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1.0 GENERAL CONDITIONS:

1.1 Applicability: If referred to within the text of such, these ITPC shall be applicable to all Request For Qualifications (RFQ) solicitations that the CENTRAL FALLS HOUSING AUTHORITY (CFHA) conducts and shall be applicable to any contract that the HA awards to or signs with any firm, agency or individual pursuant to such RFQ. A copy of these ITPC shall be made available to any actual or prospective proposer, or contractor who does business with or intends to do business with the HA.

1.1.1 Unless otherwise specified within the RFQ or contract documents, in the event that any provision in any document listed herein conflicts with any provision within these ITPC, the provision in the RFQ or contract document shall govern. Further, in the case of any attached HUD forms (more specifically: HUD-5369-C (8/93); HUD-5369-B (8/93); and HUD-5370-C (10/2006), Section I; HUD-51915), the information within such HUD form(s) shall govern any other information issued, especially that issued within any HA-created forms that are issued as a part of this solicitation.

1.2 Definitions (pertaining to all RFQ documents issued by the HA pertaining to this RFQ, including the attachments and the ensuing contract)**:**

1.2.1 **"Contracting Officer"** when named within an RFQ document shall refer to either the ED or the person he/she has delegated such responsibilities to.

1.2.2 **"Contract"** refers to the fully executed written agreement that ensues from the RFQ. Whereas all RFQ documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within the RFQ document, such is referring to both the RFQ documents and the ensuing contract document.

1.2.3 **"Contractor"** and the term "successful proposer" may be used interchangeably.

1.2.4 **"Days"** unless otherwise directed, shall refer to calendar days.

1.2.6 **"ED"** is the HA Executive Director.

1.2.8 **"CFHA"** is the CENTRAL FALLS HOUSING AUTHORITY. Unless otherwise defined herein or within the ensuing contract, whenever the term "the HA" is used without clearly designating a responsible HA staff person, the proposer(s) shall assume that responsibility for that item rests with the CO.

1.2.9 **"HUD"** is the United States Department of Housing and Urban Development. HUD is the Federal agency that the HA receives some funding from; however, pertaining to this RFQ, correspondences, including proposal submittals, received from each proposer must exhaust all provisions contained herein prior to contacting HUD (i.e. in the case of a protest).

1.2.10 **"Herein"** shall refer to all documents issued pursuant to the noted RFQ, including the RFQ documents and the attachments.

1.2.11 **Offer"** is the proposal submittal referred to within the following Section 1.2.14 that the proposer delivers to the CFHA in response to the RFQ.

1.2.12 **Offeror" or "Offerors"** are the proposer or proposers.

1.2.13 **"Parties" -** When "the parties," "both parties" or "either party" is stated within the RFQ documents or the contract, such refers to the HA and the successful proposer(s).

1.2.14 **"Proposal" and/or "Proposal Submittal"** is the "hard copy" document that the proposer is required to, as detailed within the RFQ document, deliver to the HA.

1.2.15 **"Protestant"** is a prospective proposer or proposer who feels that he/she has been treated inequitably by the CFHA and wishes the CFHA to correct the inequitable condition or situation. To be eligible to file a protest with the CFHA pertaining to an RFQ or contract, the protestant must have been involved in the RFQ process in some manner as a prospective proposer (i.e. registered and received the RFQ documents).

1.2.16 **"Prospective Proposer" or "Proposer" -** A prospective proposer is a firm or individual who has been notified of the RFQ solicitation and/or who has requested and/or received the RFQ documents and is considering responding with a proposal; a proposer is a firm or individual who has submitted a proposal in response to the RFQ. All terms and conditions shall apply equally to all prospective proposers as well as proposers, though prospective proposers may not, after the deadline set for receiving proposals, receive further notices pertaining to that RFQ—meaning, certain notices (such as the Notice of Results of Evaluation) are typically only delivered to proposers and not to all prospective proposers.

1.2.17 **"Request For Qualifications" (RFQ)** is the competitive proposal process allowed by HUD, especially as defined within Section 7.3 of HUD Procurement Handbook 7460.8 REV 2.

1.2.18 **"RFQ Document(s)" -** Whether stated in the singular or the plural, such refers to the body of documents, including attachments and the information posted on the nahro.economicengine.com Internet System (hereinafter, the "noted Internet System" or the "System), that the HA makes available to all prospective proposers wherein is detailed the HA's requirements.

1.2.19 **"Solicitation" or "Competitive Solicitation"** is the RFQ process detailed herein.

2.0 CONDITIONS TO PROPOSE:

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

2.2 **RFQ Forms, Documents, Specifications and Drawings:**

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

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

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

2.3 Proposal Preparation, Submission and Receipt by the HA:

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

2.3.2 **Manner of Submission:** The proposal submittal shall be submitted in the manner detailed within the RFQ document. Failure to submit the proposal in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that proposal, and may, at the discretion of the CO, eliminate that proposer from consideration for award.

2.3.3 **Time for Receiving Proposals:** Proposals received prior to the time set as the deadline for the receipt by the CFHA of the proposal submittal shall be securely kept, unopened, by the CFHA. The CO, whose duty it is to open such proposals, will decide when the specified time has arrived. No proposal received after the designated deadline shall be

considered, except as detailed within Section 6 of Form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*.

2.3.3.1 Proposers are cautioned that any proposal submittal that may be time-stamped as being received by the HA after the exact time set as the deadline for the receiving of proposals shall be returned unopened to the proposer. Any such proposals inadvertently opened shall not be considered but shall be ruled to be invalid. No responsibility will attach to the CFHA or any official or employee thereof, for the pre-opening of, or the failure to open a proposal not properly addressed and identified.

2.3.4 **No Public Opening of Proposals:** Pursuant to the competitive proposals or RFQ process, proposals are not publicly opened, but are held secure until the submittal deadline has passed. The proposals are then opened in private by the CO (or his/her designee) and are, pursuant to the evaluation plan, examined for minimal responsiveness (i.e. minimum compliance with the requirements of the RFQ). Persons other than HA staff involved in this process are not allowed to be present during the opening, nor may they inspect the proposals until after award has been completed.

2.3.5 **Withdrawal of Proposals:** Proposals may be withdrawn as detailed within Section 6(h) of Form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*. Negligence on the part of the proposer in preparing his/her proposal confers no right of withdrawal or modification of his/her proposal after such proposal has been received and opened.

2.3.6 **Conflicting Conditions:** Any provisions detailed within any of the RFQ documents which may be in conflict or inconsistent with any of the paragraphs in any of the other RFQ documents, including attachments, shall be void to the extent of any such conflict or inconsistency. Further, as stated within Section 1.1.1 of this ITP, unless otherwise specified within the RFQ or contract documents, if any provision in any document listed herein conflicts with any provision within this ITP, the provision in the RFQ or contract document shall govern.

2.3.7 **Interpretations:** No official oral interpretation can be made to any proposer as to the meaning of any instruction, condition, specifications drawing (if any), or any other document issued pertaining to this RFQ. Every request for an official interpretation shall be made by the prospective proposer, in writing, pursuant to the schedule set within the

RFQ document issued and as directed by the CFHA. Official interpretations will be issued in the form of addenda, which will be delivered to each proposer; but it shall be the prospective proposer's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the RFQ documents and the proposed contract with the successful proposer, and all proposers shall be bound by such addenda, whether received by the prospective or successful proposer(s).

2.4 Exceptions to Specifications:

2.4.1 A proposer may take exception to any of the proposal documents or any part of the information contained therein, by submitting, in writing to the CO, at least 10 days prior to the proposal deadline, a complete and specific explanation as to what he/she is taking exception to. Proposed alternate documents or information must also be included. A response by the CFHA will be issued in writing within 5 days of receipt of such exception request. The CFHA reserves the right to agree with the prospective proposer and issue a revision to the applicable RFQ requirements or may reject the prospective proposer's request.

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

2.5 Lump Sum Cost Breakdown (LSCB):

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

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

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

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

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

3.0 PROPOSAL EVALUATION:

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

3.1.1 All proposal documents submitted by the proposers are not necessarily a matter of public record and as a matter of normal course, the proposals submitted by each proposer will not, until after award has been completed, be available to be viewed by any interested parties except as approved by the CFHA Legal Counsel (i.e. a proposer will not, prior to completion of award, be allowed to challenge an apparent top-rated proposer by inspecting the proposal that the apparent top-rated proposer submitted). The CFHA shall, however, upon request, verify that the proposal documents submitted are/were acceptable.

3.2 **Award of Proposal(s):** The successful proposer shall be determined by the top-rated responsive and responsible proposer as determined by the evaluation process detailed within the RFQ document issued, provided his/her proposal is reasonable, he/she is able to deliver the specified items in a timely manner and it

is, in the opinion of the CFHA, to the bests interests of the CFHA to accept the proposal. All proposers will be notified in a timely manner of the results of the evaluation after award has been completed.

3.3 Rejection of Proposals:

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

3.3.2 Prospective proposers acknowledge by downloading and receiving the RFQ documents and/or by submitting a proposal that the submission of a proposal to the HA is not a right by which to be awarded that proposal, but merely an offer by the prospective proposer to perform the requirements of the RFQ documents in the event the HA decides to consider an award to that proposer.

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

3.5 Mistake in Proposal Submitted:

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

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

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

3.6.1 If the forms furnished by the CFHA are not used or are altered or if the proposed costs are not submitted as required and where provided (especially within the noted Internet System).

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

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

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

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

3.7 Disqualification of Proposers: Any one or more of the following shall be considered as sufficient for the disqualification of a proposer and the rejection of his/her proposal:

3.7.1 Evidence of collusion among prospective proposers. Participants in such collusion will receive no recognition as bidders or proposers for any future work of the CFHA until such participant shall have been reinstated as a qualified proposer or proposer. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.

3.7.2 More than one proposal for the same work from an individual, firm, or corporation under the same or different name(s), unless such was specifically allowed by the CFHA within the proposal documents issued, including by addendum.

3.7.3 Lack of competency, lack of experience and/or lack of adequate machinery, plant and/or other resources.

3.7.4 Documented unsatisfactory performance record as shown by past work for the CFHA or with any other local, State or Federal agency, judged from the standpoint of workmanship and progress.

3.7.5 Incomplete work, which in the judgment of the CFHA, might hinder or prevent prompt completion of additional work, if awarded.

3.7.6 Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.

3.7.7 Failure to comply with any qualification requirement of the CFHA.

3.7.8 Failure to list, if required, all subcontractors (if subcontractors are allowed by the CFHA) who will be employed by the successful proposer(s) to complete the work of the proposed contract.

3.7.9 As required by the RFQ documents, failure of the successful proposer to be properly licensed by the State of Rhode Island and/or to be insured by a general liability and/or worker's compensation policy.

3.7.10 Any legal reason to be determined, in good faith, to be in the best interests of the CFHA.

3.8 **Burden of Proof:** If requested by the CFHA, it shall be the responsibility of the proposer(s) to furnish the CFHA with sufficient data or physical samples, within a specified time, so that the CFHA may determine if the goods or services offered conform to the Specifications.

4.0 Right to Protest:

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

4.1.1 An alleged aggrieved "protestant" is a prospective or actual proposer who feels that he/she has been treated inequitably by the CFHA and wishes the HA to correct the alleged inequitable condition or situation. To be eligible to file a protest with the CFHA pertaining to an RFQ or contract, the alleged aggrieved protestant must have been involved in the RFQ process in some manner as a prospective proposer (i.e. registered and received the RFQ documents) when the alleged situation

occurred. The CFHA has no obligation to consider a protest filed by any party that does not meet these criteria.

4.2 **Administrative Powers:** It is totally within the administrative powers of the ED to grant or deny any requests for administrative appeal. If, in the opinion of the ED, the alleged aggrieved protestant merits an administrative review, the ED shall direct that alleged aggrieved protestant to submit additional data.

4.3 **Procedure to Protest:** An alleged aggrieved protestant shall comply with the following protest procedures, and failure to comply in the manner prescribed shall automatically relieve the CFHA from accepting or considering that protest:

4.3.1 The alleged aggrieved protestant must file, in writing, to the CO the exact reason for the protest, attaching any supportive data. The protestant must state within the written protest document specifically (not by inference) what action by the CFHA or condition is being protested as inequitable, making, where appropriate specific reference to the RFQ documents issued. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve the CFHA from any responsibility to consider the protest and take any corrective action.

4.3.2 The written instrument containing the reason for the protest must be received by the CO within 10 days after the occurrence of any of the following:

4.3.2.1 the deadline for receiving proposals;

4.3.2.2 receipt of notification of the results of the evaluation or the award; or

4.3.2.3 the alleged aggrieved protestant knows or should have known the facts.

4.3.3 In any case, protests shall be filed no more than 10 days after any of the above (unless the occurrence being protested occurred in its entirety after the proposal deadline). Protests received after these dates shall not be considered.

4.3.4 The CO shall review the written protest and supportive data, if any. He/she shall, within 10 days after receipt of the written protest, issue a written opinion and decision. This document shall state the reasons for the action taken as well as inform the alleged aggrieved protestant of

the right of further administrative review. A copy of this written opinion and decision shall be forwarded to the ED.

4.3.5 **Administrative Appeal:** If the alleged aggrieved protestant does not agree with the written opinion and decision issued by the CO, the alleged aggrieved protestant may, after receipt of the written opinion and decision issued by the CO request an administrative appeal hearing be granted (such request must be delivered in writing to the CO within 5 days of receipt of the written opinion and decision; failure to do so within such 5 days shall relive the CFHA of any responsibility to consider such request). The following procedures must be complied with in the manner prescribed; failure by the alleged aggrieved protestant to comply shall automatically relieve the CFHA from accepting or acting on that request for administrative hearing:

4.3.5.1 The alleged aggrieved protestant must file, in writing, his/her request for an administrative hearing, to the ED, within 5 days of receipt of the written opinion and decision and failure to do so within such 5 days shall relive the CFHA of any responsibility to consider such request.

4.3.5.2 The request for an administrative appeal hearing must contain the specific reasons for the appeal and all supporting data for those reasons.

4.3.5.3 It shall be within the administrative powers of the ED to, after review of the request submitted, grant or deny any request for administrative appeal.

4.3.5.4 If the ED, after complete review of the alleged aggrieved protestant's written request and supporting data, decides that the request does not merit further consideration, he/she shall render his/her decision in writing to the alleged aggrieved protestant. A decision rendered under this paragraph shall be made within 10 days after the receipt of the alleged aggrieved protestant's request for an administrative hearing. This decision shall be final without further administrative recourse.

4.3.5.5 If the ED, after review of the alleged aggrieved protestant's written request, decides that the request merits further consideration, he/she shall forward the protestant's written request, along with a cover letter explaining why it merits further consideration and with a recap of all proposals

submitted and a copy of the original written protest, to the CFHA Legal Counsel for consideration. The CFHA Legal Counsel shall issue to the alleged aggrieved protestant a decision, in writing, within 10 days of his/her receipt of such documents.

4.3.5.6 Such written decision delivered to the alleged aggrieved protestant shall exhaust the CFHA internal protest and administrative appeal process available to the alleged aggrieved protestant.

5.0 Disputed Billings (Charges):

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

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

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

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

5.1.3.1 pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of Rhode Island;

5.1.3.2 not pay the disputed charge and submit the matter to the appropriate District Court in the State of Rhode Island;

5.1.3.3 not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of Rhode Island.

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

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

5.1.4.2 repay to the CFHA the amount ordered.

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

6.0 Additional Considerations:

6.1 Right of Joinder Pursuant to NRS 332.195:

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

6.1.2 The successful proposer shall retain the unilateral right to allow or disallow any political subdivision the privilege of joining the awarded contract. In the event the successful proposer allows another political subdivision to join the CFHA contract, it is expressly understood that the CFHA shall in no way be liable for the joining political subdivision obligations to the successful proposer in any manner whatsoever.

6.2 Non-Escalation: Unless otherwise specified within the RFQ documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.

6.3 Funding Restrictions and Order Quantities: The CFHA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the CFHA, if:

6.3.1 funding is not available;

6.3.2 legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,

6.3.3 the HA's requirements in good faith change after award of the contract.

6.4 **Required Permits:** Unless otherwise stated in the RFQ documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFQ, whether or not they are known to either the CFHA or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the successful proposer and any costs submitted by the proposer shall reflect all costs required by the successful proposer to procure and provide such necessary permits.

6.5 **Taxes:** All persons doing business with the CFHA are hereby made aware that the CFHA is exempt from paying Rhode Island State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.

6.6 **Government Standards:** It is the responsibility of the prospective proposer to ensure that all items and services proposed conform to all local, State and Federal laws concerning safety (OSHA and NOSHA) and environmental control (EPA and RI County Pollution Regulations) and any other enacted ordinance, code, law or regulation. The successful proposer shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the successful proposer for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.

6.7 **Freight on Bill and Delivery:** All costs submitted by the successful proposer shall reflect the cost of delivering the proposed items and/or services to the locations(s) specified within the RFQ documents or within the contract.

6.7.1 The successful proposer agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful proposer. Upon default, the successful proposer agrees that the HA may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

6.8 **Communication:** If during the period of the contract, it is necessary that the CFHA place toll or long distance telephone calls or telegrams in connection therewith (for complaints, adjustments, shortages, failure to deliver, etc.), it is understood that the successful proposer will bear the charge or expense for all such calls and/or telegrams.

6.9 **Work on CFHA Property:** If the successful proposer's work under the contract involves operations by the successful proposer on CFHA premises, the successful

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

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

6.11 Warranty:

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

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

6.12 Official, Agent and Employees of the CFHA Not Personally Liable: It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the CFHA in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.

6.13 Subcontractors: Unless otherwise stated within the RFQ documents, the successful proposer may not use any subcontractors to accomplish any portion of the services described within the RFQ documents or the contract without the prior written permission of the CO.

6.14 Salaries and Expenses Relating to the Successful Proposers Employees: Unless otherwise stated within the RFQ documents, the successful proposer shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The successful proposer further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.

6.15 Attorney's Fees: In the event that litigation is commenced by one party hereto against the other in connection with the enforcement of any provision of this agreement, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including attorneys' fees, in a reasonable amount, to be determined by the court. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.

6.16 Independent Contractor: Unless otherwise stated within the RFQ documents or the contract, the successful proposer is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.

6.17 Severability: If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.

6.18 Waiver of Breach: A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.

6.19 Time of the Essence: Time is of the essence under this agreement as to each provision in which time of performance is a factor.

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

6.21 Indemnity:

6.21.1 The successful proposer shall protect, indemnify and hold the CFHA, its officers, employees, agents, consulting engineers and other retained

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

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

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

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

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

adequately protected by public liability and property damage insurance, if required.

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

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

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

6.22 Lobbying Certification: By proposing to do business with the CFHA or by doing business with the HA, each proposer certifies the following:

6.22.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of an Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

6.22.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of an Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

6.22.3 The successful proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

6.22.4 This clause is a material representation of fact upon which reliance was placed when the award was made or entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

6.23 **24 CFR 85.36(i), *Procurement***: Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the HA and the contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this RFQ will include the following clauses, whether actually inserted or by reference:

6.23.1 **Remedies for Contractor Breach:** Pertaining to contract-related issues, it is the responsibility of both the HA and the contractor to communicate with each other in as clear and complete a manner as possible. If at any time during the term of this contract the HA or the contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the HA has the right to issue unilateral addendums to this contract, but the contractor does not have the same right). The other party shall, within 10 days, respond in writing to the other party (however, the HA shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, the HA shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

6.23.1.1 If the contractor is in material breach of the contract, the HA may promptly invoke the termination clause detailed within Section No. 3 of Attachment G-1, form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which is attached hereto, and terminate the contract for cause. Such termination must be delivered to the contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.

6.23.1.2 Prior to termination, the HA may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the contractor on probation, thereby giving the contractor a certain period of time to correct the deficiencies or potentially suffer termination. The HA shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the contractor does not agree with such action, the contractor shall have 10 days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the HA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the HA's alleged incorrect action(s).

6.23.1.3 After termination, if the contractor does not agree with the HA's justification for the termination, the contractor shall have 10 days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the HA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the HA's alleged incorrect action(s).

6.23.1.4 The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.

6.23.2 **Termination For Cause and Convenience:** As detailed within Clause No. 3 of Attachment G-1, Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(Within or without Maintenance Work)*, attached hereto.

6.23.3 **Executive Order 11246**: For all construction contracts awarded in excess of $10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).

6.23.4 **Copeland "Anti-Kickback" Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

6.23.5 **Davis-Bacon-Act:** For all construction contracts awarded in excess of $2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).

6.23.6 **Sections 103 and 107 of the Contract Work Hours and Safety Standards Act:** For all construction contracts awarded in excess of $2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of $2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).

6.23.7 **Reporting:** Both parties hereby agree to comply with any reporting requirements that may be detailed herein.

6.23.8 **Patent Rights:** Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.

6.23.9 **Copy Rights/Rights in Data:** In addition to the requirements contained within Clause No. 5 of Attachment G-1, *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, the HA has unlimited rights to any data, including computer

software, developed by the contractor in the performance of the contract specifically:

6.23.9.1 Except as provided elsewhere in this clause, the HA shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.

6.23.9.2 The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.

6.23.9.3 For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants the HA and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the HA.

6.23.9.4 The contractor shall not, without the prior written permission of the contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants the HA a

license of the same scope as identified in the preceding paragraph.

6.23.9.5 The HA agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, the HA may either return the data to the contractor, or cancel or ignore the markings.

6.23.9.6 The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.

6.23.9.7 Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees the HA shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.

6.23.9.8 The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by the HA except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any HA location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.

6.23.10 **Clean Air Act:** For all contracts in excess of $100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

6.23.13 **Energy Policy and Conservation Act:** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

6.24 **Additional Federally Required Orders/Directives:** Both parties agree that they will comply with the following laws and directives that the HA has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this RFQ:

6.24.1 Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.

6.24.2 Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The HA hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).

6.24.3 Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, the HA requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.

6.24.4 The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.

6.24.5 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).

6.24.6 HUD Information Bulletin 909-23 which is the following:

6.24.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;

6.24.6.2 Clean Air and Water Certification; and

6.24.6.3 Energy Policy and Conversation Act.

6.24.7 The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.