISHER & PHILLIPS LLP

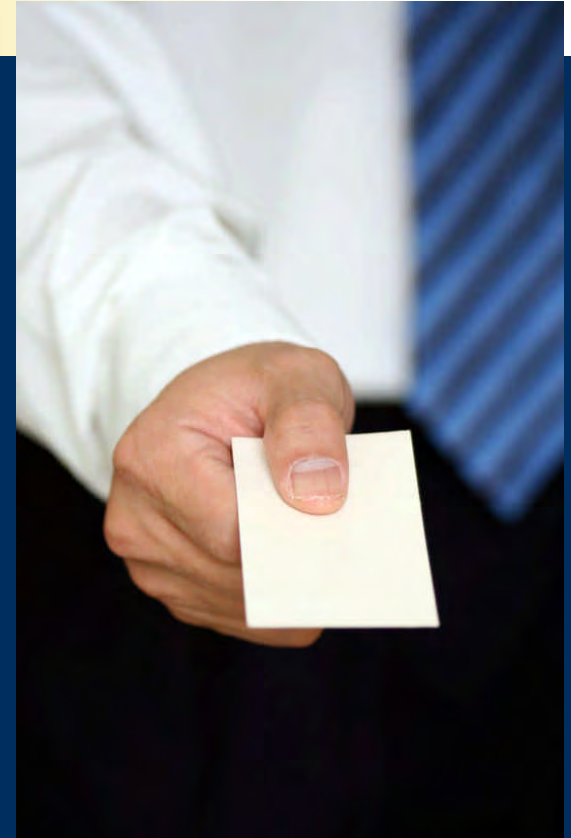
ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com • Phone (404) 231-1400

Secure and Verifiable Identity Document

- Document issued by a state or federal jurisdiction or recognized by the US government.
- Excludes foreign consular documents.
- Document approved and posted by Attorney General.
- On or after Jan. 1, 2012 – only accept secure and verifiable document for official purpose.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Immigration Enforcement Review Board

- 7 members appointed by Governor, Speaker of House & Lt. Governor.
- Authority to review/investigate complaints against public agency or employee.
- Sanctions for knowing/willful violation:
 - revocation of qualified local government status, loss of state appropriated funds, and fine between \$1000 to \$5000.



FISHER & PHILLIPS LLP

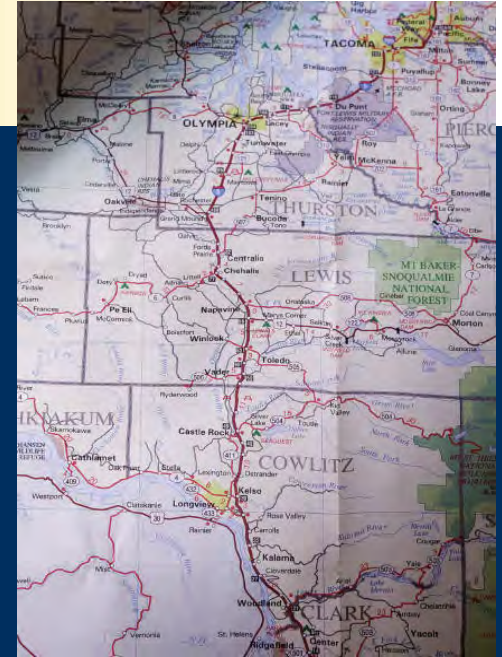
ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

County/Municipal Corporation Requirements

- Beginning Dec. 31, 2012, and each year after, any county or municipal corporation issuing documents to operate a business must provide compliance report to Department of Audits and Accounts (DAA):
 - Identifying each license or certificate issued within preceding 12 months; and
 - Name of person/business & E-Verify #.
- DAA to audit 20% of reporting agencies, subject to funding.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Public Officers and Employees - Penalties

- Any agency head, public official or employee who violates the SAVE, E-Verify, or other requirements for public employers and for state contracts shall:
 - be fined up to \$10,000,
 - pay restitution to the state or local government; and
 - be removed from office.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Legal Challenge - Status

- Lawsuit filed in Federal Court on June 2 seeking declaratory and injunctive relief.
- Judge Thrash heard arguments from both sides on June 20.
- Judge issued preliminary injunction on June 27, 2011.
- Injunction blocks implementation of criminal provisions.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

E-VERIFY - Rules

- Cannot use to re-verify employment authorization of current/existing employees (unless Federal Contract)
- Must allow employees to contest a mismatch (Tentative Nonconfirmation) and take no adverse action against employee while case is being resolved
- Cannot use to discriminate



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com • Phone (404) 231-1400

Implementation – Notifying Prospective Employees

This Employer Participates in E-Verify



The employer will provide the Social Security Administration (SSA) and, if necessary, the Department of Homeland Security (DHS), with information from each new employee's Form I-9 to confirm work authorization.

IMPORTANT: If the Government cannot confirm that you are authorized to work, this employer is required to provide you written instructions and an opportunity to contact SSA and/or DHS before taking adverse action against you, including terminating your employment.

Employees may not use E-Verify to present job applicants or to reverify current employees and may not limit or influence the choice of documents presented for use on the Form I-9.

Employment Verification  **Done.**

For more information on E-Verify, please contact DHS at:
1-888-464-4218


 

© 2007 U.S. GOVERNMENT PRINTING OFFICE: 2007 500-1042

- Participating employers are required to post the English and Spanish notice provided by DHS

Implementation – Notifying Prospective Employees

**IF YOU HAVE THE RIGHT TO WORK,
Don't let anyone take it away.**



If you have a legal right to work in the United States, there are laws to protect you against discrimination in the workplace.

You should know that –
No employer can deny you a job or fire you because of your national origin or citizenship status.

In most cases employers cannot require you to be a U.S. citizen or permanent resident or refuse any legally acceptable documents.


If any of these things have happened to you, you may have a valid charge of discrimination that can be filed with the OSC. Contact the OSC for assistance in your own language.

Call 1-800-255-7688. TDD for the hearing impaired is 1-800-237-2515.

In the Washington, D.C., area, please call 202-616-5594. TDD 202-616-5525

Or write to:
The Office of Special Counsel
Civil Rights Division
U.S. Department of Justice
P.O. Box 27725,
Washington, DC 20038-7728

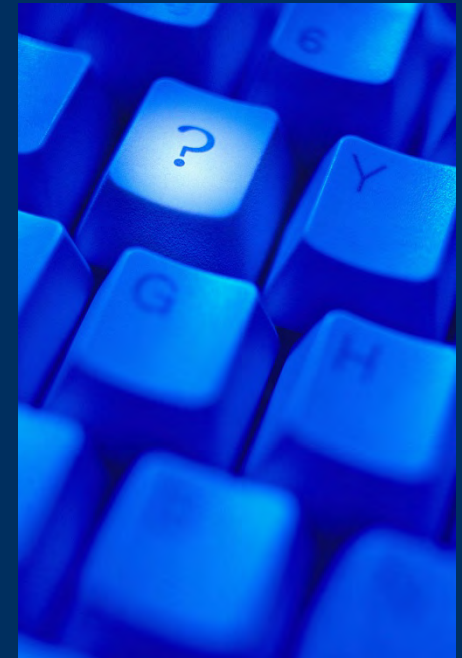
U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for
Immigration-Related Unfair
Employment Practices



- Participating employers are also required to post the Right to Work Poster

Submitting E-Verify Query

- With electronic I-9 system, information from Sections 1 and 2 of I-9 Form automatically submitted to E-Verify system
- Information submitted includes: citizenship status checked, employee's name, Social Security number, date of birth, hire date and document expiration dates



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 240-4224

Photo Match

- Occurs when you create a case for an employee who presents one of following for I-9 Form:
 - U.S. Passport or Passport Card
 - Permanent Resident Card (I-551)
 - Employment Authorization Document (I-766)
- Must make a copy of the Employee's I-9 form photo document and retain with I-9 form



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Photo Match – Follow-Up

- Compare photo displayed by E-Verify to photo on the actual document or a copy
- Reasonably identical?
- Do not compare photo displayed by E-Verify to the employee directly
- Take into account minor variations in shading/detail



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Initial Cases Results

- **Employment Authorized – Employment eligibility verified – information matches SSA and/or DHS records**
- **SSA Tentative Nonconfirmation (SSA TNC) – Social Security information could not be verified**
- **DHS Tentative Nonconfirmation (DHS TNC) – Information matches SSA records but not DHS records**
- **DHS Verification In Process – case referred to DHS**



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 240-5846

Tentative Nonconfirmation (TNC)

- Promptly notify employee of TNC – discuss in private setting
- Print Notice to Employee of TNC
- Employee may contest or not contest case result - checks box on Notice
- Contest : Initiate referral to SSA/DHS
- Not Contest – acknowledges employer may terminate employment
- Employee and HR sign original Notice – keep original & give employee copy



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Referral to SSA or DHS

- Employee Contests - initiate referral
- Print referral - review information, sign and provide copy to employee
- Employee has 8 federal government workdays to visit SSA or contact DHS
- May not terminate, suspend, delay training or take any other adverse action against employee while case is pending with SSA or DHS



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Final Case Resolution

- Employment Authorized
- SSA or DHS Final Nonconfirmation
 - E-Verify cannot verify information
 - Close case
 - May terminate employee
- DHS No Show
 - Employee did not contact DHS
 - Considered Final Nonconfirmation
- Error: Close Case and Resubmit
 - Expiration date on document incorrect
 - Submit new query for employee



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

SSA or DHS Final Nonconfirmation

- E-Verify cannot verify an employee's employment eligibility after employee visited SSA or contacted DHS
- Once you receive Final Nonconfirmation message, close case
- May terminate employee with no liability



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com • Phone (404) 231-1400

Close Case



- All cases created must be closed
- Respond to question “Is the employee currently employed with this company?”
 - Yes – continue employment
 - No – terminate employment
- Select a closure statement:
 - Examples:
 - The employee continues to work for the employer after receiving a Final Nonconfirmation result;
 - The employee was terminated by the employer for receiving a Final Nonconfirmation result;
 - The employee voluntarily quit working for the employer.

FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com • Phone (404) 231-1400

Work Authorization Documents Expiring

- Just notification that employee's Employment Authorization Document (I-766) or an I-94 Card document is expiring
- Only a reminder to re-verify/update Form I-9
- Do not re-E-Verify!
- Alert only appears first time the document expires



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

E-VERIFY – PROS & CONS

- Most Accurate Check of Employment Authorized Status.
- Reduced Fines During ICE I-9 Audit?
- Garbage In – Garbage Out.
- Does not catch identity fraud.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 231-1400

Current Version of I-9 Form

- Must use new form starting April 3, 2009. Both 2/2/09 and 8/7/09 versions acceptable.
- Employers who do not use the new form may be subject to civil money penalties.
- The new form must be used for new hires and employees who need re-verification/updating.
- I-9 Form can be downloaded at www.uscis.gov.



FISHER & PHILLIPS LLP

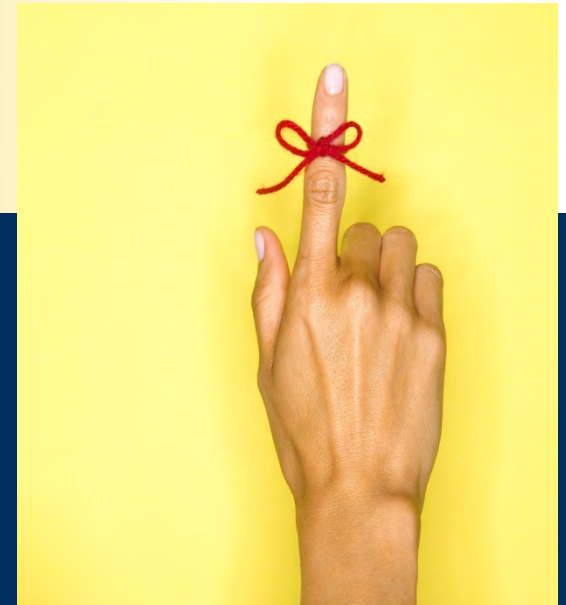
ATTORNEYS AT LAW

SOLUTIONS AT WORK®

WWW.LABORLAWYERS.COM • PHONE (404) 240-4299

Things to Remember

- DO NOT reverify expired U.S. passports or passport cards, Permanent Resident Cards, or List B Identity documents.
- As of April 3, 2009, expired documents may not be accepted (with some exceptions).
- Social Security card marked “Not Valid for Employment” or “Only Valid with DHS Authorization” is not acceptable List C document.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 240-4224

I-9 Basic Requirements

All employees hired after Nov. 6, 1986 must have a current I-9 form on file.

- Section 1 - completed by employee prior to starting work.
- Section 2 - completed by employer by end of third business day after employee starts work.
- Terminated Employees – Retention Requirements.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 240-4224

Monetary Penalties



- I-9 substantive/uncorrected technical violations (e.g., missing I-9) range from \$110 to \$1,100 per violation.
- Knowing hire/continuing to employ violations range from:
 - \$375-\$3,200 (1st violation)
 - \$3,200-\$6,500 (2nd violation)
 - \$4,300-\$16,000 (Subsequent)

FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 240-4224

I-9 Electronic Storage

- Replace paper I-9 forms by creating and storing I-9s electronically
- DHS allows electronic I-9 storage.
- For new hires and current employees
- Some electronic I-9 products allow for E-Verify synchronization and automatic expiring documents notification.



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (404) 240-4224

FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work®

Thank You

Presented by:

Jessica T. Cook, Esq.

Fisher & Phillips LLP

Phone: (404) 240-4151

Email: jcook@laborlawyers.com

www.laborlawyers.com

Atlanta · Charlotte · Chicago · Columbia · Dallas · Denver · Fort Lauderdale · Houston · Irvine · Kansas City · Las Vegas
Louisville · New Jersey · New Orleans · Orlando · Philadelphia · Portland ME · Portland OR · San Diego · San Francisco · Tampa