

REQUEST FOR PROPOSALS (RFP) No. 2020-001, Annual Audit Services

consent of the CO shall be void and may result in the cancellation of the contract with the Agency, or may result in the full or partial forfeiture of funds paid to the Contractor as a result of the proposed contract; either as determined by the CO.

- 5.3 Contract Period.** The Agency anticipates that it will initially award a contract for the period of 1 year with the option, at the Agency's discretion, of 4 additional one-year option periods, for a maximum total of 5 years.
- 5.4 Licensing and Insurance Requirements.** Prior to award (but not as a part of the proposal submission) the *Contractor* will be required to provide (NOTE: Each of the following insurance coverage shall cover both the Contractor and the temporary employee):
- 5.4.1 Workers Compensation Insurance.** An original certificate evidencing the proposer's current industrial (worker's compensation) insurance carrier and coverage amount;
- 5.4.2 General Liability Insurance.** An original certificate evidencing General Liability coverage, naming the Agency as an additional insured, together with the appropriate endorsement to said policy reflecting the addition of the Agency as an additional insured under said policy (minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000, together with damage to premises and fire damage of \$50,000 and medical expenses any one person of \$5,000), with a commercially reasonable deductible (e.g. "commercially reasonable," meaning not greater than 1% of the "general aggregate minimum" of the policy, with a maximum deductible amount of \$50,000;
- 5.4.3 Professional Liability Insurance.** 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 \$1,000,000), with a commercially reasonable deductible (e.g. "commercially reasonable," meaning not greater than 1% of the "general aggregate minimum" of the policy, with a maximum deductible amount of \$50,000;
- 5.4.4 Profile of Firm Form.** The requested related information shall also be entered where provided for on the Profile of Firm Form (DO NOT ATTACH SUBMIT COPIES WITHIN THE PROPOSAL SUBMITTAL—we will garner the necessary certificates from the Contractor prior to contract execution).
- 5.5 Right to Negotiate Final Fees.** The Agency shall retain the right to negotiate the amount of fees that are paid to the Contractor, meaning the fees proposed by the top-rated proposer may, at the Agency's options, be the basis for the beginning of negotiations. Such negotiations shall begin after the Agency has chosen a top-rated proposer. If such negotiations are not, in the opinion of the CO successfully concluded within 5 business days, the Agency shall retain the right to end such negotiations and begin negotiations with the next-rated proposer. The Agency shall

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also retain the right to negotiate with and make an award to more than one proposer, as long as such negotiation(s) and/or award(s) are addressed in the above manner (i.e. top-rated first, then next-rated following until a successful negotiation is reached).

- 5.6 Contract Service Standards.** All work performed pursuant to this RFP must conform and comply with all applicable local, state, and federal codes, statutes, laws, and regulations.
- 5.7 Prompt Return of Contract Documents.** Any and all documents required to complete the contract, including contract signature by the successful proposer, shall be provided to the Agency within 10 workdays of notification by the Agency.

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FORM OF PROPOSAL (RFP Attachment A)
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(This Form must be fully completed and placed under Tab No. 1 of the "hard copy" tabbed proposal submittal.)

(1) **Instructions.** Unless otherwise specifically required, the items listed below must be completed and included in the proposal submittal. Please complete this form by marking an "X," where provided, to verify that the referenced completed form or information has been included within the "hard copy" proposal submittal submitted by the proposer. Also, complete all the statements and certifications listed following herein:

[Table No. 1]

"X" = Item Included	Tab No.	Submittal Item (one original signature copy of each document)
	1	Form of Proposal (Attachment A)
	2	form HUD-5369-C (Attachment B)
	3	Profile of Firm Form (Attachment C)
	4	Proposed Services
	5	Managerial Capacity/Financial Viability, including resumes
	6	Client Information
	7	Equal Employment Opportunity/Supplier Diversity
	8	Subcontractor/Joint Venture Information (Optional Item)
	9	Section 3 Business Preference Documentation (Attachment D, Optional)
	10	Other Information (Optional)
	As detailed within Section 3.2 of the RFP 1.0 Document issued, enter proposed pricing where provided for within the RFP.	

(2) **SECTION 3 STATEMENT.** Are you claiming a Section 3 business preference? Yes ☐ No ☐
 If "YES," pursuant to the Section 3 portion within the Conditions and Specifications, and pursuant to the documentation justifying such submitted under Tab No. 9, which priority are you claiming? _____.

(3) **Debarred Statement.** Has this firm, or any principal(s) thereto, ever been debarred from providing any services by the Federal Government, any state government, or any local government agency within or without the State of Texas? Yes ☐ No ☐ If "Yes," please attach a full detailed explanation, including dates, circumstances, and status.

(4) **Disclosure Statement.** Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the Agency?

Signature

Date

Printed Name

Company

HOUSING AUTHORITY OF BEAUMONT, TX

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FORM OF PROPOSAL
(RFP Attachment A)

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

Yes ☐ No ☐ If "Yes," please attach a full detailed explanation, including dates, circumstances, and current status.

(5) Felony Disclosure. Has any principal(s) or any person(s) proposed to perform the work ever been convicted of a felony? Yes ☐ No ☐ If "Yes," please attach a full detailed explanation, including dates, circumstances, and status. PLEASE NOTE: The Agency reserves the right to not make award to any proposer that has staff who has been convicted of a felony if the Agency feels that doing such is in its best interests.

(6) Non-Collusive Affidavit. The undersigned party submitting this proposal hereby certifies that such proposal is genuine and not collusive and that said proposer entity has not colluded, conspired, connived or agreed, directly or indirectly, with any proposer or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price of affiant or of any other proposer, to fix overhead, profit or cost element of said proposed price, or that of any other proposer or to secure any advantage against the Agency or any person interested in the proposed contract; and that all statements in said proposal are true.

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

Signature

Date

Printed Name

Company

HOUSING AUTHORITY OF BEAUMONT, TX

Certifications and Representations of Offerors

Non-Construction Contract

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

Attachment B

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

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

1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

- (a) ☐ is, ☐ is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) ☐ is, ☐ is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) ☐ is, ☐ is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 1 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

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

(Check the block applicable to you)

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

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

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

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

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:

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

(1) Prime ☐ Sub-contractor ☐ (This form must be completed by and for each).

(2) Name of Firm:

Telephone:

Fax:

Email:

(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 Texas; (c) Former Name and Year Established (if applicable); (d) Name of Parent Company and Date Acquired (if applicable).

(5) Identify Principals/Partners in Firm (submit under Tab No. 5 a brief professional resume for each):

[Table No. 1]

Name	Title	% of Ownership

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

[Table No. 2]

Name	Title

Signature

Date

Printed Name

Company

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PROFILE OF FIRM FORM
(RFP Attachment C)

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

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

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

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

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

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

WMBE Certification Number:

Certified by (What Agency):

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

(8) Federal Tax ID No.:

(9) Please include proof of coverage for:

Worker's Compensation Insurance

Policy No.

Expiration Date

General Liability Insurance Carrier

Policy No.

Expiration Date

Professional Liability Insurance Carrier (E & O)

Policy No.

Expiration Date

Signature

Date

Printed Name

Company

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Section 3 Business Preference Submittal Form

(RFP Attachment D)

- 1.0 Introduction.** This form must be fully completed, accompanied by all required attachments, for any proposer claiming a Section 3 Business Preference (hereinafter, "Preference").
- 1.1** This fully completed form and any attachments thereto, will become a part of any ensuing contract.
- 1.2** Each proposer shall mark an "X" where provided following for all that apply to his/her claim of a Preference.
- 1.3** The proposer shall provide as an attachment to this completed form a detailed work plan clearly explaining how each following "preference claim" will be accomplished. Failure on the part of the proposer to include any such required attachment fully explaining the claim of the proposer shall result in the Agency not considering the claim for a Preference (though the Agency may, if awarded, later require the proposer to submit the information to satisfy the Section 3 requirements of the ensuing contract).
- 2.0 Current Section 3 Status.** The undersigned proposer hereby claims that it is a Section 3 business concern and claims such preference in that he/she can provide evidence that (the proposer has attached justifying documentation for each item following marked with an "X"):

- 2.1** _____ It is 51% or more owned by a Section 3 resident(s):

[Table No. 1]

(1) Section	(2) Mark "X"* if Included	(3) Description
2.1.1		Agency resident lease
2.1.2		Evidence of participation in a public assistance program
2.1.3		Articles of Incorporation
2.1.4		Fictitious or Assumed Business Name Certificate
2.1.5		List of owners/stockholders and % of each
2.1.6		Latest Board minutes appointing officers
2.1.7		Organization chart with names and titles and brief functional statement
2.1.8		Partnership Agreement
2.1.9		Corporation Annual Report

Section 3 Business Preference Submittal Form (RFP Attachment D)

2.2 _____ At least 30% of its full-time employees include persons that are currently Section 3 residents, or within 3 years of the date of first employment with the business concern were Section 3 residents:

2.2.1 To justify this claim, please see the immediate-following information:

[Table No. 2]

(1) Classification	(2) Total Number of Current Permanent Employees	(3) Total Number of Section 3 Resident Employees
Trainees		
Apprentices		
Journeypersons		
Laborers		
Supervisory		
Superintendent		
Professional		
Clerical		
Other:		

2.2.2 Attach a listing of all employees listed within column (3) above, including name and total annual income. Also attach proof of the income, such as a copy of the last tax return (please be sure to “black-out” all but the last 4 digits of the person(s) social security number), or any documentation showing proof of the receipt of public assistance.

Section 3 Business Preference Submittal Form (RFP Attachment D)

2.3 ____He/she has a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to a Section 3 business concern.

2.3.1 To justify this claim, please see the immediate-following information:

[Table No. 3]

(1)	(2)	(3)
Name of Section 3 Firm Receiving the Subcontract	Total Amount of Subcontract(s)	Percentage the Subcontract(s) is/are of the Total Proposed Contract Amount
	\$	%
	\$	%

2.3.2 Attach for each firm listed immediately above:

2.3.2.1 A detailed description of the subcontracted activity; and

2.3.2.2 A fully completed Profile of Firm form.

2.3.2.3 Proof of the income of the ownership of the Section 3 firm receiving the subcontract, such as a copy of the last tax return for the owner(s) (please be sure to "black-out" all but the last 4 digits of the person(s) social security number) or any other documentation showing proof of receipt of public assistance.

Section 3 Business Preference Submittal Form (RFP Attachment D)

3.0 As further detailed herein, which of the following priority are you claiming? (NOTE: Mark with an "X" the highest claimed Priority only.)

[Table No. 4]

Priority Claimed (Mark "X")	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 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.

Section 3 Business Preference Submittal Form
(RFP Attachment D)

4.0 The undersigned proposer hereby declares:

- 4.1 The information within this completed form (and any attachments) is, to the best of his/her knowledge, true and accurate.**
- 4.2 He/she is aware that if the Agency discovers that any such information is not true and accurate, such shall allow the Agency to:**
 - 4.2.1 NOT award the proposer a Preference; and**
 - 4.2.2 If the Agency deems such is warranted (e.g. in the case of submitting information the proposer knows to be untrue), declare such proposer to be nonresponsive and not allow the proposer to receive an award.**
- 4.3 He/she is aware that if he/she receives an award as the result of this competitive solicitation, even though he/she may not receive a Preference from the Agency as a result of this submittal, he/she will still be required to, to the greatest extent feasible, implement a Section 3 Plan, including a commitment to interview and consider hiring Section 3 persons (most specifically, residents of the Agency) whenever the successful proposer has need to hire additional employees during the term of the ensuing contract.**

The undersigned contractor hereby affirms that the foregoing is true and accurate and that he/she hereby agrees to comply as denoted herein.

Signature

Date

Printed Name

Company

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Section 3 Business Preference Explanation

(RFP Attachment D-1)

- 1.0 Introduction.** The purpose of this document is to, in simplified terms, explain to proposers, major issues pertaining to the Section 3 Business Preference program required by the Agency'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 those communities served by the Agency. 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 Housing Authority of Beaumont (hereinafter, "the Agency"), preference must be given to low- and very low-income persons residing within Jefferson County, TX (Section 3 resident), or Section 3 business concerns.
- 2.2** The requirements pertaining to Section 3 apply only to purchases and contracts the Agency completes for work—the requirements of Section 3 DOES NOT apply to purchases or contracts the Agency 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 Agency; or
- 3.1.2** A low- or very low-income resident of Jefferson County, TX.
- 3.1.2.1** Low- and very low-income within Jefferson County, TX is defined as residents within the following income levels for FY 2019 (Median Income = \$58,400):

[Table No. 1]

Income Limit Category	(1) Person	(2) Persons	(3) Persons	(4) Persons	(5) Persons	(6) Persons	(7) Persons	(8) Persons
Very Low (50%)	\$20,450	\$23,400	\$26,300	\$29,200	\$31,550	\$33,900	\$36,250	\$38,550
Extremely Low (30%)	\$12,490	\$16,910	\$21,330	\$25,750	\$30,170	\$33,900	\$36,250	\$38,550
Low (80%)	\$32,700	\$37,400	\$42,050	\$46,700	\$50,450	\$54,200	\$57,950	\$61,650
Income Limit figures are based on FY2019 Fair Market Rent (FMR). For a detailed account of how these limits are derived, please see our associated FY2019 FMR documentation.								

Section 3 Business Preference Explanation
(RFP Attachment D-1)

- 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 Agency will offer all proposers the option of a Preference.
- 5.2 In response to a competitive solicitation (this Request for Proposals or RFP), proposers are not required to respond to the Agency 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 proposer to be deemed non-responsive); however, if a proposer does claim a Preference, then the Agency will consider, investigate, and determine the validity of each such claim for a Preference.
- 5.3 Regardless of whether a 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 Agency take part in the Section 3 program?
- 6.1 The short answer is "Yes," as detailed following, each contractor must, "to the greatest extent feasible," take part in the program.

Section 3 Business Preference Explanation (RFP Attachment D-1)

6.1.1 If the contractor wishes, he/she may claim a Preference during the competitive solicitation process (please see Attachment D, most specifically Section 2.0 thereon). Pertaining to this RFP competitive solicitation process, the Agency will give a Preference based upon the following:

[Table No. 2]

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 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 Available Preference Points (Additional)

Section 3 Business Preference Explanation
(RFP Attachment D-1)

6.1.2 It is possible that a contractor may demonstrate, to the Agency'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 Agency or that contractor may be deemed not responsible by the Agency and the contract may be, at the Agency's discretion, not awarded or terminated.

7.0 Be aware that, as detailed within §135.38, the following Section 3 Clause will be a part of every applicable contract the Agency executes, and when a contractor executes the contract, he/she is thereby agreeing to comply with the following:

SECTION 3 CLAUSE

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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

Section 3 Business Preference Explanation
(RFP Attachment D-1)

provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors and assigns to 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.

- 7.6 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.
- 7.7 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 Action (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).
- 8.0 As detailed within 24 CFR §135, Appendix I, *Examples of Efforts to Offer Training and Employment Opportunities to Section 3 Residents*, as a part of the contract award process, to satisfy the requirements of Section 3 the successful proposer or Contractor will be able to denote the "efforts" his/her firm will formally commit to implement if he/she is awarded a contract:
- 8.1 Entering into "first source" hiring agreements with organizations representing Section 3 residents.
- 8.2 Sponsoring a HUD-certified "Step-Up" employment and training program for Section 3 residents.
- 8.3 Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other Section 3 residents in the building trades.
- 8.4 Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in §135.34) reside.
- 8.5 Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For the Agency, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.

Section 3 Business Preference Explanation
(RFP Attachment D-1)

- 8.6 Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.
- 8.7 Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an Agency or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.
- 8.8 Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside in the neighborhood or service area in which a section 3 project is located.
- 8.9 Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.
- 8.10 Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.
- 8.11 Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the Agency's or contractor's training and employment positions.
- 8.12 Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the Agency's or contractor's training and employment positions.
- 8.13 Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
- 8.14 Employing a job coordinator or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the Agency, other recipient or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the Agency or contractor intends to fill.
- 8.15 For the Agency, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR §905.102, and §905.201(a)(6).)

Section 3 Business Preference Explanation
(RFP Attachment D-1)

- 8.16 Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.
 - 8.17 Undertaking job counseling, education, and related programs in association with local educational institutions.
 - 8.18 Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents previously hired for employment opportunities.
 - 8.19 After selection of proposers but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.
 - 8.20 Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.
- 9.0 As detailed within 24 CFR §135, Appendix II, *Examples of Efforts to Award Contracts to Section 3 Business Concerns*, as a part of the contract award process, to satisfy the requirements of Section 3 the successful proposer or Contractor will be able to denote the "efforts" his/her firm will formally commit to implement if he/she is awarded a contract:
- 9.1 Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).
 - 9.2 In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.
 - 9.3 Contacting business assistance agencies, minority contractor's associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.
 - 9.4 Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the Agency.
 - 9.5 For the Agency, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.
 - 9.6 Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the proposal invitations or request for proposals.

Section 3 Business Preference Explanation
(RFP Attachment D-1)

- 9.7 Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.
- 9.8 Coordinating pre-proposal meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.
- 9.9 Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.
- 9.10 Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- 9.11 Arranging solicitations, times for the presentation of proposals, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.
- 9.12 Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.
- 9.13 Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.
- 9.14 Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
- 9.15 Developing a list of eligible section 3 business concerns.
- 9.16 For the Agency, participating in the "Contracting with Resident-Owned Businesses" program provided under 24 CFR part 963.
- 9.17 Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.
- 9.18 Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns.
- 9.19 Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.
- 9.20 Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.
- 9.21 Actively supporting joint ventures with section 3 business concerns.
- 9.22 Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

Instructions to Offerors Non-Construction

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



- 03291 -

Attachment E

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:]

REQUEST FOR PROPOSALS (RFP) No. 2020-001, Annual Audit Services

Supplemental Instructions to Proposers & Contractors (SIPC) (RFP Attachment F)

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Supplemental Instructions to Proposers & Contractors (SIPC)
(RFP Attachment F)

1.0 GENERAL CONDITIONS.

- 1.1 Applicability.** If referred to within the text of such, these SIPC shall be applicable to all Request for Proposals (RFP) solicitations that the Housing Authority of Beaumont (hereinafter, "the Agency") conducts and shall be applicable to any contract that the Agency awards to or signs with any firm, agency or individual pursuant to that RFP. A copy of this SIPC shall be made available to any actual or prospective proposer, or Contractor who does business with or intends to do business with the Agency.
- 1.1.1 HUD Forms.** Unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within these SIPC, the provision in the RFP or contract document shall govern. Further, in the case of any attached HUD forms (more specifically: HUD-5369-C (8/93); HUD-5369-B (8/93); and HUD-5370-C (10/2006), Section I and/or Section II), the information within such HUD form(s) shall govern any other information issued, especially that issued within any Agency-created forms that are issued as a part of this solicitation.
- 1.2 Definitions** (pertaining to all RFP documents issued by the Agency pertaining to this RFP, including the attachments and the ensuing contract):
- 1.2.1 "Agency"** is the Housing Authority of Beaumont (NOTE: Please also see the 1st paragraph of the Introduction on page 3 of the RFP 1.0 Document issued). Unless otherwise defined herein or within the ensuing contract, whenever the term "the Agency" is used without clearly designating a responsible Agency staff person, the proposer(s) shall assume that responsibility for that item rests with the CO.
- 1.2.2 "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 the RFP Document, such is referring to both the RFP documents and the ensuing contract document.
- 1.2.3 "Contracting Officer (CO)"** - When named within an RFP document shall refer to either the Executive Director or the person that he/she has delegated such responsibilities to.
- 1.2.4 "Contractor"** and the term "successful proposer" may be used interchangeably.
- 1.2.5 "Days"** unless otherwise directed, shall refer to calendar days.
- 1.2.6 "CEO"** is the Agency Chief Executive Officer.

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- 1.2.7 "Herein" shall refer to all documents issued pursuant to the noted RFP, including the RFP documents and the attachments.
- 1.2.8 "HUD" is the United States Department of Housing and Urban Development. HUD is the Federal agency that the Agency receives some funding from; however, pertaining to this RFP, correspondences, including proposal submittals, received from each proposer must exhaust all provisions contained herein prior to contacting HUD (i.e. in the case of a protest).
- 1.2.9 "Offer" is the proposal submittal referred to within the following Section 1.2.14 that the proposer delivers to the Agency in response to the RFP.
- 1.2.10 "Offeror" or "Offerors" are the proposer or proposers.
- 1.2.11 "Parties" - When "the parties," "both parties," or "either party" is stated within the RFP documents or the contract, such refers to the Agency and the successful proposer(s).
- 1.2.12 "Proposal" and/or "Proposal Submittal" is the "hard copy" document that the proposer is required to, as detailed within the RFP document, deliver to the Agency.
- 1.2.13 "Protestant" is a prospective proposer or proposer who feels that he/she has been treated inequitably by the Agency and wishes the Agency to correct the inequitable condition or situation. To be eligible to file a protest with the Agency pertaining to an RFP or contract, the protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents).
- 1.2.14 "Prospective Proposer" or "Proposer" - A prospective proposer is a firm or individual who has been notified of the RFP solicitation and/or who has requested and/or received the RFP documents and is considering responding with a proposal; a proposer is a firm or individual who has submitted a proposal in response to the RFP. All terms and conditions shall apply equally to all prospective proposers as well as proposers, though prospective proposers may not, after the deadline set for receiving proposals, receive further notices pertaining to that RFP—meaning, certain notices (such as the Notice of Results of Evaluation) are typically only delivered to proposers and not to all prospective proposers.
- 1.2.15 "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.

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Supplemental Instructions to Proposers & Contractors (SIPC) (RFP Attachment F)

- 1.2.16 "RFP Document(s)" - Whether stated in the singular or the plural, such refers to the body of documents, including attachments and the information posted on the BHA web site that the Agency makes available to all prospective proposers and wherein is detailed the Agency's requirements.
- 1.2.17 "Solicitation" or "Competitive Solicitation" is the RFP process detailed herein.

2.0 CONDITIONS TO PROPOSE.

- 2.1 **Pre-qualification of Proposers.** Prospective proposers will not be required to pre-qualify in order to submit a proposal. However, all proposers will be required to submit adequate information showing that the proposer is qualified to perform the required work (i.e. Profile of Firm Form and required resumes). Failure by the prospective proposer to provide the requested information may, at the Agency'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).
- 2.2 **RFP Forms, Documents, Specifications, and Drawings.**
 - 2.2.1 It shall be each prospective proposer's responsibility to, prior to submitting a proposal in response to the RFP, examine carefully and, as may be required, properly complete and submit all documents issued pursuant to this RFP.
 - 2.2.2 Unless otherwise instructed, specifications and drawings (if provided) do not purport to show all the exact details of the work. They are intended to illustrate the character and extent of the performance desired under the proposed contract and may be supplemented or revised from time to time.
 - 2.2.3 The Agency shall reserve the right to, prior to award, revise, change, alter, or amend any of the instructions, terms, conditions, and/or specifications identified within the RFP documents issued, within any attachment or drawing, or within any addenda issued; such notice shall be delivered in writing to each prospective and/or actual proposer. Such changes that are issued before the deadline for receipt of proposals shall be binding upon all prospective proposers. Such changes that are issued after the receipt of proposals, but prior to award shall be binding upon all parties that have submitted proposals; however, such parties shall be allowed to reject such changes by, within 5 days of receipt of such written notice, withdrawing his/her proposal. Such withdrawal must be delivered, in writing, to the CO within the 5-day deadline period.

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2.3 Proposal Preparation, Submission, and Receipt by the Agency.

- 2.3.1 Required Forms.** All required forms furnished by the Agency as a part of the RFP document issued shall, as instructed, be fully completed and submitted by the proposer. Such forms may be completed in a legible hand-written fashion, by use of a typewriter, or may be downloaded and completed on a computer. If, during the download, a form becomes changed in any fashion, the proposer must "edit" the form back to its original form (for example, signature lines must appear on the page the line was originally intended to be on).
- 2.3.2 Manner of Submission.** The proposal submittal shall be submitted in the manner detailed within the RFP document. Failure to submit the proposal in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that proposal, and may, at the discretion of the CO, eliminate that proposer from consideration for award.
- 2.3.3 Time for Receiving Proposals.** Proposals received prior to the time set as the deadline for the receipt by the Agency of the proposal submittal shall be securely kept, unopened, by the Agency. The CO, whose duty it is to open such proposals, will decide when the specified time has arrived. No proposal received after the designated deadline shall be considered, except as detailed within Section No. 6 of form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*.
- 2.3.3.1** Proposers are cautioned that any proposal submittal that may be time-stamped as being received by the Agency after the exact time set as the deadline for the receiving of proposals shall be returned unopened to the proposer. Any such proposals inadvertently opened shall not be considered but shall be ruled to be invalid. No responsibility will attach to the Agency or any official or employee thereof, for the pre-opening of, or the failure to open a proposal not properly addressed and identified.
- 2.3.4 No Public Opening of Proposals.** Pursuant to the competitive proposals or RFP process, proposals are not publicly opened, but are held secure until the submittal deadline has passed. The proposals are then opened in private by the CO (or his/her designee) and are, pursuant to the evaluation plan, examined for minimal responsiveness (i.e. minimum compliance with the requirements of the RFP). Persons other than Agency staff involved in this process are not allowed to be present during the opening, nor may they inspect the proposals until after award has been completed.

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- 2.3.5 Withdrawal of Proposals.** Proposals may be withdrawn as detailed within Section 6 of form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*. Negligence on the part of the proposer in preparing his/her proposal confers no right of withdrawal or modification of his/her proposal after such proposal has been received and opened.
- 2.3.6 Conflicting Conditions.** Any provisions detailed within any of the RFP documents which may be in conflict or inconsistent with any of the paragraphs in any of the other RFP documents, including attachments, shall be void to the extent of any such conflict or inconsistency. Further, as stated within the preceding Section 1.1.1 of this SIPC, unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within this SIPC, the provision in the RFP or contract document shall govern.
- 2.3.7 Interpretations.** No official oral interpretation can be made to any proposer as to the meaning of any instruction, condition, specifications drawing (if any), or any other document issued pertaining to this RFP. Every request for an official interpretation shall be made by the prospective proposer, in writing, pursuant to the schedule set within the RFP document issued and as directed by the Agency. Official interpretations will be issued in the form of addenda, which will be delivered to each proposer; but it shall be the prospective proposer's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the RFP documents and the proposed contract with the successful proposer, and all proposers shall be bound by such addenda, whether or not received by the prospective or successful proposer(s).
- 2.4 Exceptions to Specifications.**
- 2.4.1** A proposer may take exception to any of the proposal documents or any part of the information contained therein, by submitting, in writing to the CO, at least 10 days prior to the proposal deadline, a complete and specific explanation as to what he/she is taking exception to. Proposed alternate documents or information must also be included. A response by the Agency will be issued in writing within 5 days of receipt of such exception request. The Agency reserves the right to agree with the prospective proposer and issue a revision to the applicable RFP requirements, or may reject the prospective proposer's request.
- 2.4.2** When taking exception, prospective proposers must propose services that meet the requirements of the RFP documents. Exceptions to the specification and/or approved "equal" requests may be discussed at the scheduled pre-proposal conference (if scheduled). All verbal instructions issued by the Agency officers not already listed within the RFP documents shall only become official when issued as addenda or as a written answer issued pursuant to receipt of a written question.

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2.5 Lump Sum Cost Breakdown (LSCB).

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

2.5.1.1 The purpose of this LSCB will serve the Agency in two distinct areas:

2.5.1.1.1 Prior to award of Proposals. The Agency may request a LSCB for any or all items reflected within the RFP document as "lump sum" for the purpose of determining an unbalanced cost proposal. The CO, using acceptable methods dictated by the industry, shall conduct the analysis.

2.5.1.1.2 After Award. The Agency may request a LSCB for any or all items reflected within the RFP document as "lump sum" for the purpose of making partial payments to the successful proposer.

2.5.1.1.3 Increase/Decrease. Under no circumstances, may any cost item reflected as "lump sum" be increased and/or decreased as a result of the LSCB analysis.

3.0 PROPOSAL EVALUATION.

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

3.1.1 All proposal documents submitted by the proposers are not necessarily a matter of public record and as a matter of normal course, the proposals submitted by each proposer will not, until after award has been completed, be available to be viewed by any interested parties except as

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approved by the Agency Legal Counsel (i.e. a proposer will not, prior to completion of award, be allowed to challenge an apparent top-rated proposer by inspecting the proposal that the apparent top-rated proposer submitted). The Agency shall, however, upon request, verify that the proposal documents submitted are/were acceptable.

- 3.2 Award of Proposal(s).** The successful proposer shall be determined by the top-rated responsive and responsible proposer as determined by the evaluation process detailed within the RFP document issued, provided his/her proposal is reasonable, he/she is able to deliver the specified items in a timely manner and it is, in the opinion of the Agency, to the best interests of the Agency to accept the proposal. All proposers will be notified in a timely manner of the results of the evaluation after award has been completed.
- 3.3 Rejection of Proposals.**
- 3.3.1** The Agency reserves the right, at any time during the proposal process, to reject any or all proposals received. In the case of rejection of all proposals, the Agency reserves the right to advertise for new proposals or to proceed to do the work otherwise, if in the judgment of the Agency, the best interest of the Agency will be promoted.
- 3.3.2** Prospective proposers acknowledge by downloading and receiving the RFP documents and/or by submitting a proposal that the submission of a proposal to the Agency is not a right by which to be awarded that proposal, but merely an offer by the prospective proposer to perform the requirements of the RFP documents in the event the Agency decides to consider an award to that proposer.
- 3.4 Cancellation of Award.** The Agency reserves the right to, without any liability, cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties.
- 3.5 Mistake in Proposal Submitted.**
- 3.5.1** A request for withdrawal of a proposal due to a purported error need not be considered by the Agency unless the same is filed in writing by the proposer within 48 hours after the proposal deadline (proposers may of their own volition withdraw a proposal prior to the submittal deadline). Any such request shall contain a full explanation of any purported error and shall, if requested by the Agency, be supported by the original calculations on which the proposal was computed, together with a certification and notarization thereon that such computation is the original and prepared by the proposer or his/her agent, who must be identified on the notarized form. The foregoing shall not be construed that such withdrawal will be permitted, as the Agency retains the right to accept or reject any proposal withdrawal for a mistake.

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- 3.5.2** Unless otherwise prohibited within the RFP documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at the Agency's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to the CO, for his/her review. This mistake must be corrected before the issuance of contract documents.
- 3.6 Irregular Proposal Submittal.** A proposal shall be considered irregular for any one of the following reasons, any one or more of which may, at the Agency's discretion, be cause for rejection:
- 3.6.1** If the forms furnished by the Agency are not used or are altered or if the proposed costs are not submitted as required and where provided (especially within the eProcurement Marketplace).
- 3.6.2** If all requested completed attachments do not accompany the proposal submitted.
- 3.6.3** If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning or give the proposer submitting the same a competitive advantage over other proposers.
- 3.6.4** If the proposer adds any provisions reserving the right to accept or reject any award or to enter into a contract pursuant to an award.
- 3.7 Disqualification of Proposers.** Any one or more of the following shall be considered as sufficient for the disqualification of a proposer and the rejection of his/her proposal:
- 3.7.1** Evidence of collusion among prospective proposers. Participants in such collusion will receive no recognition as proposers for any future work of the Agency until such participant shall have been reinstated as a qualified proposer. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.
- 3.7.2** More than one proposal for the same work from an individual, firm, or corporation under the same or different name(s), unless such was specifically allowed by the Agency within the proposal documents issued, including by addendum.
- 3.7.3** Lack of competency, lack of experience and/or lack of adequate machinery, plant, and/or other resources.
- 3.7.4** Documented unsatisfactory performance record as shown by past work for the Agency or with any other local, State, or Federal agency, judged from the standpoint of workmanship and progress.

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- 3.7.5 Incomplete work, which in the judgment of the Agency, might hinder or prevent prompt completion of additional work, if awarded.
 - 3.7.6 Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
 - 3.7.7 Failure to comply with any qualification requirement of the Agency.
 - 3.7.8 Failure to list, if required, all subcontractors (if subcontractors are allowed by the Agency) who will be employed by the successful proposer(s) to complete the work of the proposed contract.
 - 3.7.9 As required by the RFP documents, failure of the successful proposer to be properly licensed by the State of New York and/or to be insured by a general liability and/or worker's compensation policy.
 - 3.7.10 Any legal reason to be determined, in good faith, to be in the best interests of the Agency.
- 3.8 **Burden of Proof.** If requested by the Agency, it shall be the responsibility of the proposer(s) to furnish the Agency with sufficient data or physical samples, within a specified time, so that the Agency may determine if the goods or services offered conform to the Specifications.
- 4.0 **Right to Protest.**
- 4.1 **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. An alleged aggrieved protestant claiming this right is hereby informed that these regulations do not provide for administrative appeal as a matter of right for that alleged aggrieved protestant.
 - 4.1.1 An alleged aggrieved "protestant" is a prospective or actual proposer who feels that he/she has been treated inequitably by the Agency and wishes the Agency to correct the alleged inequitable condition or situation. To be eligible to file a protest with the Agency pertaining to an RFP or contract, the alleged aggrieved protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents) when the alleged situation occurred. The Agency has no obligation to consider a protest filed by any party that does not meet these criteria.
 - 4.2 **Administrative Powers.** It is totally within the administrative powers of the CEO to grant or deny any requests for administrative appeal. If, in the opinion of the CEO, the alleged aggrieved protestant merits an administrative review, the CEO shall direct that alleged aggrieved protestant to submit additional data.

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- 4.3 Procedure to Protest.** An alleged aggrieved protestant shall comply with the following protest procedures, and failure to comply in the manner prescribed shall automatically relieve the Agency from accepting or considering that protest:
- 4.3.1 Protest Document.** The alleged aggrieved protestant must file, in writing, to the CO the exact reason for the protest, attaching any supportive data. The protestant must state within the written protest document specifically (not by inference) what action by the Agency or condition is being protested as inequitable, making, where appropriate specific reference to the RFP documents issued. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve the Agency from any responsibility to consider the protest and take any corrective action.
- 4.3.2 Deadlines.** The written instrument containing the reason for the protest must be received by the CO within 10 days after the occurrence of any of the following:
- 4.3.2.1** The deadline for receiving proposals;
- 4.3.2.2** Receipt of notification of the results of the evaluation or the award; or
- 4.3.2.3** The alleged aggrieved protestant knows or should have known the facts.
- 4.3.3 Time Limit.** In any case, protests shall be filed no more than 10 days after any of the above (unless the occurrence being protested occurred in its entirety after the proposal deadline). Protests received after these dates shall not be considered.
- 4.3.4 CO Review/Issue Opinion.** The CO shall review the written protest and supportive data, if any. He/she shall, within 10 days after receipt of the written protest, issue a written opinion and decision. This document shall state the reasons for the action taken as well as inform the alleged aggrieved protestant of the right of further administrative review. A copy of this written opinion and decision shall be forwarded to the CEO.
- 4.3.5 Administrative Appeal.** If the alleged aggrieved protestant does not agree with the written opinion and decision issued by the CO, the alleged aggrieved protestant may, after receipt of the written opinion and decision issued by the CO request an administrative appeal hearing be granted (such request must be delivered in writing to the CO within 5 days of receipt of the written opinion and decision; failure to do so within such 5 days shall relieve the Agency of any responsibility to consider such request). The following procedures must be complied with in the manner

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prescribed; failure by the alleged aggrieved protestant to comply shall automatically relieve the Agency from accepting or acting on that request for administrative hearing:

- 4.3.5.1 The alleged aggrieved protestant must file, in writing, his/her request for an administrative hearing, to the ED, within 5 days of receipt of the written opinion and decision and failure to do so within such 5 days shall relieve the Agency of any responsibility to consider such request.
- 4.3.5.2 The request for an administrative appeal hearing must contain the specific reasons for the appeal and all supporting data for those reasons.
- 4.3.5.3 It shall be within the administrative powers of the ED to, after review of the request submitted, grant, or deny any request for administrative appeal.
- 4.3.5.4 If the ED, after complete review of the alleged aggrieved protestant's written request and supporting data, decides that the request does not merit further consideration, he/she shall render his/her decision in writing to the alleged aggrieved protestant. A decision rendered under this paragraph shall be made within 10 days after the receipt of the alleged aggrieved protestant's request for an administrative hearing. This decision shall be final without further administrative recourse.
- 4.3.5.5 If the ED, after review of the alleged aggrieved protestant's written request, decides that the request merits further consideration, he/she shall forward the protestant's written request, along with a cover letter explaining why it merits further consideration and with a recap of all proposals submitted and a copy of the original written protest, to the Agency Legal Counsel for consideration. The Agency Legal Counsel shall issue to the alleged aggrieved protestant a decision, in writing, within 10 days of his/her receipt of such documents.
- 4.3.5.5 Such written decision delivered to the alleged aggrieved protestant shall exhaust the Agency internal protest and administrative appeal process available to the alleged aggrieved protestant.

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5.0 Disputed Billings (Charges).

5.1 Procedures. In addition to the procedures detailed within Clause No. 7 of Contract Appendix No. 1, form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, in the event that the Agency disputes any portion of its billing(s), the Agency shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

5.1.1 The Agency's representative shall, within 10 days after the Agency's receipt of such billing, formally notify the Contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.

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

5.1.3 If the CO and the Contractor's representative are unable to resolve the dispute through such discussion within 10 days, the Agency shall, within 10 days thereafter, either (NOTE: Within the following, "appropriate," at the sole decision and discretion of the Agency):

5.1.3.1 Pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of Kentucky;

5.1.3.2 Not pay the disputed charge and submit the matter to the appropriate district court in the State of Kentucky;

5.1.3.3 Not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of Kentucky.

6.0 Additional Considerations.

6.1 Right of Joinder or Piggyback.

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

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

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- 6.7.1** The successful proposer agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful proposer. Upon default, the successful proposer agrees that the Agency may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.
- 6.8 Communication.** If during the period of the contract, it is necessary that the Agency place toll or long-distance telephone calls or telegrams in connection therewith (for complaints, adjustments, shortages, failure to deliver, etc.), it is understood that the successful proposer will bear the charge or expense for all such calls and/or telegrams.
- 6.9 Work on Agency Property.** If the successful proposer's work under the contract involves operations by the successful proposer on Agency premises, the successful proposer shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the Agency's negligence, shall indemnify the Agency, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful proposer, its agents, employees, or subcontractors.
- 6.10 Estimated Quantities.** Unless otherwise stated within the RFP documents, the quantities reflected within the RFP documents, to the best of the Agency's knowledge, reflect projected consumption data. These quantities are not meant to infer or imply actual consumption figures or quantities that will be purchased by the Agency under the finalized contract; but, pursuant to all RFP documents, these quantities will be used as calculation figures to determine the successful proposer.
- 6.11 Warranty.**
- 6.11.1** The services provided under the contract shall conform to all information contained within the RFP documents as well as applicable Industry Published Technical Specifications, and if one of the above-mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.
- 6.11.1** The liability of the successful proposer to the Agency (except as to title) arising out of the furnishing of the services or of its use under the terms of the contract shall not exceed the correcting of the defect(s) in the services as provided under the contract, and upon expiration of the warranty period all such liability shall terminate except under the warranty for merchantability and the warranty of fitness for a particular purpose.

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- 6.12 Official, Agent and Employees of the Agency 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 Agency in any way be personally liable or responsible for any covenant or agreement herein contained, whether either expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 6.13 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 CO.
- 6.14 Salaries and Expenses Relating to the Contractor's Employees.** Unless otherwise stated within the RFP documents, the successful proposer shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The successful proposer further agrees to comply with all Federal, State, and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 6.15 Attorney's Fees.** In the event that one party commences litigation hereto against the other in connection with the enforcement of any provision of this agreement, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including attorneys' fees, in a reasonable amount, to be determined by the court. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.
- 6.16 Independent Contractor.** Unless otherwise stated within the RFP documents or the contract, the successful proposer is an independent Contractor. Nothing herein shall create any association, agency, partnership, or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 6.17 Severability.** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 6.18 Waiver of Breach.** A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 6.19 Time of the Essence.** Time is of the essence under this agreement as to each provision in which time of performance is a factor.

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6.20 Limitation of Liability. In no event shall the Agency be liable to the successful proposer for any indirect, incidental, consequential, or exemplary damages.

6.21 Indemnity.

6.21.1 The successful proposer shall protect, indemnify and hold the Agency, its officers, employees, agents, consulting engineers and other retained consultants harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character which the Agency, its officers, employees, agents, consulting engineers or other retained consultants may suffer, or which may be sought against, recovered from or obtainable against the Agency, its officers, employees, agents, consulting engineers or other retained consultants such as:

6.21.1.1 As a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act on the part of the successful proposer, its subcontractors or agents, or anyone directly or indirectly employed by any subcontractor or agent, in the fulfillment or performance of the terms, conditions or covenants that are contained in this contract or agreement, regardless of whether or not the occurrence which gave rise to such claim, damage, loss, suit, action, judgment or expense was caused, in part, by any party indemnified hereunder; or

6.21.1.2 As a result of, or by reason of, or arising out of, or on account of, or in consequence of, any neglect in safeguarding the work; or

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

6.21.1.4 Because of any claim or amount recovered under the "Kentucky Industrial Insurance Act", or any other law, ordinance, or decree, which claim, or recovery, arose out of or is attributable to any act or failure to act on the part of the successful proposer in the fulfillment or performance of the terms, conditions and covenants that are contained in this contract. Any money due by the successful proposer under and by virtue of this contract which is considered necessary by the Agency for such purpose, may be retained by the Agency for its protection; or in case no money is due, its surety may be held until all such claims, damages, losses, suits, actions, decrees, judgments, attorney's fees and court costs and other expenses of any kind or character as aforesaid shall have been settled and suitable evidence to that effect furnished to the Agency

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provided, however, that money due the successful proposer will not be withheld when the successful proposer produces satisfactory evidence that it is adequately protected by public liability and property damage insurance, if required.

- 6.21.2** In this connection, it is expressly agreed that the successful proposer shall, at its own expense, defend the Agency, its officers, employees, agents, consulting engineers and other retained consultants, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the successful proposer has indemnified the Agency, its officers, employees, agents, consulting engineers and other retained consultants against, and if the successful proposer shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the successful proposer including attorney's fees and court costs; provided, however, that if the forum in which such claim suit or action is heard determines that the occurrence that gave rise to the same was caused, in whole or in part, by any party who is indemnified hereunder, the Agency shall reimburse the successful proposer for all, or the indemnified party's proportionate share, as the case may be, of the costs of such defense.
- 6.21.2** Reimbursement to the successful proposer by the Agency, in whole or in part, for the costs of protecting traffic shall not serve to relieve the successful proposer of its responsibility as set forth in the RFP documents.
- 6.21.3** The successful proposer guarantees the payment of all just claims for materials, supplies and labor, and all other just claims against it or any subcontractor, in connection with the contract.
- 6.22 Lobbying Certification.** By proposing to do business with the Agency or by doing business with the Agency, each proposer certifies the following:
- 6.22.1** No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- 6.22.2** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with

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this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

- 6.22.3 The successful proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 6.22.4 This clause is a material representation of fact upon which reliance was placed when the award was made or entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.
- 6.23 **2 CFR §200.326, Appendix II, *Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*.** Pursuant to this CFR, as issued by the Office of the U.S. Secretary of HUD, the Agency, and the Contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this RFP will include the following clauses, whether inserted or by reference:
- 6.23.1 **Remedies for Contractor Breach.** Pertaining to contract-related issues, it is the responsibility of both the Agency and the Contractor to communicate with each other in as clear and complete a manner as possible. If at any time during the term of this contract the Agency or the Contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the Agency has the right to issue unilateral addendums to this contract, but the Contractor does not have the same right). The other party shall, within 10 days, respond in writing to the other party (however, the Agency shall retain the right to, if conditions warrant, require the Contractor to respond in a shorter period of time). Further, the Agency shall, at a minimum, employ the following steps in dealing with the Contractor as to any performance issues:
- 6.23.1.1 If the Contractor is in material breach of the contract, the Agency may promptly invoke the termination clause detailed within Section No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which form is attached hereto, and terminate the contract for cause. Such termination must be delivered to the Contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.

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- 6.23.1.2 Prior to termination, the Agency may choose to warn the Contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the Contractor on probation, thereby giving the Contractor a certain period of time to correct the deficiencies or potentially suffer termination. The Agency shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the Contractor does not agree with such action, the Contractor shall have 10 days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 6.23.1.3 After termination, if the Contractor does not agree with the Agency's justification for the termination, the Contractor shall have 10 days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 6.23.1.4 The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.
- 6.23.2 **Termination for Cause and Convenience.** For all contracts in excess of \$10,000, as detailed within Clause No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, attached hereto. In addition to the immediate-foregoing, if the Agency terminates the Contractor for convenience, the Agency is obligated to, as detailed within Section 11.6.C.2 of HUD Procurement Handbook 7460.8 REV 2, negotiate with and pay to the Contractor a "reasonable allowance for profit" for the remainder of the contracted period.
- 6.23.3 **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

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- 6.23.4 Davis-Bacon Act, as amended (40 U.S.C.3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C.3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors [are] required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors [are] required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 6.23.5 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or *contracts for transportation or transmission of intelligence*.
- 6.23.7 Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a

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- 6.23.12 ***\$200.322 Procurement of recovered materials.*** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only 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, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 6.24 **Additional Federally Required Orders/Directives.** Both parties agree that they will comply with the following laws and directives that the Agency has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this RFP:
- 6.24.1 **Executive Order 11061**, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 6.24.2 **Public Law 88-352, Title VI of the Civil Rights Act of 1964**, which provides that no person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The Agency hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- 6.24.3 **Public Law 90-284, Title VIII of the Civil Rights Act of 1968.**, popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex, or national origin. Pursuant to this statute, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 6.24.4 **The Age Discrimination Act of 1975**, which prohibits discrimination on the basis of age.

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- 6.24.5** Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 6.24.6** HUD Information Bulletin 909-23 which is the following:
 - 6.24.6.1** Notice of Assistance Regarding Patent and Copyright Infringement;
 - 6.24.6.2** Clean Air and Water Certification; and
 - 6.24.6.3** Energy Policy and Conversation Act.
- 6.24.7** The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.

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Sample Contract Form between the Housing Authority of Beaumont, TX. and [Contractor] (RFP Attachment G)

INTRODUCTION

This contract by and between the Housing Authority of Beaumont, TX (hereinafter "the Agency"), and _____, (hereinafter "the Contractor") is hereby entered into this ____ day of _____, 2020.

Services pursuant to this contract shall begin on the ____ day of _____, 2020, and shall end on the ____ day of _____, 2021, unless otherwise extended, modified, terminated, or renewed by the parties as provided for within this contract. Unless otherwise detailed herein, all references to "days" shall be calendar days (in the case that the last day referenced falls on a Saturday, Sunday, or legal holiday, then the period of time shall be automatically extended to include the next workday). Also, whenever the term "herein" is referred to, such refers to this contract form, the appendices, and all listed attachments.

1.0 Definitions.

- 1.1 **Contracting Officer (CO).** The Agency Contracting Officer, typically the Agency Executive Director, but may be another person delegated such authority by the ED.
- 1.2 **Executive Director (ED).** The Agency Executive Director.
- 1.3 **Housing Authority.** Any reference herein or within any Appendix to the "Housing Authority" or the "HA" shall be interpreted to mean the same as the Agency.
- 1.4 **Request for Proposals (RFP).** A competitive solicitation process conducted by the Agency wherein award was completed to the top-rated responsive and responsible proposer.

2.0 Services and Payment.

- 2.1 **Scope of Services.** The services provided pursuant to this contract generally consist of those services for the Agency as described herein and within the Appendices. Said services shall be provided on the dates and times determined by the Agency at the designated Agency community and facilities. In addition, the Agency shall retain the right to implement and/or enforce any item issued as a part of RFP No. 2020-001.
- 2.2 **Provisions of any and all Work (Task Orders).** The Contractor shall not begin any additional work (other than that already detailed herein) without the receipt of a completed Contract Task Order from the authorized Agency representative. This Task Order may take the form of an e-mail.
- 2.3 **Cost/Value of Services.**

- 2.3.1 **Contract Value.** The current total Not-To-Exceed (NTE) value of this contract is:

\$____.____.

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- 2.3.1.1 The Contractor exceeds the NTE amount at his/her own risk. The Contractor is under no obligation to provide additional services that would cause the Contractor's fees to exceed the NTE amount without prior revision of this amount by written change order. Further, the Agency reserves the right to amend this amount (increase/decrease) at any time during the ensuing contract period(s) when the Agency determines doing so is in its best interests.
- 2.4 **Renewal Options.** This contract is initially executed for the period of 1 year with the option, at the Agency's discretion, of 4 additional one-year option periods, for a maximum total of 5 years.
- 2.5 **Time Performance.** The Contractor will complete each assigned task as assigned by the Agency.
- 2.6 **Billing Method.**
- 2.6.1 To receive payment for services rendered pursuant to this contract the Contractor shall submit a fully completed invoice for work previously performed to:
- Housing Authority of Beaumont
Attention: Hunter Harvey, Accountant
1890 Laurel, Beaumont, TX 77701**
- 2.6.2 At a minimum, the invoice shall detail the following information:
- 2.6.2.1 Unique invoice number;
- 2.6.2.2 Contractor's name, address, and telephone number;
- 2.6.2.3 Date of invoice and/or billing period;
- 2.6.2.4 Applicable Contract No.;
- 2.6.2.5 Applicable Purchase Order No.;
- 2.6.2.6 Brief description of services rendered, including applicable timeframe, total hours being billed for each service at each detailed site, and at the approved rate (may be submitted in the form of a report);
- 2.6.2.7 Task Order, approved by the Agency Executive Director; and
- 2.6.2.8 Total dollar amount being billed.

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2.6.3 The Agency will pay each such properly completed invoice received on a Net/30 basis. Any invoice received not properly completed will not be paid unless and/or until the Contractor complies with the applicable provisions of this contract.

3.0 **Agency's Obligations.** Pursuant to this contract, the Agency agrees to provide the specific services detailed herein and shall be responsible for the following:

3.1 The Agency agrees to not provide to the Contractor any Task Order assigning work to the Contractor without the prior approval of the ED.

4.0 **Contractor's Obligations.** Pursuant to this contract, the Contractor agrees to provide the specific services detailed herein and shall be responsible for the following:

4.1 **Supervision and Oversight.** The Contractor shall be solely responsible for providing supervision and oversight to all the Contractor's personnel that are assigned to the Agency properties pursuant to this contract.

4.2 **Qualified Personnel.** The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein and within the appendices. For the purposes of this contract, the term "qualified personnel" shall mean those personnel that have been investigated, tested, and trained in the manner described within this contract and, as proposed by the Contractor within its proposal or as provided by the Contractor during the Contractor's normal conduct of business.

4.3 **Compliance with Federal and State Laws.** All work performed by the Contractor, pursuant to this contract, shall be done in accordance with applicable all Federal, State, and local laws, regulations, codes, and ordinances.

4.4 **Insurance Requirements.**

4.4.1 **Indemnity.** The complete indemnity requirements are detailed within Section 11.19 herein.

4.4.2 **Insurances.** In this regard, the Contractor shall maintain the following insurance coverage during the effective term(s) of this contract:

4.4.2.1 **General Liability Insurance.** An original certificate evidencing General Liability coverage, naming the Agency as an additional insured, together with the appropriate endorsement to said policy reflecting the addition of the Agency as an additional insured under said policy (minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000, together with damage to premises and fire damage of \$50,000 and medical expenses any one person of \$5,000), with a commercially reasonable deductible (e.g. "commercially

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reasonable," meaning not greater than 1% of the "general aggregate minimum" of the policy, with a maximum deductible amount of \$5,000;

- 4.4.2.2 Professional Liability Insurance.** 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 \$1,000,000), with a commercially reasonable deductible
- 4.4.2.4 Worker's Compensation Insurance.** Worker's compensation coverage evidencing carrier and coverage amount.
- 4.4.2.5 Certificates/Endorsements.** The Contractor shall provide to the Agency with current certificate(s)/endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-reference insurance coverage, including naming the Agency as an additional insured (where appropriate) during the term(s) of this contract shall constitute a material breach thereof. Insurance certificate(s)/endorsement(s) shall be delivered to the following person representing the Agency:

**Housing Authority of Beaumont
Attention: Paula Nicholas, Procurement Specialist
1890 Laurel, Beaumont, TX 77701**

- 4.5 Licensing.** The Contractor shall also provide to the Agency a copy of any required licenses. Failure to maintain these licenses in a current status during the term(s) of this contract shall constitute a material breach thereof.
- 4.6 Financial Viability and Regulatory Compliance.**
 - 4.6.1** The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state, and local licensing authorities and that it possesses all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding delinquent federal, state, or local taxes or business assessments.
 - 4.6.2** The Contractor agrees to promptly disclose to the Agency any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by the Contractor to disclose such issue to the Agency in writing within 5 days of such notification received will constitute a material breach of this contract.

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4.6.3 The Contractor further agrees to promptly disclose to the Agency any change of more than 50% of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within 5 days of said actions shall constitute a material breach of this contract.

4.6.4 All disclosures made pursuant to this section of the contract shall be made in writing and submitted to Agency within the time periods required herein.

4.7 Confidentiality. The Contractor, in connection with performing his/her services hereunder, will have access to or may be provided certain confidential information concerning the Agency and agrees that any information concerning the finances, accounting practices, business, client, client lists, property information, client data, records of the Agency or any other information which a reasonable person could conclude that should remain confidential (collectively Confidential Information), will not be disclosed to any party and without limitation, any employee of the Agency or any client or potential client of the Agency at any time, except for the Contractor's legal counsel, accounts, or financial advisors, who will also hold such Confidential Information in confidence. The Contractor acknowledges that the information is being provided with the sole understanding that all Confidential Information will remain confidential and will be held in the strictest confidence. The Contractor further acknowledges that any disclosure of the Confidential Information, whether intentional or inadvertent, may harm the Agency. The Agency will have the right to enforce this Contract by specific performance, as well as hold the Contractor liable for any damages caused by any disclosure of any Confidential Information, whether intentional or inadvertent. The Contractor agrees that he has received valuable consideration for the entering into of this Contract and agrees to be bound all of its terms and conditions. This Contract will be binding on the Contractor and any attorney, accountant, financial advisor who also may be provided Confidential Information.

4.8 No Smoking on Agency Property. The Agency has implemented a No Smoking policy on all its properties. Accordingly, the Contractor shall ensure that it's employees or other persons brought or allowed onsite by the Contractor shall not utilize any smoking materials on Agency property at any time.

5.0 Modification. This contract shall not be modified, revised, amended, or extended except by written addendum, preferably executed by both parties, but the Agency shall retain the right to issue a unilateral addendum (pursuant to HUD regulation, the Contractor shall not have the same right). The Agency acknowledges that such "unilateral addendum" must not be otherwise in conflict with the current requirements already stated within this contract, or any appendix attached thereto, or in conflict with any relevant regulation or law; in either case, if a unilateral addendum is issued in conflict with the current requirements of the