



INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

Table of Contents

Section	Description	Page
1.0	General Conditions	3
1.1	Applicability	3
1.2	Definitions	3
2.0	Conditions To Bid	5
2.1	Pre-qualification of Bidders	5
2.2	IFB Forms, Document Specifications and Drawings	5
2.3	Bid Preparation, Submission and Receipt by the OHA	5
2.4	Exceptions to Specifications	7
2.5	Lump Sum Cost Breakdown (LSCB)	7
3.0	Bid Evaluation	8
3.1	Bid Opening Results	8
3.2	Award of Bid(s)	8
3.3	Rejection of Bids	8
3.4	Cancellation of Award	8
3.5	Mistake in Bid Submitted	8
3.6	Irregular Bid Submitted	9
3.7	Disqualification of Bidders	9
3.8	Burden of Proof	10
4.0	Right To Protest	11
4.1	Rights	11
4.2	Administrative Powers	11
4.3	Procedure to Protest	11
5.0	Disputed Billings (Charges)	13
5.1	Procedures	13
6.0	Additional Considerations	14
6.1	Right of Joinder Pursuant to NRS 332.195	14
6.2	Non-escalation	14
6.3	Funding Restrictions and Order Quantities	14
6.4	Required Permits	14
6.5	Taxes	14
6.6	Government Standards	14
6.7	Freight on Bill and Delivery	15
6.8	Communication	15
6.9	Work on OHA Property	15
6.10	Estimated Quantities	15
6.11	Warranty	15
6.12	Official, Agent and Employees of the OHA Not Personally Liable	15
6.13	Subcontractors	16
6.14	Salaries and Expenses Relating to the Successful Bidder's Employees	16
6.15	Attorney's Fees	16
6.16	Independent Contractor	16
6.17	Severability	16
6.18	Waiver of Breach	16
6.19	Time of the Essence	16
6.20	Limitation of Liability	16
6.21	Indemnity	16
6.22	Lobbying Certification	18
6.23	24 CFR 85.36(i), Procurement	28
6.24	Additional Federally Required Orders/Directives	21
6.25	Additional Information	22
6.26	Conflicting Conditions	22

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

1.0 GENERAL CONDITIONS:

1.1 **Applicability:** If referred to within the text of such, these ITBCs shall be applicable to all Invitation For Bids (IFB) solicitations that the Housing Authority of the City of Omaha (OHA) conducts and shall be applicable to any contract that the OHA awards to or signs with any firm, agency or individual pursuant to that IFB. A copy of these ITBCs shall be made available to any actual or prospective bidder, or contractor who does business with or intends to do business with the OHA.

1.1.1 Unless otherwise specified within the IFB or contract documents, in the event that any provision in any document listed herein conflicts with any provision within these ITBCs, the provision in the IFB or contract document shall govern. Further, in the case of any attached HUD forms to the IFB or contract document, the information within such HUD form(s) shall govern any other information issued, especially that issued within any OHA-created forms that are issued as a part of the solicitation.

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

1.2.1 **"Contracting Officer"** when named within an IFB 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 IFB. Whereas all IFB documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within the IFB document, such is referring to both the IFB documents and the ensuing contract document.

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

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

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

1.2.8 **"OHA"** is the Housing Authority of the City of Omaha. Unless otherwise defined herein or within the ensuing contract, whenever the term "OHA" is used without clearly designating a responsible OHA staff person, the bidder(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 OHA receives some funding from; however, pertaining to this IFB, correspondences, including bid submittals, received from each bidder 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 IFB, including the IFB documents and the attachments.

1.2.11 **"Offer"** is the bid submittal referred to within the following Section 1.2.14 that the bidder delivers to the OHA in response to the IFB.

1.2.12 **"Offeror" or "Offerors"** are the bidder or bidders.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

- 1.2.13 **"Parties"** - When "the parties," "both parties" or "either party" is stated within the IFB documents or the contract, such refers to the OHA and the successful bidder(s).
- 1.2.14 **"Bid" and/or "Bid Submittal"** is the "hard copy" document that the bidder is required to, as detailed within the IFB document, deliver to the OHA.
- 1.2.15 **"Protestant"** is a prospective bidder or bidder who feels that he/she has been treated inequitably by the OHA and wishes the OHA to correct the inequitable condition or situation. To be eligible to file a protest with the OHA pertaining to an IFB or contract, the protestant must have been involved in the IFB process in some manner as a prospective bidder (i.e. registered and received the IFB documents).
- 1.2.16 **"Prospective Bidder" or "Bidder"** - A prospective bidder is a firm or individual who has been notified of the IFB solicitation and/or who has requested and/or received the IFB documents and is considering responding with a bid; a bidder is a firm or individual who has submitted a bid in response to the IFB. All terms and conditions shall apply equally to all prospective bidders as well as bidders, though prospective bidders may not, after the deadline set for receiving bids, receive further notices pertaining to that IFB--meaning, certain notices (such as the Notice of Results of Evaluation) are typically only delivered to bidders and not to all prospective bidders.
- 1.2.17 **"Request For Bids" (IFB)** is the competitive bid process allowed by HUD, especially as defined within Chapter 6 of HUD Procurement Handbook 7460.8 REV 2.
- 1.2.18 **"IFB Document(s)"** - Whether stated in the singular or the plural, such refers to the body of documents, including attachments and the information posted on the nahro.economicengine.com Internet site (hereinafter, the "noted Internet System" or the "System), that the OHA makes available to all prospective bidders wherein is detailed the OHA's requirements.
- 1.2.19 **"Solicitation" or "Competitive Solicitation"** is the IFB process detailed herein.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

2.0 CONDITIONS TO BID:

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

2.2 IFB Forms, Documents, Specifications and Drawings:

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

2.2.1.1 Bidders acknowledge that submitting a bid to OHA is not a right to be awarded a contract, but only an offer by the Bidder to perform the requirements of the IFB documents in the event OHA decides to award a contract to that Bidder.

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 OHA 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 IFB 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 bidder. Such changes that are issued before the deadline for receipt of bids shall be binding upon all prospective bidders. Such changes that are issued after the receipt of bids, but prior to award shall be binding upon all parties that have submitted bids; however, such parties shall be allowed to reject such changes by, within 5 days of receipt of such written notice, withdrawing his/her bid. Such withdrawal must be delivered, in writing, to the CO within the 5-day deadline period.

2.3 Bid Preparation, Submission and Receipt by the OHA:

2.3.1 **Required Forms:** All required forms furnished by the OHA as a part of the IFB document issued shall, as instructed, be fully completed and submitted by the bidder. 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 bidder must "edit" the form back to its originally form (for example, signature lines must appear on the page the line was originally intended to be on).

2.3.2 **Manner of Submission:** The bid submittal shall be submitted in the manner detailed within the IFB document. Failure to submit the bid in the manner

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

specified may result in a premature opening of, post-opening of, or failure to open and consider that bid, and may, at the discretion of the CO, eliminate that bidder from consideration for award.

2.3.3 Time for Receiving Bids: Bids received prior to the time set as the deadline for the receipt by the OHA of the bid submittal shall be securely kept, unopened, by the OHA. The CO, whose duty it is to open such bids, will decide when the specified time has arrived. No bid received after the designated deadline shall be considered, except as detailed within Section 5 of Form HUD-5369, *Late Submissions, Modifications and Withdrawal of Bids*.

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

2.3.4 Public Opening of Bids: Pursuant to the IFB process, bids shall be publicly opened at the day and time published in the IFB documents. At the bid opening, only the name of the company and the pertinent cost information will be read aloud (for instance, in the case of bids with multiple line items in a number that it is not realistic to read all item, only the actual or calculated total may be read. The full determination of responsiveness (i.e. minimum compliance with the requirements of the IFB) and responsibility will be conducted by an OHA official in private after the public bid opening. Persons other than OHA staff involved in this process are not allowed to be present during the responsive and responsibility evaluations, nor may they inspect the bids until after award has been completed.

2.3.5 Withdrawal of Bids: Bids may be withdrawn as detailed within Section 5(g) of Form HUD-5369, *Late Submissions, Modifications and Withdrawal of Offers*. Negligence on the part of the bidder in preparing his/her bid confers no right of withdrawal or modification of his/her bid after such bid has been received and opened.

2.3.6 Interpretations: No official oral interpretation can be made to any bidder as to the meaning of any instruction, condition, specifications drawing (if any), or any other document issued pertaining to this IFB. Every request for an official interpretation shall be made by the prospective bidder, in writing, pursuant to the schedule set within the IFB document issued and as directed by the OHA. Official interpretations will be issued in the form of addenda, which will be delivered to each bidder; but it shall be the prospective bidder's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the IFB documents and the proposed contract with the successful bidder, and all bidders shall be bound by such addenda, whether or not received by the prospective or successful bidder(s).

2.4 Exceptions to Specifications:

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

2.4.1 A bidder may take exception to any of the bid documents or any part of the information contained therein, by submitting, in writing to the CO, at least 10 days prior to the bid 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 OHA will be issued in writing within 5 days of receipt of such exception request. The OHA reserves the right to agree with the prospective bidder and issue a revision to the applicable IFB requirements, or may reject the prospective bidder's request.

2.4.2 When taking exception, prospective bidders must bid services that meet the requirements of the IFB documents. Exceptions to the specification and/or approved "equal" requests may be discussed at the scheduled pre-bid conference (if scheduled). All verbal instructions issued by the OHA officers not already listed within the IFB 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 OHA reserves the right to, at any time, request and receive from any or all bidders a LSCB of any or all of the costs bid. The bid documents constitute an outline of the work to be completed by the bidder. 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 bidder in order to comply with the bid 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 OHA in two distinct areas:

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

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

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.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

3.0 BID EVALUATION:

3.1 Bid Opening Results: It is understood by all bidders/prospective bidders that the bids received will be publicly opened and read aloud and the results will immediately be a matter of public record; meaning, the OHA will record all bids on a bid tabulation and make such tabulation available to any person upon request.

3.1.1 Bid documents submitted by the bidders shall not be a matter of public record until after award has been completed. The OHA shall, however, upon request, verify that the bid documents submitted are/were acceptable.

3.1.2 Ties: In the case of bids, the award shall be decided as detailed within Section 6.12.C of HUD Procurement Handbook 7460.8 REV 2, by “drawing stages or other random means of selection.”

3.2 Award of Bid(s): The successful bidder shall be determined as the responsive and responsible bidder that provides the “Best Value” to OHA and who submits the lowest actual or calculated cost as detailed with the IFB, as long as he/she is able to deliver the specified items in a timely manner and it is, in the opinion of the OHA, to the best interests of the OHA to accept the bid. All bidders will be notified in a timely manner of the results of the evaluation after award has been completed.

3.3 Rejection of Bids:

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

3.3.2 Prospective bidders acknowledge by downloading and receiving the IFB documents and/or by submitting a bid that the submission of a bid to the OHA is not a right by which to be awarded that bid, but merely an offer by the prospective bidder to perform the requirements of the IFB documents in the event the OHA decides to consider an award to that bidder.

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

3.5 Mistake in Bid Submitted:

3.5.1 A request for withdrawal of a bid due to a purported error need not be considered by the OHA unless the same is filed in writing by the bidder within 48 hours after the bid deadline (bidders may of their own volition withdraw a bid prior to the bid deadline). Any such request shall contain a full explanation of any purported error and shall, if requested by the OHA, be supported by the original calculations on which the bid was computed, together with a certification and notarization thereon that such computation is the original and prepared by the bidder 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 OHA retains the right to accept or reject any bid withdrawal for a mistake.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

- 3.5.2 Unless otherwise prohibited within the IFB documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at the OHA'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.
- 3.5.3 As detailed within Section 8(d) of form HUD-5369 and Section 7(b)(3) of form HUD-5369-B, OHA reserves the right to, as determined by OHA, "waive informalities and minor irregularities" in the offers received.
- 3.6 **Irregular Bid Submittal:** A bid shall be considered irregular for any one of the following reasons, any one or more of which may, at the OHA's discretion, be cause for rejection:
 - 3.6.1 If the forms furnished by the OHA are not used or are altered or if the bid 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 bid submitted.
 - 3.6.3 If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the bid incomplete, indefinite or ambiguous as to its meaning or give the bidder submitting the same a competitive advantage over other bidders.
 - 3.6.4 If the bidder 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 bidder are unbalanced in the sense that the listed price of any cost item departs by more than 25% from the OHA's cost estimate for that item.
- 3.7 **Disqualification of Bidders:** Any one or more of the following shall be considered as sufficient for the disqualification of a bidder and the rejection of his/her bid:
 - 3.7.1 Evidence of collusion among prospective or actual bidders. Participants in such collusion will receive no recognition as bidders or proposers for any future work of the OHA until such participant shall have been reinstated as a qualified bidder or bidder. 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 bid for the same work from an individual, firm, or corporation under the same or different name(s), unless such was specifically allowed by the OHA within the bid 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 OHA or with any other local, State or Federal agency, judged from the standpoint of workmanship and progress.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

- 3.7.5 Incomplete work, which in the judgment of the OHA, 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 OHA.
 - 3.7.8 Failure to list, if required, all subcontractors (if subcontractors are allowed by the OHA) who will be employed by the successful bidder(s) to complete the work of the bid contract.
 - 3.7.9 As required by the IFB documents, failure of the successful bidder to be properly licensed by the City of Omaha, Nebraska and/or the State of Nebraska 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 OHA.
- 3.8 **Burden of Proof:** If requested by the OHA, it shall be the responsibility of the bidder(s) to furnish the OHA with sufficient data or physical samples, within a specified time, so that the OHA may determine if the goods or services offered conform to the Specifications.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

4.0 Right to Protest:

4.1 **Rights:** Any prospective or actual bidder, offeror, or contractor who is allegedly aggrieved in connection with the solicitation of a bid 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 bidder who feels that he/she has been treated inequitably by the OHA and wishes the OHA to correct the alleged inequitable condition or situation. To be eligible to file a protest with the OHA pertaining to an IFB or contract, the alleged aggrieved protestant must have been involved in the IFB process in some manner as a prospective bidder (i.e. registered and received the IFB documents) when the alleged situation occurred. The OHA 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 OHA 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 OHA or condition is being protested as inequitable, making, where appropriate specific reference to the IFB 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 OHA 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 bids;

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 bid deadline). Protests received after these dates shall not be considered.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

- 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. The following procedures must be complied with in the manner prescribed; failure by the alleged aggrieved protestant to comply shall automatically relieve the OHA from accepting or acting on that request for administrative hearing:
- 4.3.5.1 The alleged aggrieved protestant must file, in writing, his/her request for an administrative hearing, to the ED, within 5 days of receipt of the written opinion and decision and failure to do so within such 5 days shall relieve the OHA 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 bids submitted and a copy of the original written protest, to the OHA Legal Counsel for consideration. The OHA Legal Counsel shall issue to the alleged aggrieved protestant a decision, in writing, within 10 days of his/her receipt of such documents.
- 4.3.5.5 Such written decision delivered to the alleged aggrieved protestant shall exhaust the OHA internal protest and administrative appeal process available to the alleged aggrieved protestant.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

5.0 Disputed Billings (Charges):

5.1 **Procedures:** In addition to the procedures detailed within Clause No. 31 of Form HUD-5370, *General Conditions for Construction Contracts*, in the event that the OHA disputes any portion of its billing(s), the OHA shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

5.1.1 The OHA's representative shall, within a reasonable time frame after the OHA'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 a reasonable time frame 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 a reasonable time frame, the OHA shall thereafter, either:

5.1.3.1 pay the disputed charges and reserve the right to submit the matter to arbitration at OHA's discretion if the disputed amount does not exceed \$75,000.00, or to the appropriate District Court in the State of Nebraska;

5.1.3.2 not pay the disputed charge and submit the matter to arbitration at OHA's discretion if the disputed amount does not exceed \$75,000.00, or to the appropriate District Court in the State of Nebraska;

5.1.3.3 not pay the disputed charge and allow the Contractor to submit the matter either to arbitration if the disputed amount does not exceed \$75,000.00, or to the appropriate District Court in the State of Nebraska.

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

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

5.1.4.2 repay to the OHA the amount ordered.

Either option shall be completed within 15 days after the contractor's receipt of the arbitrator's decision.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

6.0 Additional Considerations:

6.1 Right of Joinder Pursuant to NRS 332.195:

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

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

6.2 **Non-Escalation:** Unless otherwise specified within the IFB 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 OHA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the OHA, 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 OHA's requirements in good faith change after award of the contract.

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

6.5 **Taxes:** All persons doing business with the OHA are hereby made aware that the OHA is exempt from paying Nebraska 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 bidder to ensure that all items and services bid conform to all local, State and Federal laws concerning safety (OSHA and NOSHA) and environmental control (EPA and Douglas County Pollution Regulations) and any other enacted ordinance, code, law or regulation. The successful bidder 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 bidder for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

- 6.7 Freight on Bill and Delivery:** All costs submitted by the successful bidder shall reflect the cost of delivering the bided items and/or services to the location(s) specified within the IFB documents or within the contract.
- 6.7.1** The successful bidder 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 bidder. Upon default, the successful bidder agrees that the OHA 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 OHA 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 bidder will bear the charge or expense for all such calls and/or telegrams.
- 6.9 Work on OHA Property:** If the successful bidder's work under the contract involves operations by the successful bidder on OHA premises, the successful bidder 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 OHA's negligence, shall indemnify the OHA, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful bidder, its agents, employees, or subcontractors.
- 6.10 Estimated Quantities:** Unless otherwise indicated within the IFB documents, the quantities reflected within the IFB documents, to the best of the OHA'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 OHA under the finalized contract; but, pursuant to all IFB documents, these quantities will be used as calculation figures to determine the successful bidder.
- 6.11 Warranty:**
- 6.11.1** The services provided under the contract shall conform to all information contained within the IFB 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 bidder to the OHA (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 OHA 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 OHA 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.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

- 6.13 Subcontractors:** Unless otherwise stated within the IFB documents, the successful bidder may not use any subcontractors to accomplish any portion of the services described within the IFB documents or the contract without the prior written permission of the CO.
- 6.14 Salaries and Expenses Relating to the Successful Bidders Employees:** Unless otherwise stated within the IFB documents, the successful bidder 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 bidder 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 IFB documents or the contract, the successful bidder 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 OHA be liable to the successful bidder for any indirect, incidental, consequential or exemplary damages.
- 6.21 Indemnity:**
- 6.21.1** The successful bidder shall protect, indemnify and hold the OHA, 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 OHA, its officers, employees, agents, consulting engineers or other retained consultants may suffer, or which may be sought against, recovered from or obtainable against the OHA, its officers, employees, agents, consulting engineers or other retained consultants such as:

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

- 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 bidder, 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 “Nebraska 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 bidder in the fulfillment or performance of the terms, conditions and covenants that are contained in this contract. Any money due by the successful bidder under and by virtue of this contract which is considered necessary by the OHA for such purpose, may be retained by the OHA 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 OHA provided, however, that money due the successful bidder will not be withheld when the successful bidder 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 bidder shall, at its own expense, defend the OHA, 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 bidder has indemnified the OHA, its officers, employees, agents, consulting engineers and other retained consultants against, and if the successful bidder shall fail to do so, the OHA 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 bidder 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 OHA shall reimburse the successful bidder for all, or the indemnified

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

party's proportionate share, as the case may be, of the costs of such defense.

- 6.21.2 Reimbursement to the successful bidder by the OHA, in whole or in part, for the costs of protecting traffic shall not serve to relieve the successful bidder of its responsibility as set forth in the IFB documents.
 - 6.21.3 The successful bidder 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 OHA or by doing business with the OHA, each bidder certifies the following:
- 6.22.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder, 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 bidder 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 OHA and the contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this IFB 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 OHA and the contractor to communicate with each other in as clear and complete a manner as possible. If at any

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

time during the term of this contract the OHA 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 OHA 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 OHA shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, the OHA 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 OHA may promptly invoke the termination clause detailed within Section No. 34 of form HUD-5370, *General Conditions Construction Contracts*, 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 OHA 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 OHA 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 OHA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the OHA's alleged incorrect action(s).
- 6.23.1.3 After termination, if the contractor does not agree with the OHA'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 OHA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the OHA'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. 34 of Form HUD-5370, *General Conditions for Construction Contracts*, attached hereto.
- 6.23.7 **Reporting:** Both parties hereby agree to comply with any reporting requirements that may be detailed herein.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

- 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. 44 of Form HUD-5370, *General Conditions for Construction Contracts*, the OHA 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 OHA 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 OHA 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 OHA.
 - 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 OHA a license of the same scope as identified in the preceding paragraph.
 - 6.23.9.5** The OHA agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data.

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

If any data delivered under this contract are improperly marked, the OHA 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 bid 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 OHA 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 OHA 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 OHA 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.

6.24 Additional Federally Required Orders/Directives: Contractor shall comply with the following laws and directives that the OHA has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this IFB:

- 6.24.1** Executive Order 11246
- 6.24.2** Executive Order 11063
- 6.24.3** Copeland "Anti-Kickback" Act (18 USC 874)
- 6.24.4** Davis Bacon Act (40 USC 276a-276a-7)
- 6.24.5** Clean Air & Water Acts (42 USC 1857(h); 33 USC 1368)
- 6.24.6** Contract Work Hours & Safety Standards Act (40 USC 327-330)
- 6.24.7** Energy Policy & Conservation Act (PL 94-163, 89 STAT 871)
- 6.24.8** Civil Rights Act of 1964, Title VI (PL 88-352)
- 6.24.9** Civil Rights Act of 1968, Title VIII (PL 90-284 Fair Housing Act)
- 6.24.10** Age Discrimination Act of 1975
- 6.24.11** Anti-Drug Abuse Act of 1988 (42 USC 11901 et. Seq.)
- 6.24.12** HUD Information Bulletin 909-23
- 6.24.13** Immigration Reform & Control Act of 1986

INSTRUCTIONS TO BIDDERS AND CONTRACTORS, CONSTRUCTION (ITBC-C)

- 6.24.14 Fair Labor Standards Act (29 USC 201, et. Seq.) 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.
- 6.25 **Additional Information:** 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.
- 6.26 **Conflicting Conditions:** In the event there is a conflict between the documents comprising the applicable IFB and any resulting contracts, the following order of precedence shall govern: (1) the more restrictive terms of either: any and all attached HUD forms and the term/conditions in the body of any resulting contract; (2) the IFB; and (3) Contractor's Response. In the event that a conflict exists between any state statute or federal law the most restrictive terms shall apply.