

**HOUSING & REDEVELOPMENT AUTHORITY  
OF DULUTH, MINNESOTA**



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**Request for Proposals (RFP)**

**CONSULTING SERVICES FOR CAPITAL NEEDS  
ASSESSMENTS (CNA) and CNA e-TOOLS AS REQUIRED FOR HUD  
RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM  
AT HRA HI-RISES**

Due: December 18, 2020 – 4:30 pm CST

**HOUSING & REDEVELOPMENT AUTHORITY  
OF DULUTH, MN**

**STATEMENT OF PURPOSE**

The Housing and Redevelopment Authority of Duluth, Minnesota (“HRA”) is seeking proposals for consulting services for capital needs assessments (CNAs) and CNA e-TOOLS as required for the HUD Rental Assistance Demonstration Program (RAD) at its Public Housing hi-rises. To obtain a copy of the proposal documents, please contact Terry Paczynski at [tpaczynski@duluthhousing.com](mailto:tpaczynski@duluthhousing.com) or (218) 529-6308.

**Submission of proposals must be received no later than  
Friday, December 18, 2020 at 4:30 pm CST**

**RFP Issued: November 13, 2020  
Proposal Deadline: December 18, 2020**

## **SCOPE OF SERVICES**

### **AGENCY BACKGROUND**

The HRA is a housing and redevelopment authority created pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended (the “Act”). The HRA was created pursuant to the Act, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Duluth adopted on January 7, 1948. The HRA owns and manages federally subsidized dwelling units within the City of Duluth consisting of six high-rise apartment buildings and 296 scattered site units. The HRA provides housing assistance to low-income families, elderly, and disabled individuals, and has a robust Rehab and Real Estate Department. The mission of the HRA is to “create housing opportunities and strengthen neighborhoods to sustainably achieve a quality living environment for all.” The HRA is governed by a seven-member Board of Commissioners appointed by the Mayor of Duluth and confirmed by the City Council. The HRA works to meet the City’s housing needs for all income levels.

### **THE PROJECT**

The HRA Board of Commissioners approved submittal of Rental Assistance Demonstration (RAD) applications to HUD at their May 28, 2020 Board meeting, and received Commitments to enter into Housing Assistance Payment (CHAP) agreements on September 18, 2020.

This RFP pertains specifically to the HRA’s Public Housing Program and the potential conversion of its hi-rises through RAD, and invites interested consultants to submit proposals for the development of HUD RAD compliant CNAs, Energy Audit, and completion of the e-Tool, and provide any updates if needed.

The HRA received five CHAP agreements. This RFP pertains to two of those CHAP agreements encompassing three high rises that would be no-debt conversions given other encumbrances on those properties.

### **SCOPE OF THE PROPOSAL**

The HRA is seeking proposals from consultants for the completion of CNA’s, as required by HUD’s RAD Program, for three of the HRA’s six hi-rise apartment buildings. Please see the attached Scope of Work.

A pre-proposal meeting will be held virtually at 2:00 pm central time on Thursday, November 19, 2020. Attendance at the pre-proposal meeting is voluntary and is not necessary for the submittal of a proposal. To join the meeting log in to: [https://www.gotomeet.me/Duluth\\_HRA](https://www.gotomeet.me/Duluth_HRA) or audio only call 1 (646) 749-3122; ACCESS CODE: 384-998-181.

### **PRICE PROPOSAL**

HRA is requesting that the price proposals be broken into the following elements and priced separately:

1. RAD CNA Narrative Report and detailed 20-year Reserve for Replacement Schedule;
2. Energy Audit;
3. In the event 180 days pass prior to financing plan submission, the cost to update the RAD CNA and 20-year R4R schedule;

4. E-Tool submission in version 3.0.

**Grandview Manor**

Grandview Manor is an 8-story, 41,400 square foot, multifamily apartment building with 48 dwelling units (44-1BR and 4-2BR) located at 301 E. 2<sup>nd</sup> St., Duluth, MN. The Community Room and adjacent residential style kitchen, common laundry, office suite for building manager and maintenance supervisor, maintenance shop, common public restroom, staff restroom, trash room, garage, and mechanical and electrical rooms are located on the ground floor. The first floor has a lobby by the entrance door. The property was originally built in 1962.

**Ramsey Manor**

Ramsey Manor is a 13-story, 61,800 square foot, multifamily apartment building with 102 dwelling units (100-1BR and 2-2BR) located at 400 N. 53<sup>rd</sup> Ave W. Duluth, MN. An office suite, laundry room, lobby, lounge, and mechanical area are located on the first floor. The mechanical area consists of a trash room at the base of a trash chute, receiving area, electrical service entrance and switch gear, and other utility entrances. The 13th floor has apartments, community room with dividers, an attached common residential style kitchen, and storage rooms that were originally other common area rooms. The property was originally built in 1971.

**Midtowne Manor I**

Midtowne Manor I is a 14-story, 67,340 square foot, multifamily apartment building with 107 dwelling units (105-1BR and 2-2BR) located at 2021 W. 2<sup>nd</sup> St., Duluth, MN. An office suite, laundry room, maintenance shop, lobby, lounge, and mechanical area are located on the first floor. The mechanical area consists of a trash room at the base of a trash chute, receiving area, electrical service entrance and switch gear, and other utility entrances. The 14th floor has apartments, open air balcony, community restrooms, community room with dividers and attached common residential style kitchen, and storage rooms that were originally other common area rooms. The property was originally built in 1971.

Note that the HRA is not including its scattered site homes or HOPE VI public housing in this RFP. It is also not including the three hi-rises that will be utilizing FHA financing as that process requires the lender to procure their own CNA consultant.

HRA staff will complete as much of the CNA Assessment Tool site data as possible prior to giving them to the Consultant for the surveys. Costs for new energy audits, intrusive testing, or other work necessary for the production of a fully compliant CNA must be included in the costs discussed below.

The consultant's reports shall include identification and discussion of all potential energy measure improvements and water conservation improvements per the HUD RAD CNA directions. The Consultant's report shall also identify and discuss any available Minnesota Power, Comfort Systems, or other utility company, rebate programs.

HRA staff will assist the consultant with scheduling the Capital Needs Assessments and will provide keys for access to the buildings and apartments. HRA staff will also assist the Consultant by generating notices and delivering them to the residents. If the consultant loses a

key that has been issued to their company they will be obligated to pay the cost of having all effected locks rekeyed.

The Capital Needs Assessments will allow the HRA to budget and implement building improvements, energy/water conservation opportunities (ECO's), and "green" improvements in all of our hi-rises and community centers under future competitively bid contracts. Preparation of bid documents and administration of construction contracts to implement the building improvements, energy, water, and green improvements are not included in the scope of this agreement. The consultant will, however, be required to provide data and to cooperate with the consultants that are selected under future request for proposals.

Services shall include:

1. Meet with HRA staff to prepare for capital needs assessments. Review HUD CNA requirements, CNA forms and data to be provided by HRA. Review planned schedule for completing the various components of the CNA.
2. Conduct each site inspection and complete each draft CNA including the Energy Audit in accordance with HUD RAD CNA requirements attached.
3. Submit each draft CNA to HRA for review and comment. The draft shall include a categorization of immediate needs, needs to be funded in years 2 through 5, and needs to be funded for years 6 through 20.
4. Revise draft CNAs as necessary to gain HRA approval.
5. Revise submitted CNAs as necessary to gain HUD and HRA approval.
6. Submit two bound hard copies and a thumb-drive, electronic copy of each final CNA to the HRA.
7. Provide electronic copies of work items and projected timing of immediate and future work items for the HRA to use in future capital improvement budgeting.
8. Complete HUD's e-Tool in the most current version.
9. Provide any updates to the e-Tool as needed.
10. This consultant will provide all required data and information to the future selected consultants to allow the implementation of the recommended improvements.

An Agreement will be issued to the selected consultant authorizing the above referenced work in accordance with the consultant's proposal and this request for proposals.

### **THE TEAM**

The Project continue to be owned by the HRA or by a to-be-formed wholly owned Limited Liability Company, with the HRA serving as the sole member. Support in the conversion is being provided by the consultant, Recap Real Estate Advisors. HRA will continue to serve as the management company for the Properties.

### **TIMELINE**

Responses to this RFP are due on December 18, 2020 so that HRA can review the proposals and make a Recommendation to its Board of Directors.

## EVALUATION TECHNICAL FACTORS

A review of the proposals in accordance with this RFP and a recommendation of the firm most advantageous and supportive of the HRA's needs will be presented to the HRA Board of Commissioners for approval consideration. The HRA and/or the Board of Commissioners may at its discretion request interviews with respondents to discuss the specific aspects and clarification of their proposals.

The HRA Evaluation Committee will use the following criteria to determine the successful consultant for a single, lump sum contract.

<b>POINT VALUE</b>	<b>CRITERIA</b>
20	Approach, Process, and Compliance for the RAD CNA
20	Previous experience on similar projects
25	Quality of response to the RFP & Professional and Technical competence
20	Cost
15	Section 3
<b>100</b>	<b>TOTAL POINTS</b>

This contract is federally assisted; and will obligate the awardee not to discriminate in employment practices as mandated by the Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968. Minority and women owned business are encouraged to respond. HRA reserves the rights to retain all proposal packages submitted. The Housing and Redevelopment Authority of Duluth reserves the right to waive irregularities and to reject any and all proposals.

## SUBMISSION REQUIREMENTS

Respondents must submit one (1) digital copy of the complete proposal. All materials will become property of the HRA. Additionally, respondents will be responsible for all cost incurred in preparing a response to this RFP.

All proposals must be received no later than **4:30 pm, December 18, 2020 Central Time**. Submittal is to be made to [jkeppers@duluthhousing.com](mailto:jkeppers@duluthhousing.com) with *RAD CNA Proposal* in the subject line.

The above stated deadline is firm as to the date and time. The HRA will treat as ineligible for consideration any submission received after that deadline. The HRA may elect to deem a submission non-responsive if the submission fails to comply with the specific requirements of this solicitation.

**Respondents must submit the following for the submission to be considered complete with each section separated by a cover page:**

1. Letter of Interest
  - a. Include contact name, title, address, email, and telephone number to be contacted for clarification or additional information regarding proposals.
  - b. A statement about how your firm plans on approaching the work, your initial findings about the work, and how the work will be completed. This will include specific information about work items discussed in the “Rental Assistance Demonstration (RAD): Physical Condition Assessment Statement of Work and Contractor Qualifications” as well as the other HUD documents discussed above.
  - c. Information on how your firm complies with each of the qualifications noted in the Rental Assistance Demonstration (RAD): Physical Condition Assessment Statement of Work and Contractor Qualifications.
  
2. Previous Related Experience
  - a. Samples of similar RAD compliant Capital Needs Assessments that your company has developed for other public housing authorities that have been accepted by HUD Rental Assistance Demonstration staff. Provide a completed CNA Assessment Tool v1.2 submittal if available.
  - b. A list of other public housing authorities that your company has provided RAD compliant Capital Needs Assessments to.
  - c. A schedule indicating major milestones with completion dates.
  - d. Profiles of those staff who will be assigned to this project, including sub-consultants, if any.
  
3. Fee Structure (TAB 3)
  - a. An itemized list of the proposed cost to complete a Capital Needs Assessment for each hi-rise.
  - b. An itemized list of the proposed cost to complete the Energy Audits for each hi-rise.
  - c. An itemized list of the proposed cost to complete the e-Tool for each hi-rise.
  - d. An itemized list of the proposed cost to complete an update if required.
  - e. Hourly wage rates, including overhead, etc., with estimated maximum fees for completion of project. Wage rates shall be for professional and technical staff only. Clerical and other support costs will be included in these wage rates as overhead.
  - f. A fee schedule for mileage and other services not included in the hourly rate.
  
4. Business References (TAB 4)
  - a. Provide three references (Company name, address, contact name, telephone number, and email) from similar RAD compliant Capital Needs Assessments completed within the last five years.
  
5. Exhibits – HRA and HUD Required Forms (TAB 5)
  - a. Profile of Firm Form

- b. Section 3 Business Concern Affidavit and Certification
- c. Housing and Redevelopment Authority of Duluth Form of Non-Collusive Affidavit
- d. Instructions to Offeror Non-Construction (HUD-5369-B)
- e. General Conditions for Non-Construction Contracts (HUD-5370-C Section I)
- f. HRA of Duluth Other General Conditions

The selected Consultant will be required to provide a certificate of insurance certifying that they have insurance coverage that will cover their employees while on Public Housing property and will protect the HRA from liability for the actions of their employees.

**HRA Contact Person for copies of this RFP:**

Terry Paczynski, Procurement and Capital Improvement Manager

Contact information: (218) 529-6308 or [tpaczynski@duluthhousing.com](mailto:tpaczynski@duluthhousing.com)

**HRA Contact Person for questions related to this RFP:**

Project specification questions or questions about the CNA/e-Tool should be directed **IN WRITING** to Shannon Lestan, Project Consultant, at [sleston@recapdvisors.com](mailto:sleston@recapdvisors.com)

**SUBMISSION:**

One Electronic Copy of the proposal should be delivered as follows via email to Jill A. Keppers, MPH, Executive Director, at [jkeppers@duluthhousing.com](mailto:jkeppers@duluthhousing.com) no later than December 18, 2020 at 4:30 pm Central Time. After this deadline, no other proposals or modifications to previously submitted proposal packages will be accepted.

**HRA'S RESERVATION OF RIGHTS**

The HRA reserves the right to reject any and all proposals, to waive any informalities in the RFP process, and/or to terminate the RFP process at any time if deemed by the HRA to be in its best interest.

1. The HRA reserves the right not to award a contract pursuant to the RFP.
2. The HRA reserves the right to terminate a contract awarded under this RFP, at any time, for its convenience upon ten (10) days written notice to the successful proposer.
3. The HRA reserves the right to determine the work schedule and locations that the successful proposer shall provide the services described in the RFP.
4. The HRA reserves the right to retain all proposals submitted and not permit withdrawal for a period of sixty (60) days subsequent to the deadline for receiving proposals without the written consent of the HRA.
5. The HRA reserves the right to negotiate the fees proposed by the respondent as described in this RFP.
6. The HRA reserves the right to reject any proposal that does not meet the requirement of the RFP, including, but not limited to, incomplete RFP and/or offering of alternative or non-requested services.
7. The HRA shall have no obligation to compensate any proposer for any cost incurred in responding to this RFP.



8. The HRA shall reserve the right to, at any time during the RFP or contract process, prohibit any further participating by a proposer or reject any proposal submitted that does not conform to any of the required details herein.

General Conditions of the RFP:

1. Late submissions will not be accepted or considered.
2. The HRA reserves the right to accept or reject any and all proposals submitted, either in whole or in part, with or without cause; to waive any informalities of any proposal; to extend, amend, or cancel this RFP at any time; and, to make the award in the best interest of the HRA.
3. The HRA reserves the right to request additional information, if needed, from prospective contractors.
4. The Respondent will read and abide by HUD-5369-B Instructions to Offerors Non-Construction (Exhibit A).
5. In the event that it becomes necessary for the HRA to revise any part of this RFP, revisions will be provided in the form of an Addendum. Any Respondent that wishes to receive the Addendum(s) electronically must email their name and company information along with their email address to the HRA contact person listed on page 1.
6. Submissions that are incomplete or not in conformance with the submission requirements may be eliminated from further consideration. Respondents should note carefully the submission requirements.
7. All proposals submitted in response to this RFP will be considered public information and may be made available to the general public (including news media) unless Confidential and/or Proprietary information is submitted under a separate cover and is clearly designated as such.
8. The Respondent will provide a presentation regarding the proposal submitted, if requested to do so by the HRA.
9. Respondents may modify or withdraw a submission prior to the submission deadline only by an authorized representative of that organization. All submissions will become the property of the HRA after the submission deadline.
10. The Respondent affirms that its proposal is made without any additional understandings or agreements in connection with any other person, firm, partnership, or corporation making a submittal for the same purpose, and is in all respects fair and without collusion or fraud.
11. The Respondent has clearly read the provisions, terms, and conditions of the RFP document and does hereby agree to be bound thereby.
12. The HRA retains the right to negotiate with the selected firm(s).
13. Additional services and/or service adjustments may be added or deleted during the life of any contract awarded hereunder as mutually agreed upon in writing between the HRA and Respondent.
14. Respondent must meet the HRA's insurance requirements, as requested by the HRA, and upon award of contract.
15. Respondent will not offer any gratuity, favor, or anything of monetary value to any officials or employees of the HRA, for the purpose of influencing consideration of a response to the RFP.

16. The HRA reserves the right to disqualify any submission that may present a conflict of interest between the HRA, its employees or Board members, Respondent, or parties in the submission.

### **ACCEPTANCE OF RFP AND CONTRACT TERMS**

Respondent's submission of a proposal in response to the RFP shall constitute acceptance by the Respondent of the terms and conditions of this RFP. In the event that the Respondent's proposal is accepted for contract award, the Respondent agrees to enter into a negotiated contract with the HRA at a mutually agreed upon time.

### **CONTRACT AWARD**

Subject to the rights reserved in the RFP, the HRA will award a contract by written notice to the selected Respondent. The award of a contract is subject to the approval of the HRA Board of Commissioners and/or the HRA Executive Director, and it shall be conditional upon the successful negotiation of any revisions to the RFP.

A contract shall be awarded in accordance with the terms and conditions of the RFP to the Respondent whose proposal is most advantageous to the HRA considering qualifications, pricing, technical, and other factors as specified in this RFP. The HRA reserves the right to negotiate and award any element of this RFP, to reject any or all proposals, or to waive any minor irregularities or technicalities in RFP received as in the best interest of the HRA.

### **NO WARRANTY**

Respondents are required to examine the RFP, scope of service, and instructions pertaining to the services requested. Failure to do so will be at the Respondent's own risk. It is assumed that the Respondent has made full investigation to be fully informed as to the extent and character of the services requested. No warranty or representation is made or implied pertaining to the information contained in the RFP.

### **EXHIBITS**

- A. Profile of Firm Form
- B. Section 3 Business Concern Affidavit and Certification
- C. Housing and Redevelopment Authority of Duluth Form of Non-Collusive Affidavit
- D. Instructions to Offeror Non-Construction (HUD-5369-B)
- E. General Conditions for Non-Construction Contracts (HUD-5370-C)
- F. HRA of Duluth Other General Conditions

# **Rental Assistance Demonstration (RAD) Capital Needs Assessment Statement of Work and Contractor Qualifications**

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## **Introduction:**

Each project selected for award will be required to perform a detailed physical inspection to determine both short-term rehabilitation needs to be included as a Scope of Work that will be completed as part of the RAD conversion and long-term capital needs to be addressed through a Reserve for Replacement Account. A CNA must be submitted with the Financing Plan and must have been completed no earlier than 180 days prior to submission of the Financing Plan, except with HUD approval.

The CNA must meet the RAD Program requirements, but must also be compliant with the requirements, as they may be modified from time to time, of HUD Multifamily Accelerated Processing (MAP) and the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. (ASHRAE) Procedures for Commercial Building Energy Audits, Second Edition 2011, Level II guidelines.

## **Overview:**

The RAD CNA has three parts:

**Part 1: CNA Report Comparing Traditional and Green Requirements** – It is the traditional CNA that identifies repairs necessary in the first year following restructuring and the repairs and replacements during the next 20 years; it only offers “traditional” and “green” components that meet local building code; it estimates costs using both “traditional” and “green” principles; and it provides comments on the benefits (financial and otherwise) of the green alternative.

**Part 2: Energy Audit** – It evaluates how energy and water is used at the property. It documents prudent utility-related improvements (water and energy) to the property, the cost of the improvements, and a simple financial payback analysis (however, note that a more sophisticated analysis is available for systems with multiple components with varying estimated useful lives and where the full lifecycle cost analysis is useful). It includes an initial assessment of potentially viable alternatives for generating electricity, heating water, and heating and cooling the conditioned space at the building.

**Part 3: CNA e-Tool v3.0** – The CNA eTool is required as part of any RAD Financing Plan (or application for FHA Firm Commitment). The CNA eTool contains two major components – the narrative (the description of each component and its condition and may include an energy audit) and the financial model (the 20-year schedule and associated determination of the Initial Deposit to Replacement Reserve, or IDRR, and the Annual Deposit to Replacement Reserve, or ADRR).

The CNA contractor may complete any of the components for which it has the necessary qualifications; otherwise, the contractor may subcontract to others who have the necessary qualifications.

## **PART 1. CNA REPORT COMPARING TRADITIONAL AND GREEN REQUIREMENTS**

### **1. Qualifications:** The contractor must

- A. Have training and experience to evaluate building systems, health, and safety conditions, and physical and structural conditions, and to provide cost estimates for maintaining, rehabilitating, or improving deficiencies, using both traditional and Green principles. Must also have environmental expertise, as inspection will include environmental issues as well. Must have any required licenses.
- B. Have the designation of Leadership in Energy and Environmental Design Accredited Professional (LEED AP), in either the United States Green Building Council's LEED New Construction and Major Renovation or the LEED Existing Building Maintenance and Operations examination tracks, or an equivalent designation.
- C. Have completed 10-hours of education in the last calendar year in the areas of Green Building, Sustainability, Energy Efficiency, or Indoor Air Quality.
- D. Have knowledge of the requirements for the "green building" standard, if any, identified by the owner, which may include: Enterprise Green Communities, LEED-H, LEED-H Midrise, LEED-NC, ENERGY STAR New Homes, ENERGY STAR Multifamily High Rise, EarthCraft House, EarthCraft Multifamily, Earth Advantage New Homes, Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label), and the National Green Building Standard (NGBS) or other industry-recognized green building standard deemed acceptable by HUD in its sole discretion.
- E. Have acceptably completed written evaluation reports for similar types of multifamily rental housing projects in similar physical condition and age in the subject market or in similar areas, preferably including two (2) or more buildings that were receiving Section 8 or public housing assistance when the report was prepared.
- F. Have an acceptable record of performance with HUD. Not be under suspension or debarment by HUD or involved as a defendant in criminal or civil action with HUD.
- G. Have produced reports that are well regarded in the marketplace in terms of content, timeliness, and responsiveness. The contractor should have this personal experience, not just the company.
- H. Have the capacity to complete the project inspection and prepare the report in a time frame acceptable to the PHA.

### **2. Statement of Work:** The contractor shall

- A. Perform a Capital Needs Assessment (CNA) for each asset specified by the PHA and report the findings.
  - (i) The report shall be prepared according to the Fannie Mae document: "Physical

Needs Assessment Guidance to the Property Evaluator” (Exhibit 1), except as modified herein. This standard is meant to meet or exceed ASTM E 2018-08, Annex 1.1 concerning multifamily properties as well as Appendix XI.1 concerning qualifications, XI.2 concerning verification of measurements and quantities based on as-built drawings when available or field counts or measurements when necessary, XI.3 concerning service company research. Appendix XI.5 concerning the recommended table of contents is also recommended. Further, this report must be “MAP-compliant,” fully meeting or exceeding the current requirements of HUD Multifamily Accelerated Processing.

- (ii) The report shall include color photographs and a detailed narrative describing the property’s exterior and interior physical elements and condition, including architectural and structural components, and mechanical systems.
- (iii) The Contractor shall conduct and document site inspections of enough dwelling units to be able to formulate an accurate estimate of repair, replacement and major maintenance needs and all office, community space, and common areas. In no event shall the inspection be of less than 25% of occupied units, and 100% of all vacant units and common areas.

- a. In some cases, depending on the size and condition of the Project, all or nearly all units will need to be inspected by the Contractor.

- b. In other cases, a lesser number of units may need to be inspected by the Contractor. But in no event shall the number of units be less than specified in subparagraph (iii) above.

- c. The Department expects that appropriate statistical sampling methods and techniques will be used by the Contractor to reach conclusions about repair needs.

Units shall be randomly sampled while taking into consideration occupied and unoccupied units and the unit size mix, i.e. one-bedrooms, two-bedrooms, etc. If a significant number of units are found to be in poor condition, the Lender/Owner may require that additional units be inspected. The Contractor may also determine that additional units and/or common areas require inspection to fully achieve the objective of considering green building principles, and if so, must coordinate the parameters of the inspection with the Lender/Owner.

- (iv) The inspection must document individual building write ups for all multi-building complexes.
- (v) For older structures the Contractor and lender should consider forensic investigations of primary building systems, including but not limited to structural, building envelope, conveyance, mechanical, electrical, and plumbing systems, where visual or non-invasive examination alone may not be sufficient to support a conclusion about the condition or remaining useful life of system components.

While recognizing that age and condition of structures are not always related, a guideline for use of forensic methods is structures 30 or more years of age. It is the responsibility of the lender to assure that the Contractor employs investigative methods appropriate to the age, condition, physical composition of the property, and the local environment.

When undertaken, a forensic examination should result in a written report, attached to the CNA, which report should include at a minimum the following:

- a. A statement of the examiner's particular experience, education, technical or trade certifications, or other qualifications establishing the examiner's expertise relevant to the matter examined.
  - b. A description of the physical component(s) or system examined including the portions, quantities, and/or locations examined, and the relevant products and materials found installed.
  - c. A description of the trade or industry recognized techniques, tests, or analytical methods of examination used.
  - d. A summary of the estimated age, condition, and serviceability of the products, materials, or system examined.
  - e. The examiner's recommendation of any repairs and/or replacements.
  - f. The examiner's estimate of the remaining useful life of the system or component assuming any recommended repairs or replacements are completed.
- (vi) The report shall include:
- a. **Critical items:** Identify in detail, and report immediately to property management and the Lender/Owner, any repair item(s) that represents a critical repair.

Critical repairs include:

1. Remedies for exigent health and safety hazards or code violations;
2. Correction of conditions that adversely affect ingress or egress;
3. Correction of conditions preventing sustaining occupancy;
4. Correction of accessibility deficiencies.

It is the lender's responsibility to assure that accessibility requirements are accurately applied to projects by the Contractor with knowledge of Federal and, where applicable, state and local requirements. These requirements are:

- (1) The Fair Housing Act design and construction requirements apply to all multifamily housing built after March 13, 1991.
- (2) Section 504 of the Rehabilitation Act of 1973 applies to all Federally assisted programs, facilities, and housing.
- (3) The Americans with Disabilities Act of 1990 (ADA) applies to public accommodations and commercial facilities and to any such portion of a multifamily property.
- (4) Summary Table of Applicable Federal Accessibility Requirements.

ACTIVITY & YEAR BUILT	MARKET RATE APARTMENTS	AFFORDABLE (not assisted, e.g. LIHTC's)	FEDERALLY ASSISTED**
Projects built (1st occupancy*) after 3/13/1991	Fair Housing Act Requirements	Fair Housing Act Requirements	Fair Housing Act & 504/UFAS Requirements
Projects built from 7/11/1988 to 3/13/1991	None	None	504/UFAS Requirements
Sub Rehab of projects built after 7/11/1988	None	None	504/UFAS Requirements (load bearing wall exception)
Refinance of projects built prior to 7/11/1988	None	None	504/UFAS Requirements (load bearing wall and financial/administrative burden exceptions)
All Public Accommodation	ADA	ADA	ADA & 504/UFAS

\*1<sup>st</sup> occupancy means a building occupied for any purpose, not just for housing.

\*\*"Federally assisted" projects include those financed or assisted by Project Based Vouchers, 202/811, HOME, HOPWA, Rent Supplements, 236, TCAP, BMIR, etc.

- (5) State and Local Accessibility Laws. The Fair Housing Act does not preempt state and local government measures affording persons with disabilities greater access than is required by the Fair Housing Act and some state and local governments do apply more stringent requirements. When state or local requirements exceed the Fair Housing Act design and construction requirements, the former prevail to the extent of such excess.
  - (6) Adaptable Does Not Mean Deferrable. A common misinterpretation of the Fair Housing Act design and construction requirements holds that the term "adaptable" contemplates a delay or deferral of the time when "features of adaptable design" required by the statute or regulations may be completed. This is inaccurate. The "features of adaptable design" described in the Fair Housing Act design and construction standards are required at original design and construction. Adaptable for purposes of Section 504 is defined at 24 CFR 8.3 and contemplates limited future physical changes to meet specific needs of particular persons with disabilities.
- b. **Repair/Rehab Items (Short Term Physical Needs):** Identify and estimate the cost of the repairs, replacements, and significant deferred and other maintenance items that will need to be addressed within 12 months of closing (do not include items that are not broken but may need replacement in the near future). The items evaluated (both recommended and not recommended) are explained in the

narrative report and the recommended items are documented in the Cap Needs Input worksheet of the CNA model. That data input automatically generates the rehab escrow needs that appear in column B of the 20 Year Schedule worksheet of the CNA model. Review column B of that worksheet to ensure the data input generated the correct result.

- c. **Long-term Physical Needs/ Reserve Items:** Identify and provide an estimate of the major maintenance and replacement items that are required to maintain the project's physical integrity over the next twenty (20) years.
- d. **Reserve Costs.** The Contractor shall estimate the Initial Deposit to the Reserve for Replacement Account and the Annual Deposit to the Reserve for Replacement Account based on the cost of "Near Term" replacement and major maintenance needs of the Project.
- e. **Environmental Concerns:**
  - (1) This applies to all existing properties constructed prior to 1978 which have not been demonstrated to be LBP and/or asbestos-free. For projects that contain LBP and/or asbestos, the Contractor is responsible for engaging the services of a qualified LBP and/or asbestos abatement contractor(s) to prepare a scope of work for the abatement of LBP and/or asbestos. Where the scope of abatement work consists of permanent enclosure or encapsulation, but not removal, of LBP and/or asbestos, the qualified abatement contractor(s) must also prepare, separate from the scope of abatement work, an Operations and Maintenance (O&M) Plan for LBP and/or asbestos. The O&M Plan contains ongoing maintenance activities for LBP and/or asbestos, to be followed for as long as the LBP and/or asbestos remains in place. All abatement work and ongoing maintenance activities for LBP and/or asbestos shall conform to the following Regulatory requirements:
    - a. For LBP, 24 CFR Part 35;
    - b. For asbestos, 40 CFR Part 61.
  - (2) The report shall provide a description of directly observed potential on-site environmental hazards and include a completed Environmental Restrictions Checklist (see Exhibit 2).
  - (3) The report must meet HUD's requirements, as they may be modified from time to time, for the detection and remediation of radon. These requirements were initially described in HUD Mortgagee Letter 2013-07, issued January 31, 2013.
- f. **Green Building Principles:** An objective of the report is to identify all opportunities to improve energy efficiency, maximize water efficiency, use re-used and recycled materials where practical, safeguard the indoor air quality of the property, be of less harm to the environment generally, and remove/re-use replaced materials and construction debris appropriately. The Contractor is required to evaluate all components in the building, all building systems, and all components on the property, and the property itself, to identify all opportunities to achieve the stated objective. **The Contractor is expected to consider the most promising types of improvements being used generally in applicable green**



**buildings, to identify all alternatives considered, to provide a justification for the green alternative recommended and a brief explanation of why the non-selected alternatives are less appropriate for the subject property.**

Each line item must identify the:

- (1) costs of the traditional repair/replacement to meet local building code, as applicable, and the alternative using green building principles;
  - (2) cost estimate for both the traditional and green approaches; and
  - (3) expected benefits of the green alternative, both financial and non-financial.
- (vii) The report shall identify any physical deficiencies as a result of:
- a. a visual survey;
  - b. a review of any pertinent documentation; and
  - c. interviews with the property owner, management staff, tenants, interested local community groups, and government officials, where appropriate.
- (viii) The report shall include the Contractor's professional opinion as to whether tenant relocation is necessary to complete the recommended scope of work for rehabilitation.

B. The CNA must also include the following subcomponents:

- (ix) Acknowledgements (who prepared report, the preparer's qualifications or a certification that the preparer meets the qualifications required in Part 1.1, when report was prepared, who received report, and when report was reviewed).
- (x) Appendices (color photographs, site plans, maps, etc.).

C. In addition, the contractor shall:

- (xi) Recommend any additional professional reports needed, for example, to determine the presence or degree of structural defects, or to complete additional investigation into an environmental issue, such as radon testing that was not envisioned at the time of engagement. The Lender/Owner will be responsible for obtaining such reports.
- (xii) If requested by the Lender/HUD, the CNA Contractor will review the requirements of a particular "green building standard" and include in the CNA its professional opinion on whether the rehabilitation recommended in the CNA will meet the requirements of the particular "green building standard".
- (xiii) If the services of a subcontractor were secured to inspect the property and complete the report, the contractor shall review the inspection for quality, consistency, and agreed upon format and conformance with these requirements.
- (xiv) If requested by the Lender/Owner, attend a formal kick-off meeting to clarify the requirements and scope of the work to be performed.

### **3. Deliverables**

I. A draft narrative report and a Component Replacement Summary and Detailed 20 Year

Reserve Schedule.

- J. The Owner will review the draft deliverables and discuss any necessary corrections with the Contractor that are necessary for the drafts to be finalized.
- K. The final narrative report shall be completed in the number of originals and copies requested by the Owner.

## **PART 2. ENERGY AUDIT**

### **1. Qualifications:** The contractor shall

- A. Be certified to complete building energy audits by RESNET or BPI (or their training providers), or be a Certified Energy Manager (CEM), or be a State equivalent certified energy auditor, or be a professional architect, or be a registered professional engineer, or be a RESNET certified Home Energy Rater or BPI Certified Building Analyst.
- B. Not be under suspension or debarment by HUD or involved as a defendant in criminal or civil action with HUD.
- C. Produce reports that are well regarded in the marketplace in terms of content, timeliness, and responsiveness. The contractor should have this personal experience, not just the company.
- D. Have the capacity to complete the project inspection and prepare the report in a time frame acceptable to the Lender/Owner.

### **2. Statement of Work**

These requirements are intended to fully satisfy and exceed the requirements in the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. (ASHRAE) Procedures for Commercial Building Energy Audits, Second Edition 2011, Level II guidelines.

- A. An energy audit identifies how energy and water is used in a facility.
  - (i) Data is collected on energy and water use and costs and a physical inspection of the property and energy-related equipment is performed.
  - (ii) The physical inspection reviews equipment and space conditions, past maintenance schedules, remaining useful life, and system performance, along with building envelope characteristics and conditions.
  - (iii) Physical inspection may also consider indicators of performance issues such as leaking or soiled heat exchangers, high humidity, poor space temperature control, and comfort concerns. Some of these characteristics may be indicators of improperly sized heating or cooling equipment.
- B. An energy audit analyzes utility costs of the existing property, including separate rates, if any, for owner and tenant accounts, such as for electricity. Utility data is trended and benchmarked against similar properties with like heating and cooling requirements, and

used to provide estimates of energy and water savings that may be gained by implementing cost effective conservation measures.

- C. An energy audit provides a prioritized list of recommended cost-effective energy and water efficiency improvements to reduce utility costs.
  - (i) Cost-effective energy and water efficiency improvements are energy or water conserving measures whose estimated utility savings exceed the installed cost of the improvement over the measure's useful life.
  - (ii) Recommendations are based on engineering and economic analysis and consider factors such as operating hours, equipment efficiency, and building and occupant energy and water demand characteristics.
  - (iii) Costs are generally developed through industry norms or available historical project information.
- D. Insulation in attics, walls, basements, floors, and ducts for heating and cooling circulation, should, at a minimum, be upgraded to current local building code for new construction, unless prevented by physical obstructions. Additional insulation beyond code should be recommended if cost-justified.
- E. In addition, the energy audit includes a recommendation on whether additional caulking and sealing is a cost-justified expenditure.
- F. An energy audit report includes the following:
  - (i) Current energy, water, and sewerage usage and costs (kilowatt-hour, therms, ccf, utility cost). NOTE: This requirement includes all utility usage at the property, both tenant-paid and owner-paid, and all common areas.
  - (ii) Evidence that the Contractor used the Air Conditioning Contractors of America (ACCA) Manual J guide or another recognized methodology to size the recommended heating and cooling systems. The sizing shall consider other energy-related improvements being made to the property, including additional insulation, energy-efficient windows, etc. The Lender/Owner may request the Contractor prepare several calculations based on possible improvements or may contact the Contractor subsequent to the completion of the initial calculation and ask for a revision based on a specific set of improvements.
    - Exception: There are two exceptions to the requirement to complete a load calculation to appropriately size the heating and cooling systems:
      - a. When the existing units are already the smallest available and there are no known property management or tenant complaints indicating that the existing systems may be inadequate. To justify this exception, the Contractor must inquire of the site property management and of any tenants encountered during the inspection of units, and not receive comments that would cause the Contractor to question the adequacy of the existing systems.
      - b. When the existing units use electric baseboard heat and conversion to another heat system has been determined to be infeasible. To justify this exception, the Contractor must consider any comments about unit

heating received from inquiring of the site property management and of any tenants encountered during the inspection of units and state why conversion to another source is infeasible.

- (iii) Evidence that the contractor analyzed the existing size of hot water heaters and analyzed the appropriate efficient replacement size using First Hour Rating (primarily for individual tenant hot water heaters) or other professionally recognized sizing tools with a goal of providing sufficient but not excess capacity.
- (iv) Evidence that the contractor inspected the ductwork for leakage and recommended and priced appropriate repairs. HUD's objective is to identify energy-saving opportunities and is relying on the contractor's professional judgment as to the extent of inspection, testing, cleaning, and repair that is warranted for the specific property. If the ducts are accessible, the contractor is to conduct a visual inspection and make recommendations for repair of any loose/ broken connections or other leaks. If the ducts are not accessible, the contractor is to provide an opinion on the likely cost-benefit analysis of repairing the ducts and the approach recommended to do so (including use of an aerosol-based product).
- (v) Prioritized list of recommended energy efficiency improvements. At a minimum, in evaluating recommended improvements, the contractor evaluates and comments on:
  - a. Wall, ceiling, and basement (if applicable) insulation – describe existing, cite the local code for new construction
  - b. Exterior doors – weather stripping, caulking, insulation characteristics, possible needed replacement and standards
  - c. Storm doors (where they currently exist) – weather stripping, caulking, insulation characteristics, possible needed replacement and standards
  - d. Dishwashers (where they currently exist) – efficiency standard, age, replacement options
  - e. Windows/sliding glass doors – considering age, weather stripping, caulking, air conditioning sleeves
  - f. HVAC – age, size, and rated efficiency of units, age and type of thermostat
  - g. DHW – age, size, and rated efficiency of units, insulation, temperature setting and set-backs, appropriate efficiency and size for replacement units
  - h. Refrigerators – age, size, rated efficiency of units, potential replacements
  - i. Water – flow rate of shower and faucets, hot water temp at tap, hot water pipe insulation, toilet tank size
  - j. Ventilation – kitchen and bath ventilation (recirculating or outside), appropriate size for replacement units
  - k. Apartment lighting – existing lighting methods, over-lighted conditions, conversion to CFL bulbs or fixtures
  - l. Lobby, common area, corridor – exterior doors (see above), existing lighting methods, lighting (sufficiency/excess, conversion to CFL bulbs and/or fixtures, T-8 (or smaller) electronic ballast fluorescent, LED exit light and

automatic control potential)

- m. Exterior lighting (including parking area) – existing number, type, sufficiency/excess illumination levels and efficiency of lighting type, conversion potential to more efficient lighting type, automatic controls
  - n. Central Plant Boilers/Hot water – efficiency, age, potential for combined heat and power (CHP), set backs
  - o. Laundry Area – identify if leased or owned, number and type of appliances, size, age, efficiency rating
  - p. Other commercial or office space – same evaluation
  - q. Possibility of cost effective change in fuel/heating system type
  - r. Evaluation of rate options, if any, with the utility companies for different site uses, e.g., residential/commercial rates, peak load management rates.
- (vi) An initial assessment of the potential feasibility of installing alternative technologies for electricity, heating and cooling systems, and hot water heating (collectively called Green Energy Technologies) at the property. The auditor is to comment specifically on each of the following:
- a. Photovoltaic for electricity
  - b. Solar thermal for hot water heating
  - c. Wind turbine
  - d. Combined heat and power
  - e. Geothermal heat pumps, and
  - f. Fuel cells.

As an initial assessment of potential feasibility, the auditor's comments are to conclude and justify, for each of the six technologies, whether further study is recommended. Specifically, the auditor is to state that the property: is a potentially viable candidate and a feasibility study is recommended or is not a viable candidate and further study is not recommended.

NOTE: HUD expects a few sentences of discussion for each of the six technologies. For example, "Combined heat and power: The property has less than 80 units (a rule of thumb for minimum number of units for feasibility) and does not have a central power source. Further study is not recommended." Another example, "Geothermal heat pumps: The property has sufficient acreage to drill wells and uses enough energy for heating and cooling that this technology may be feasible. Further study is recommended."

(vii) Installed cost estimates for recommended energy and water efficiency measures.

(viii) Expected useful life of recommended energy and water conservation measures.

Annual energy and water saving estimates (consumption and cost reductions). In considering cumulative savings, the auditor should consider how measures may interact and be realistic about the overall portion of existing utility use that might be conserved. *[Note: The installation of individual components, taken individually, may support a certain level of utility savings that will not be realized when all the recommended components are installed as a package. In addition, some components (e.g., the first-time installation of air conditioning) will serve to increase utility usage.]*

- (ix) The utility savings estimates will be contained in the Utility Savings worksheet of the CNA model (note that the auditor may use the optional “Water Savers” worksheet of the model but **must complete** cell D28 of that worksheet for the total estimate of water savings).
  - (x) Simple payback period in years for each evaluated measure, whether recommended or not. If more than one measure was evaluated, include a brief discussion of all measures evaluated and a justification for the one recommended in the narrative report. Include the recommended measure in the Cap Needs Input worksheet of the CNA model.
- G. The CNA should also include acknowledgments (who prepared report, the preparer’s qualifications, or a certification that the preparer meets the qualifications required in Part 2.1, when report was prepared, who received report, and when report was reviewed).
- H. In addition to the above, the auditor shall:
- (i) Recommend any additional professional reports needed (including, for example alternate energy system feasibility studies, air infiltration tests for energy loss and ventilation needs, blower door tests, infrared imaging, duct blasting, etc.). The Lender/Owner will be responsible for obtaining such reports.
  - (ii) If the services of a subcontractor were secured to perform the CNA, the Contractor shall review the inspection for quality, consistency and agreed upon format, and conformance with the report requirements.
  - (iii) If requested by the Lender/Owner, attend a formal kick-off meeting to clarify the requirements and scope of the work to be performed.

### **3. Deliverables**

A narrative Energy Audit as part of the CNA narrative.

## **PART 3. CNA e-Tool**

### **1. Introduction**

As part of an effort begun in 2010 to align Federal rental housing policies and procedures, HUD and the US Department of Agriculture (USDA), Rural Housing Service, developed an automated process for preparation, submission, and review of CNAs. The several software tools and web applications that form the elements of this automated process are called the CNA e-Tool. Technical information, instructions on how to access and use the CNA e-Tool, and related information are published and periodically updated at HUD's CNA e-Tool home page: [https://www.hud.gov/program\\_offices/housing/mfh/cna](https://www.hud.gov/program_offices/housing/mfh/cna)

### **2. Statement of Work**

The provider will follow the instructions provided by HUD to submit the CNA e-Tool via the web portal once version 3.0 goes live.

Exhibit A  
Profile of Firm Form

**HOUSING & REDEVELOPMENT AUTHORITY OF DULUTH, MN**

**PROFILE OF FIRM FORM**

**NAME OF FIRM:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_ **E-MAIL:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
STREET CITY STATE ZIP

**COMPANY RESUME:** Please complete below and attach a brief biography/resume of the company, including, at a minimum the following information:

1. Year Firm Established: \_\_\_\_\_
2. Year Firm Established in Minnesota (if applicable): \_\_\_\_\_
3. Former Name and Year Established (if applicable): \_\_\_\_\_
4. Name of Parent Company and Date Acquired (if applicable): \_\_\_\_\_
5. Years conducting work similar to bid proposal: \_\_\_\_\_

**PROJECT MANAGER:** Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on the project:

NAME	TITLE

**SUBCONTRACTORS:** Identify proposed subcontractors and the jobs for this project:

NAME	WORK ASSIGNMENT

**FEDERAL TAX ID NO.:** \_\_\_\_\_

**MINNESOTA OR OTHER – BUSINESS LICENSE NO.:** \_\_\_\_\_



**HOUSING & REDEVELOPMENT AUTHORITY OF DULUTH, MN**

**PROFILE OF FIRM FORM**

**INSURANCE:**

Worker's Compensation Insurance Carrier: \_\_\_\_\_

Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

General Liability Insurance Carrier: \_\_\_\_\_

Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Professional Liability Insurance Carrier: \_\_\_\_\_

Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**PROJECT REFERENCES:** References from at least three related projects completed in the last 3 years. The listing shall, at a minimum, include the information listed below. The HRA reserves the right to contact these references. (attach additional sheet if necessary)

CLIENT NAME	CONTACT NAME	ADDRESS	PHONE NO. & E-MAIL ADDRESS	DATES OF SERVICE	BRIEF DESCRIPTION OF PROVIDED SERVICE(S)
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**MAINTENANCE – SUPPORT:** A description of the company's Maintenance and on-going Support Service, including (attach additional sheets if necessary):

- Location of closest service and repair specialist along with details of support response time and turnaround repair guarantees.
- On-going costs identifying the limits of coverage for standard service as well as fees for after-hours response.

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**DEBARRED STATEMENT:** Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of Minnesota, or any local government agency within or without the State of Minnesota?

Yes  No

If "Yes", please attach a full detailed explanation, including dates, circumstances, and current status.

**HOUSING & REDEVELOPMENT AUTHORITY OF DULUTH, MN**

**PROFILE OF FIRM FORM**

**DISCLOSURE STATEMENT:** Does this firm or any principal(s) thereof have any current and/or past personal or professional relationship with any Commissioner or Officer of the HRA?

Yes  No

If "Yes", please attach a full detailed explanation, including dates, circumstances, and current status.

**NON-COLLUSIVE AFFIDAVIT:** Complete and attach Non-Collusive Affidavit.

**VERIFICATION STATEMENT:** The undersigned bidder hereby states that by completing and submitting this form, he/she is verifying that all information provided herein is to the best of his/her knowledge, true and accurate, and agrees that if the HRA discovers that any information entered herein is false, that shall entitle the HRA to not consider nor make award or to cancel any award with the undersigned party.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
COMPANY

Exhibit B  
Section 3 Business Concern Affidavit and Certification

## SECTION 3 BUSINESS CONCERN AFFIDAVIT

The undersigned being duly sworn, on oath, represents, warrants, certifies, deposes and says, under penalty of law, as follows:

### I. BASIC INFORMATION

The following information is true and correct:

1. Name of Company: \_\_\_\_\_

2. Company Address: \_\_\_\_\_

\_\_\_\_\_

3. Type of Business (corporation, partnership, sole proprietorship, joint venture):

\_\_\_\_\_

4. Section 3 Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

### II. SECTION 3 BUSINESS CONCERN

Is the Company a Section 3 Business Concern\*? (Please circle your answer)

YES

NO

If "YES", indicate (a) – (b) – (c) from definition below:

\_\_\_\_\_

\*A "Section 3 Business Concern" is a business concern that is one of the following:

- (a) at least 51% owned by Section 3 Residents, or
- (b) has full-time, permanent employees, at least 30% of whom either (i) are currently Section 3 Residents, or (ii) have been employed by the business for three years or less and were Section 3 Residents at the time when the business first hired them, or
- (c) has committed to subcontract in excess of 25% of the dollar award of all subcontracts to be let in connection with the project to businesses that qualify under (a) or (b) above.

A “*business concern*” is a business entity formed in accordance with state law and which is licensed under state, county, or municipal law to engage in the type of business activity for which it was formed.

**III. VERIFICATION**

The company hereby agrees to provide, upon request, documents verifying the information provided on this form.

Under penalty of perjury, I certify that I am the \_\_\_\_\_ (Title) of the Company, that I am authorized by the Company to execute this affidavit on its behalf, that I have personal knowledge of the certifications made in this affidavit and that the same are true.

Name: \_\_\_\_\_  
*Signature*

Name: \_\_\_\_\_  
*Printed*

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

## **SECTION 3 DEFINITIONS**

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1994, requires that, to the greatest extent feasible, employment and other economic opportunities generated by HUD funds be directed to low- and very low-income residents. 24 CFR Part 135 establishes the standards and procedures to be followed by Public Housing Authorities in order to ensure that the requirements of Section 3 are met. **The HRA may give preference for award of the contract to a responding qualified, verified Section 3 business from the HRA locality if the offer from the business under consideration is no more than 5% greater than the lowest responsive, responsible offer and within budget.**

**30% OF NEW HIRES/EMPLOYEES** – 30% of new hires/employees is calculated by dividing the total hours worked by all new hires into the total hours worked by Section 3 new hires. The result must be greater than or equal to 30% for the minimum goal to be met.

**CORE EMPLOYEE** – The core crew employee is an individual who is a bona fide employee of the contractor at the time the contract is awarded, and was employed by the contractor not less than 120 days prior to the contract award or worked not less than 350 hours during the 120 days preceding the contract award. The contractor is responsible for verifying that core employees are defined by and meet the criteria of the HRA.

**LOW INCOME PERSONS** – Families (including single persons) whose incomes do not exceed 80% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families (see income levels on page 2).

**NEW HIRES** – Full-time employees for permanent, temporary, or seasonal employment opportunities.

**SECTION 3 BUSINESS CONCERN** – A business concern, as defined in this section–

- (1) That is 51% or more owned by Section 3 Residents; or
- (2) Whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 Residents, or within three years of the date of first employment with the business concern were Section 3 Residents; or
- (3) That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "Section 3 Business Concern".

**SECTION 3 RESIDENT** – Any individual who meets the low-income or very low-income criteria and who is 18 years of age or older who resides in the metropolitan area. Qualified Section 3 Residents will receive recruiting and hiring priority in the following order:

- HRA HOPE VI Clients
- HRA Self-Sufficiency Participants
- Other HRA Public Housing Residents
- Other Section 8 Participants
- Other low- or very low-income residents of the surrounding community

**VERY LOW INCOME PERSONS** – Families (including single persons) whose incomes do not exceed 50% of the median family income for the area, as determined by HUD, with adjustment for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50% of the median for the area on the basis of HUD’s findings that such variations are necessary because of unusually high or low family incomes (see income levels below).

**DULUTH, MN-WI MSA  
2020 – ANNUAL GROSS HOUSEHOLD INCOME LIMITS**

<b>FAMILY SIZE (TOTAL HOUSEHOLD)</b>	<b>VERY LOW INCOME (50%)</b>	<b>LOW INCOME (80%)</b>
<b>1</b>	<b>\$26,900</b>	<b>\$43,050</b>
<b>2</b>	<b>\$30,750</b>	<b>\$49,200</b>
<b>3</b>	<b>\$34,600</b>	<b>\$55,350</b>
<b>4</b>	<b>\$38,400</b>	<b>\$61,450</b>
<b>5</b>	<b>\$41,500</b>	<b>\$66,400</b>
<b>6</b>	<b>\$44,550</b>	<b>\$71,300</b>
<b>7</b>	<b>\$47,650</b>	<b>\$76,200</b>
<b>8</b>	<b>\$50,700</b>	<b>\$81,150</b>

SOURCE: 2020 – U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT.

These income levels are periodically revised.

Exhibit C  
Housing and Redevelopment Authority of Duluth Form of Non-Collusive Affidavit



# Housing & Redevelopment Authority of Duluth, MN

Form of Non-Collusive Affidavit

PROJECT: \_\_\_\_\_

\_\_\_\_\_, deposes and says that:

(Name)

(1) He or she is the \_\_\_\_\_ of \_\_\_\_\_,  
(Title) (Company)

the Bidder that has submitted the attached Bid;

(2) He or she is fully informed respecting the preparation of contents of the attached bid and of all pertinent circumstances respecting such bid;

(3) Such bid is genuine and is not a collusive or sham bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affidavit, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other bidder, firm or person to submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, or to fix any overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Housing and Redevelopment Authority of Duluth, Minnesota "Authority", or any person interested in the proposed contract; and

(5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agents, representatives, owner, employees, or parties in interest, including this affidavit.

(6) The bidder has not provided, nor will provide, in connection with this bid or any contract resulting herefrom, any gain or interest of any type of any employee, member or officer of the Authority or to a member of the governing body or other public official of the locality that exercises any responsibility with respect to the Authority during their tenure or for one year thereafter;

(7) The bidder verifies that all statements in said bid are true.

BY: \_\_\_\_\_

(Authorized Representative)

DATE: \_\_\_\_\_

Exhibit D  
Instructions to Offeror Non-Construction (HUD-5369-B)

# Instructions to Offerors Non-Construction

## 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 protester.

## **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:]

Exhibit E  
General Conditions for Non-Construction Contracts (HUD-5370-C Section I)

# General Conditions for Non-Construction Contracts

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

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

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

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

#### 3. Termination for Convenience and Default

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

#### 4. Examination and Retention of Contractor's Records

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

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

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

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

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

#### 6. Energy Efficiency

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

#### 7. Disputes

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

#### 8. Contract Termination; Debarment

#### 9. Assignment of Contract

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

#### 10. Certificate and Release

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

#### 11. Organizational Conflicts of Interest

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

#### 12. Inspection and Acceptance

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

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

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

### 13. Interest of Members of Congress

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

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

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

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

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(ii) The prohibition does not apply as follows:



(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

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## 16. Equal Employment Opportunity

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

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

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

## 17. Dissemination or Disclosure of Information

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

## 18. Contractor's Status

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

## 19. Other Contractors

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

## 20. Liens

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

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

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

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

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

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

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

Exhibit F  
HRA of Duluth Other General Conditions

# Housing & Redevelopment Authority of Duluth, MN

## Other General Conditions

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

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

### **Procurement of Recovered Materials**

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

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### **Termination for Cause and for Convenience.**

(a) The HRA may terminate this contract in whole, or from time to time in part, for the HRA's convenience or the failure of the Contractor to fulfill the contract obligations (cause/default). The HRA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the HRA all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process. A breach of Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

(b) If the termination is for the convenience of the HRA, the HRA shall be liable only for services rendered before the effective date of the termination.

(c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (cause/default), the HRA may (1) require the Contractor to deliver in the manner and to the extent directed by the HRA, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HRA. In the event of termination for cause/default, the HRA shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

**Independent Contractor.** The contractor is an independent agent and not to be considered an employee of the HRA or assume any right, privilege or duties of an employee, and shall save harmless the HRA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HRA in connection with the Contract. The Contractor is responsible for his/her income or other tax liability.

### **Subcontracting/Assignment.**

The Contractor shall not subcontract any portion of the services to be performed under this Contract nor assign this contract without prior written approval of the HRA. In the event that a subcontract is approved, prompt payment must be made in accordance with Minnesota Statute 471.425 Subd.4a. The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HRA under the contract may be assigned to a bank, trust company, or other financial institution.

### **Warranty**

All material and workmanship provided under this solicitation shall be *fully warranted by the Contractor in addition to and irrespective of any manufacturer's or supplier's warranty for a period of one year after final completion of work* and any deficiencies shall be corrected by the Contractor at no expense to the HRA during the warranty period. The Contractor shall make any manufacturer's standard warranty available to the HRA.

### **Inspection and Acceptance**

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

# Housing & Redevelopment Authority of Duluth, MN

## Other General Conditions

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

(b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HRA within 7 days of notification or a later date if extended by the HRA.

(c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HRA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

**Permits and Codes.** The Contractor shall comply with all applicable codes and regulations with all Federal, State and local code and/or ordinances. The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work.

**Work Performance.** All work shall be performed by the Contractor and/or his or her employees who are skilled in their trade and who are able to work in harmony with employees of the HRA, residents, and employees of other contractors who may be working at the location at which the work is to be done.

### **Health, Safety, and Accident Prevention**

In performing this contract, the Contractor shall: (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation; (2) Protect the lives, health, and safety of other persons; (3) Prevent damage to property, materials, supplies, and equipment; and, (4) Avoid work interruptions. The HRA office will not be responsible for insuring any safety requirements being compiled with or enforcement thereof.

### **Clean-Up**

The contractor at all times shall keep the premises free from accumulation of waste material or rubbish caused by his operation. At the completion of the work he shall remove all waste materials and rubbish from and about the project as well as all tools, construction equipment, machinery and surplus material. The Contractor shall remove stains, smears, spots dust, dirt or other foreign substances from finished surfaces, shall remove temporary protective coatings, labels and shall do such other cleaning as necessary to place the installed materials and premises in a thoroughly neat, clean and orderly condition.

### **Interest of Members of Congress**

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

### **Interest of Members, Officers, or Employees and Former Members, Officers, or Employees**

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

### **Equal Employment Opportunity**

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

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

# Housing & Redevelopment Authority of Duluth, MN

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(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**Affirmative Action:** The goal of the HRA Equal Opportunity and Affirmative Action Plan is to ensure that businesses owned and controlled by minorities (MBE) and/or women (WBE) are offered a maximum feasible opportunity to do business with the HRA. The HRA maintains a contracting goal that 20% of modernization contracts of \$25,000 or more should be awarded to MBE and WBE enterprises through the competitive bidding process. MBE or WBE subcontractors, suppliers and employees will be considered when monitoring progress toward meeting these goals. The successful bidder, upon request of the HRA, may be required to submit additional information regarding the response of MBE/WBE subcontractors or suppliers solicited by the bidder for this contract.

**Anti-Kickback Act:** The Copeland Act makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under his/her contract for employment.

**Section 3:** Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1994, requires that, to the greatest extent feasible, employment and other economic opportunities generated by HUD funds be directed to low- and very low-income residents. 24 CFR Part 135 establishes the standards and procedures to be followed by Public Housing Authorities in order to ensure that the requirements of Section 3 are met. According to HRA Section 3 Policy, Contractors will be required to hire *qualified*, Section 3 employees as 30% of all *new* hires. A new hire is defined as any persons hired after the signing of the contract. At the time of contract specific new hires will be determined based on the contractor's plan/schedule for completing the job. Positions for new hires shall not be filled immediately prior to undertaking work in order to circumvent regulations set forth in 24 C.F.R. Part 135. ***The HRA may award the contract to a responding qualified, verified Section 3 business if the offer from the business under consideration is no more than 5% greater than the lowest responsive, responsible offer and within budget.***

**Insurance Hold Harmless.** Contractors and Subcontractors shall hold harmless and defend the HRA, their officers, agents, employees, and tenants against any and all claims for property damage, loses, claims for injury to or death of one or more than one person, costs and expenses of any kind and nature including attorney's fees, arising out of or resulting from the performance of the work or contractor's operations under the Contract; and shall pay any judgment against the HRA resulting from any such suit; provided however, that the HRA shall have the right at its option to participate in any such litigation without relieving the Contractor of any of its obligations hereunder. ***The Contractor shall provide the HRA with a certificate of Insurance prior to commencement of the work. The insurance shall be for not less than the following limits: Per occurrence - \$1,500,000, General Aggregate - \$3,000,000. The HRA shall also be named and covered as an additional insured on each Comprehensive General Liability Insurance policy furnished for the Contract. The certificate shall provide 30 days written notice to the HRA of any change or cancellation prior to expiration.***

**Change Order Calculation.** The HRA may at any time, by written order, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.

(a) If any such change causes an increase or decrease in the hourly rate, amount of the contract, or the time required for performance of any

# Housing & Redevelopment Authority of Duluth, MN

## Other General Conditions

part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HRA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.

(c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HRA decides that the facts justify it, the HRA may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HRA.

Change order costs shall be as set forth below:

- a. Actual labor costs, itemized by each trade involved showing the hourly rates for each. Labor rates shall be the same for extra and credit computations.
- b. Burden on labor, which shall be the actual costs of mandatory fringe benefits, taxes on labor, worker's compensation, and insurance on labor, unemployment taxes, including FICA.
- c. Actual quantities of material and equipment with their actual unit costs.
- d. The cost of subcontracted work, computed in the same way as provided for under this subparagraph.
- e. Overhead, profit, or commission, as set forth below.
- f. Applicable sales tax on materials.

The maximum that will be allowed for overhead, profit or commission shall be as follows:

	Overhead	Profit	Commission
To the Contractor and/or subcontractor for work performed with their own forces	8% of actual cost	7% of actual cost plus overhead	-----
To the Contractor for work performed by forces other than their own	-----	-----	7% of subcontractor cost, overhead and profit.

### Disputes

(a) All disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

(b) All claims by the Contractor shall be made in writing and submitted to the HRA. A claim by the HRA against the Contractor shall be subject to a written decision by the HRA.

(c) The HRA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HRA's decision, shall notify the HRA in writing that it takes exception to such decision, the decision shall be final and conclusive. (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HRA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HRA that it submit a final voucher and release, whichever is earlier, then the HRA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.

(e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HRA.

(d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

### Sales Tax.

It is assumed that in the preparation of the bid, the bidder has taken into consideration any liability to the State of Minnesota for Sales/Use tax. The Contractor's tax liability will be considered as his expense for which no direct compensation will be made by the HRA over and above the accepted bid price. *At the close of the contract, the Contractor and/or Subcontractors will furnish a list to the HRA of items purchased for this project and the respective Minnesota and City of Duluth sales taxes assessed for those items.*



# Housing & Redevelopment Authority of Duluth, MN

## Other General Conditions

### **Withholding Affidavit.**

Minnesota Statute S290.97 requires that local governments shall not make final settlement with any contractor until a satisfactory showing is made that the Contractor has complied with Minnesota Statute S290.92 which relates to the withholding an payment of payroll taxes. All Contractors and Subcontractors must obtain and submit a copy of the certified by the Minnesota Department of Revenue, "Withholding Affidavit for Contractors", form IC-134, before the final settlement can be made on the contract.

### **Payments**

(a) The HRA shall pay the Contractor the price as provided in this contract.

(b) The HRA shall make progress payments approximately every 30 days as the work proceeds on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(c) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

(d) Except as otherwise provided in State law, *the HRA shall retain five (5) percent* of the amount of progress payments until completion and acceptance of all work under the contract. The HRA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the HRA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.

(e) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

(f) Final settlement shall be made after acceptance of the completed work and receipt of required Lien Waivers, Sales tax documentation, and State of MN form IC134.