

REVERSE AUCTION PROGRAM
Uniform Physical Condition Standards (UPCS) Inspection Services
PURCHASE ORDER TERMS AND CONDITIONS
Effective [December 20, 2005]

1.0 Terms and Conditions

These terms and conditions apply to all purchase orders issued by the U.S. Department of Housing and Urban Development (HUD) Office of Public and Indian Housing (PIH) Real Estate Assessment Center (REAC) under its UPCS inspection services Reverse Auction Program (RAP).

HUD may revise these terms and conditions as necessary (e.g., to comply with revisions to the Federal Acquisition Regulation (FAR) and HUD Acquisition Regulation (HUDAR)). In the event HUD makes revisions, an updated version of this document will be posted to the PIH-REAC website. Revisions will clearly indicate the date of effectiveness. The version of the terms and conditions in effect at the time HUD issued the purchase order shall remain in effect for the duration of the order unless HUD formally modifies the order in accordance with the clause at FAR 52.243-1, Changes-Fixed Price Alternate I (see section Attachment 1). Therefore, the contractor should download the version in effect when his/her purchase order is awarded.

1.1 Definitions

“Contractor” means the legal entity to which this purchase order is awarded. The contractor shall be legally responsible for all work performed and for complying with all terms and conditions of this purchase order.

“Inspector” is defined as the individual, certified by PIH-REAC in the UPCS inspection protocol, who performs on-site property inspections. Inspectors may be contractors, employees of a contractor, subcontractors (at any tier) to a contractor, or employees of a subcontractor.

The terms “purchase order” and “contract” are synonymous for purposes of these terms and conditions.

“Price” means the amount set forth in the contractor’s winning bid for an inspection or lot of inspections.

1.2 Contractor’s Status

The contractor is an independent, private entity performing the services described herein under contract to the Government and is not an agent of HUD or the Federal Government. In no case shall the contractor or any of its employees or subcontractors identify or represent themselves as agents or representatives of HUD or the Federal Government.

1.3 Period of Performance

The period of performance of this purchase shall be the period stated in the email purchase order award notification issued to the contractor. The contractor shall complete all work and submit all reports by the

end of that period. The contractor may not exceed the period of performance without written approval (email) from PIH-REAC or the HUD Contracting Officer.

If the contractor cannot complete the inspection work within the specified performance period, he/she must send a formal request to extend the Purchase Order period of performance to the RAP mailbox (ReacReverseAuctionProgram@hud.gov). This request **must** be sent before the end of the performance period, and must include all relevant information such as the purchase order number(s), the inspection number(s), and the rationale for extension. PIH-REAC will review the extension request to determine whether the request is justified. If an extension is granted, the contractor will receive an email revising the purchase order period of performance. If an extension is not granted, the contractor will be responsible for completing the inspection work by the performance period end date.

2.0 Scope of Services

The contractor shall be responsible for the performance of all work required for inspections as described herein for the bid price accepted by the Government via the RAP for the awarded inspections. The contractor shall provide all equipment, transportation, and other services and materials as needed to complete the work.

3.0 Computer Hardware/Software Requirements

The contractor shall have:

- The latest version of the Data Collection Device (DCD) software, computer hardware that meets the DCD software requirements as communicated by PIH-REAC, and the ability to maintain the technical environment of the DCD.
- The following software:
 - Microsoft Windows 95 or later operating system;
 - Internet Explorer v6.0 browser;
 - WinZip 6.3 or higher;
 - Microsoft Access 97;
 - Microsoft Excel 97 or 2000;
 - Microsoft Word 97 or 2000; and
 - Acrobat Reader 5.0.
- All necessary hardware and software to communicate via email.
- Internet access that supports electronic transmission of property profile data and inspection results to PIH-REAC.

The contractor shall ensure that the hardware used for inspections is compatible with HUD-provided software at all times. HUD will not compensate the contractor for upgrades to, or replacement of, contractor-furnished hardware. See also the clause at HUDAR 2452.239-71, Information Technology Virus Security.

4.0 Communications Between PIH-REAC and Contractors

The contractor shall ensure that PIH-REAC is able to contact the contractor and any of the contractor's inspectors via email and telephone. PIH-REAC will use email as its primary means of communication regarding the purchase order (award, cancellation, extension, etc.).

All email communication to PIH-REAC must be sent to: ReacReverseAuctionProgram@hud.gov.

4.1 Contact Information

The contractor shall maintain current contact information in the Central Contractor Registration (CCR). This includes the physical street address, mailing address (if different from street address), and phone number. The contractor shall provide PIH-REAC with any alternate contact information (e.g., additional phone numbers) not shown in the CCR. The contractor shall notify PIH-REAC via email whenever there are any changes to the contractor's contact information. The contractor is responsible for the accuracy of all contact information provided to PIH-REAC and the CCR.

The contractor must email REACReverseAuctionProgram@hud.gov with any changes to its email address. Also, if the contractor has an additional, alternate phone number that is not reflected in the CCR, please provide it via email.

The contractor is responsible for ensuring that its inspectors (either employees or subcontractors) maintain current contact information in the PIH-REAC Inspector Administration system.

4.2 Changes to Contact Information

The contractor shall provide any changes to previously provided contact information to PIH-REAC as soon as they are known.

4.3 Failure to Maintain Contact

The contractor shall respond within three business days to communications from PIH-REAC. Repeated failure of the contractor to maintain contact with or to respond to PIH-REAC may result in the termination of the contract.

5.0 Pre Inspection

5.1 Scheduling Protocol

The contractor shall:

- Schedule the required inspection(s) within 15 calendar days after the contractor's receipt of the email notification of the award of this purchase order.
- Schedule the inspection directly with the Property Owner Agent/ Executive Director (POA/ED) or appointed representative. PIH-REAC will provide the contractor with POA/ED contact information through Secure Systems, as well as an email text template to be used to confirm inspection information with the POA/ED, which is available in Attachment 3: Required Email Text for Inspection Confirmation in the Reverse Auction Program Business Rules.

- Schedule the inspection on a date and time that is mutually agreeable to the POA/ED and inspector, and within the required period of performance.
- Enter the inspection date and time, and responsible inspector's M-ID, in Secure Systems Scheduler component. When contractors have difficulty accessing Secure Systems or entering information, they should contact HUD by email at: ReacReverseAuctionProgram@hud.gov, with a brief description of the problem and provide the inspection date and time, and responsible inspector's M-ID.
- Ensure that the inspection does not start for at least 15 calendar days after the contractor notifies the POA/ED of the inspection. The POA/ED needs at least 15 calendar days notice prior to the inspection to provide time for resident notification.
- Conduct the inspection during normal business hours of the property. Inspectors shall not conduct inspection activities on weekends or Federal holidays (please see Section 9.5 Observance of Federal Holidays, for a detailed list of government-observed holidays).
- Use the estimated inspection duration indicated for the property on the auction website (i.e. one-day inspection, two-day inspection) when scheduling the inspection. Any changes to the property profile, particularly those that may affect the duration of the inspection, should be reported to PIH-REAC as outlined in section 5.1.2.
- Estimate and include enough time in the inspection period to allow for reasonable anticipated contingencies, including travel time.
- Identify to the POA/ED the name of the inspector who will be performing the inspection.

Any exceptions to the above requirements must be approved by PIH-REAC via email. The contractor shall retain a copy of the approval for six-months.

The contractor shall immediately notify PIH-REAC by telephone or email if the contractor is unable to schedule an inspection. If the contractor is unable to schedule an inspection because the POA/ED is uncooperative or unwilling to permit the inspection, PIH-REAC will assist the contractor in resolving the issues.

5.1.1 Property Profile Verification

During the initial contact and scheduling of the inspection, the contractor shall verify with the POA/ED the accuracy of the following property profile data:

- The property name and ID;
- The total number of buildings and units;
- Any reason(s) why the property should not be inspected; and
- Any other data provided by PIH-REAC for the inspection, such as the name and address of the owner and management agent, email address, and phone numbers.

The building and unit data provided during the auction and in the purchase order award should be used as a guide for the profile verification. All care must be taken to use this data, as it is the most current information provided to PIH-REAC.

5.1.2 Property Profile Discrepancies

The contractor shall notify PIH-REAC immediately of any significant discrepancy between the property profile data PIH-REAC provided to the contractor and the verified property data obtained from the POA/ED. A significant discrepancy includes material errors of fact (e.g., wrong property name or ID), or a variance in the number of buildings or units.

PIH-REAC will verify the discrepancy and notify the contractor whether to proceed or forfeit the inspection. If the contractor fails to accurately verify the property profile data and the inspector discovers a significant discrepancy after arriving at the property, the inspector will perform the inspection using the correct unit sample size for the contractor's price.

5.1.3 Written Inspection Confirmation

Confirmation of the inspection date and time must be confirmed in writing with the POA/ED within 24 hours after oral agreement. Refer to Attachment 3: Required Email Text for Inspection Confirmation in the Reverse Auction Program Business Rules. The contractor shall copy PIH-REAC on the email at: ReacReverseAuctionProgram@hud.gov. The contractor shall complete the message by filling in all required information indicated in italics (e.g., names, dates, etc.). PIH-REAC must approve any modification of confirmation text before it is sent.

Contractors should request written (including email) confirmation from the POA/ED representative. The contractor must be able to provide this written verification of the property profile and resident notification, if requested by PIH-REAC, and shall retain the POA/ED confirmation for a period of six months. These actions are required in order to reduce uninspectable properties and unsuccessful inspections.

If a POA/ED does not have access to email, the contractor shall send the confirmation via certified mail and request a response via certified mail from the POA/ED confirming the inspection date and time, and resident notification. The confirmation letter shall be on the contractor's letterhead and shall use the text content. The contractor shall inform PIH-REAC separately via email of the confirmed inspection date and time.

5.1.4 Changes to the Inspection Schedule

Changes and cancellations to inspection schedules should be rare and must be accepted by PIH-REAC. If the originally confirmed inspection schedule needs to be changed for any reason, the contractor must update the Secure Systems Scheduler component with the correct inspection schedule. The contractor must provide a justification to PIH-REAC for any schedule change made within 72 hours of the inspection date and time by calling the Technical Assistance Center (TAC) at 1-888-245-4860.

5.1.5 Failure to Inspect on Scheduled Date and Time

If the contractor fails to perform an inspection at the date and time that the contractor entered into the Secure Systems Scheduler and does not notify PIH-REAC in advance of the changed date and time in accordance with paragraph 5.1.4, the HUD Contracting Officer may either:

- Reject the inspection and require the contractor to re-inspect at the contractor's own expense (see paragraph 7.1.2);
- Accept the inspection for the reduced price shown in paragraph 8.4; or
- Terminate the inspection for default.

Repeated failures to perform inspections on the date time scheduled without proper notification to PIH-REAC may result in the termination of this purchase order for default.

5.2 Uninspectable Properties

The contractor shall notify PIH-REAC immediately if the POA/ED indicates the property is no longer in HUD's inventory or if buildings/units have been rendered uninspectable, referred to as Reported Uninspectable (RU). PIH-REAC will verify the status as uninspectable and notify the contractor, referred to as Verified Uninspectable (VU). If PIH-REAC is unable to verify the RU as valid, PIH-REAC considers the inspection to be Verified Inspectable (VI) and the contractor is still responsible for scheduling and conducting the inspection. The Inspectable (IN) status changes are completed using Secure System's Scheduler component.

Reports of uninspectable properties must include the name and telephone number of the property representative reporting the property as uninspectable, and a brief explanation of why the property is uninspectable. The contractor shall utilize Secure System's Scheduler component to make an on-line uninspectable property report.

5.3 Cancelled Inspections

On rare occasions (e.g., acts of God, circumstances beyond the contractor's control), PIH-REAC, the POA/ED, or the contractor may need to cancel an inspection. PIH-REAC may authorize an administrative fee depending on the cancelled inspection circumstance.

5.3.1 Contractor Notification to PIH-REAC

The contractor shall immediately notify PIH-REAC via the TAC at 1-888-245-4860 when:

- The contractor needs to change the schedule of, or cancel, an inspection. The contractor must provide a justification for any schedule change made within 72 hours of the inspection date and time.
- The POA/ED requests the cancellation of or change to an inspection schedule.

PIH-REAC will notify the contractor if the schedule change or inspection cancellation is unacceptable. If the change or rescheduling is acceptable to PIH-REAC, the contractor shall coordinate with the POA/ED to reschedule the inspection.

5.3.2 *PIH-REAC Cancellations*

PIH-REAC reserves the right to cancel an inspection at any time. In such a cases, PIH-REAC will notify the contractor immediately. The contractor shall be compensated as set forth in section 8.3.

5.4 *Substitution of Inspectors*

The contractor shall make all substitutions of assigned inspectors via Secure Systems' Scheduler component. The correct M-ID must be in Secure Systems for the inspector to be able to successfully download the inspection.

The contractor shall contact the TAC to notify PIH-REAC if substituting an inspector assigned to perform an inspection.

6.0 **Inspections**

6.1 *Successful Inspection*

An inspection is considered to be successful when the inspector completes the inspection and uploads the inspection results. The inspection is then subject to PIH-REAC review and will be accepted or rejected.

6.1.1 *Onsite Verification of Property Information*

The inspector shall download the property profile data into the DCD software from the PIH-REAC website sufficiently in advance of the inspection to permit verification of all data. Upon arrival on site and before generating the inspection sample, the inspector shall visually verify the property profile data (including visiting each building) with the property representative.

In the case of single-family scattered sites, the inspector is allowed to generate the sample based on what the POA/ED states as the profile. Only in the case of *single-family scattered sites* may the inspector visually verify the profile as the inspection is conducted and add any building not previously included. Please refer to the Compilation Bulletin for a complete description of single-family sites. The website address is available at:

http://www.hud.gov/offices/reac/products/pass/PDFs/upcsprotocolelarifications2003_3.pdf

The inspector shall also visually verify and record the following information:

- Copies of lead-based paint certifications, boiler certifications, fire alarm inspections, sprinkler system inspections, and elevator inspections, if applicable.
- A copy of the POA/ED's required notice to residents of the inspection date, and information as to the means by which the residents were notified.
- A copy of the rent roll or other record, for the purposes of verifying total number of units and occupancy of the units.
- An estimate of the size of all areas of walkways, steps, driveways, roads, and parking areas included within the parameters of the property.

6.1.2 Accompaniment

In accordance with the UPCS protocol, a representative must accompany the inspector during the entire inspection. If the inspector completes an inspection without a property representative the inspection will be rejected. When a representative is unavailable, the inspection shall be deemed unsuccessful.

6.1.3 Errors in Inspection Sample Size

If the contractor fails to accurately verify the number of buildings and units, and the sample size is too small, the contractor may be responsible for inspecting the additional buildings/units as necessary to meet the proper sample size at no additional cost to HUD. If the contractor fails to accurately verify the number of buildings and units, and the size of the sample inspected is too large, HUD will not compensate the contractor for the overage.

6.1.4 Inspection Performance

After verifying property profile data and entering buildings and unit data, the UPCS inspection software will determine which buildings and units are to be inspected. The type of building must be properly identified to ensure valid sampling. The inspector shall conduct complete on-site interior and exterior inspections in accordance with the UPCS inspection protocol. The inspector will record and call out all deficiencies as they are observed, with the property representative present.

6.1.5 Health and Safety Hazards

At the conclusion of each day's inspection activities, the inspector shall provide the property representative with a written notice of any exigent health and safety hazards (that pose an immediate threat to the health and/or safety of the residents) that the inspector observed and recorded. The form for this notification is provided as Attachment 4 in the Reverse Auction Program Business Rules: Notification of Exigent and Fire Safety Hazards. No modification of this form shall be made without prior approval from PIH-REAC.

The inspector must obtain a signature from the property representative on the form that acknowledges receipt prior to leaving the property. If the POA/ED representative refuses to sign acknowledging receipt, the inspector shall note such refusal on the form, and provide a copy to the property representative. The contractor shall retain the signed form to be provided to HUD, if requested, for a period of six months.

The inspector shall not provide any other documents to the POA/ED. After successful upload of the inspection by the inspector, PIH-REAC will inform the HUD field office having jurisdiction over the property of the life-threatening health and safety hazards noted during the inspection.

6.1.6 Uploading Inspection Results

For each inspection performed, the inspector shall upload a complete and accurate inspection report using the UPCS inspection software and Secure Systems prior to the expiration of the period of performance. The inspector shall electronically transmit the completed inspection report through an Internet connection to PIH-REAC, *no later than the next working day* following the completion of the inspection.

6.2 Other Than Successful Inspections

6.2.1 Uninspectable Properties

A property shall be considered uninspectable if the POA/ED indicates it is no longer in HUD's inventory or if buildings or units have been rendered uninspectable.

The contractor shall immediately report any uninspectable (RU) property to PIH-REAC via Secure System.

PIH-REAC will confirm the uninspectable status, notify the contractor, and if verified uninspectable (VU), will authorize payment of the uninspectable property price in accordance with section 8.1. If PIH-REAC is unable to verify the reported uninspectable (RU) as valid, the contractor shall remain responsible for scheduling and conducting the inspection.

6.2.2 Unsuccessful Inspection

In certain cases, the inspector may be unable to complete an inspection for reasons beyond the contractor's control including, but not limited to:

- The property representative cannot provide access to the buildings or units required for inspection;
- An insufficient sample of units is available for inspection;
- No property representative is available on-site to accompany the inspector; and
- The POA/ED failed to notify all residents prior to the inspection.

The contractor shall immediately notify PIH-REAC (via the TAC) of an unsuccessful inspection (RUU), report the status of the inspection via Secure System and provide a copy of the POA/ED's written confirmation of the property profile information, the agreed-upon schedule, and prior understanding that the residents were to be notified. PIH-REAC will confirm the unsuccessful inspection, notify the contractor, and if confirmed, will authorize payment of the unsuccessful inspection price in accordance with section 8.2.

6.3 Re-inspections

If re-inspection of a property is required due to an inspector's deficient performance, the contractor shall re-inspect the property at no additional cost to HUD (see *Inspection/Acceptance* clause in Attachment 1).

7.0 Post-Inspection

7.1 PIH-REAC Inspection Reviews

Each inspection is subject to a review upon upload to PIH-REAC to ensure the product is acceptable. PIH-REAC will verify that the property profile is correct, assess inspection observations, and conduct a timestamp data analysis on the inspection. This review will be the basis for PIH-REAC's acceptance or rejection of the inspection.

7.1.1 Inspections Placed On Hold or Posted Inspections in Secure Systems

When PIH-REAC cannot accept an inspection due to significant deficiencies, errors or questions concerning the inspection, it will place the inspection on hold. PIH-REAC may contact the contractor, property representative, or HUD staff to resolve the deficiencies, errors or questions. The contractor shall review and respond to all posted inspection reviews in Secure Systems. With respect to posted inspections, if the contractor does not return contact within 72 hours, PIH-REAC may reject the inspection.

The contractor shall resolve directly with the inspector any errors and deficiencies on the part of the inspector. If the contractor satisfactorily corrects the deficiencies or errors, and resolves PIH-REAC's questions, PIH-REAC will accept the inspection. If the deficiencies, errors or questions cannot be resolved to PIH-REAC's satisfaction, the inspection will be rejected.

7.1.2 Rejected Inspections

PIH-REAC will notify the contractor if an inspection is rejected. PIH-REAC may order the contractor to re-inspect the property. Such a request will be in writing (email is acceptable) and will specify the particular property to be re-inspected, the nature of the inspector's errors or omissions, and a new inspection identification number for the re-inspection. The re-inspection shall be completed within the timeframe established or as negotiated by PIH-REAC. The re-inspection is subject to all requirements of the original inspection, including scheduling and written notification to the POA/ED, as outlined within this document. **Rejected inspection work is not subject to payment until and if PIH-REAC determines that the re-inspection is acceptable.** The contractor may be liable for any increase in cost to HUD for the re-procurement.

7.1.3 Late Inspection Results

An inspection is late if the contractor fails to complete it and upload the inspection results by the end date of the period of performance of the purchase order. PIH-REAC may elect to not accept late inspections, or to accept them at the reduced price set forth in paragraph 8.4.

7.2 Inspector Quality Assurance

PIH-REAC will monitor and evaluate the inspector's performance to determine compliance with the UPCS inspection protocol and the Inspector Code of Conduct through Quality Assurance (QA) reviews. PIH-REAC may solicit and consider feedback from owners, tenants, mortgagees, and POA/EDs, and use any other method PIH-REAC deems appropriate in making its assessment of the inspector's performance.

7.2.1 Collaborative Quality Assurance (CQA)

A HUD QA staff member performs this review side-by-side with the inspector while the inspection is being conducted. During the CQA review, the inspector's overall performance is rated either "Within Standard" or "Outside Standard" based on the inspector's ability to follow the established UPCS inspection protocol. An "Outside Standard" performance designation will be referred to PIH-REAC

Inspector Administration for follow-up action. Compilation of “Outside Standard” QA reviews may result in inspector de-certification.

7.2.2 Limited Quality Assurance (LQA)

This review is performed after the inspector has completed the inspection to determine whether or not the inspection was a true representation of the physical condition of the property at the time the inspection took place. As a result of the LQA review, the inspector’s performance is rated either “Within Standard” or “Outside Standard” based on their ability to follow the UPCS inspection protocol. An “Outside Standard” performance designation will be referred to PIH-REAC Inspector Administration for follow-up action. Compilation of “Outside Standard” QA reviews may result in inspector de-certification.

8.0 Payment Terms

As total compensation for each inspection accepted by PIH-REAC (see the *Inspection/Acceptance* clause in Attachment 1), HUD will pay the contractor the price accepted as the successful bid on the auction website. The price shall be inclusive of all contractor costs of performance (e.g., travel expenses).

The contractor should claim payment for each accepted inspection before the end of the fiscal year, to ensure timely payment.

The contractor shall make separate payment requests for each accepted inspection, each uninspectable property, and each unsuccessful and cancelled inspection. The contractor may not aggregate inspections (e.g., by lot), uninspectable property payments, etc. under a single request for payment.

8.1 Uninspectable Properties

HUD will pay the contractor 50 dollars for each verified uninspectable (VU) property (see section 6.2.1).

8.2 Unsuccessful Inspection

HUD will pay the contractor 50 percent (rounded to the nearest whole dollar) of the contractor’s price for each verified unsuccessful inspection (VUU) (see section 6.2.2).

8.3 Cancelled Inspections

If PIH-REAC cancels an inspection (see section 5.3.2), the contractor shall be paid:

- 50 percent of the contractor’s price if PIH-REAC cancels less than 72 hours before the scheduled inspection starting time.
- 50 dollars if PIH-REAC cancels 72 or more hours before the scheduled inspection starting time.

8.4 Rejected and Late Inspections

Rejected and late inspections are not subject to full payment (see section 7.1.2) unless the contractor can prove to PIH-REAC's satisfaction that the cause for late delivery or deficient performance was due to circumstances beyond the contractor's control

If PIH-REAC elects to accept a late inspection, the contractor shall be paid 50 percent of the contractor's price for the inspection. If PIH-REAC elects to not accept a late inspection, the contractor shall be paid nothing.

If PIH-REAC elects to accept and pay for an inspection when the contractor failed to perform the inspection on the date and time scheduled (see paragraph 5.1.5), the contractor shall be paid 50 percent of the contractor's price for the inspection.

8.5 *Mandatory Use of MasterCard Level II Vendor Account*

HUD will make all payments electronically to the contractor's established Level II MasterCard vendor account. The vendor account is an electronic payment system, commonly referred to as a "merchant account." This account enables the contractor to accept credit card payments through a virtual terminal (Internet website) for services rendered. To participate in the RAP, each contractor must establish and maintain a vendor account with a MasterCard credit card company or merchant account provider. The account must be able to process payments through an online terminal with a Merchant Category Code (MCC) of "9399-Government Services," using the "Level II Data" program requirements. A Level II vendor account requires additional information for each purchase such as the "authorization code," which is necessary for payment for a specific inspection.

The contractor shall be responsible for establishing and maintaining an active MasterCard Level II vendor account. HUD will *not* pay any transaction or activation fees associated with establishing and maintaining the vendor account or any credit card fees.

8.6 *Payment Process*

Once PIH-REAC accepts an inspection in accordance with the *Inspection/Acceptance* clause herein, PIH-REAC will provide an authorization code to the contractor, which is required for payment. The contractor is responsible for entering this authorization code into the credit card processing website to initiate the electronic payment process. Payment will then be made electronically, directly to the contractor's account.

The contractor may monitor the status of authorized payments using Secure Systems' Financial Management component.

Contractors shall not share the HUD purchase card or authorization code with others and shall only use the purchase card to obtain payment on accepted and authorized payments of inspections. Unauthorized use may result in the contractor's termination from the RAP.

8.7 *Improper Payment Requests*

PIH-REAC will reject payment requests if the contractor claims an incorrect amount; requests payment in advance for uncompleted or yet to be accepted inspections; or fails to populate the correct authorization code. PIH-REAC will indicate to the MasterCard vendor that the payment has been rejected; the MasterCard vendor will, in turn, resolve the rejected payment with the contractor directly.

9.0 Prohibitions

The contractor shall enforce the following prohibitions:

9.1 *Re-inspection of Same Properties*

The inspector shall be ineligible to perform any re-inspection of any properties inspected under this contract for a period of twelve months, except for re-inspections required in accordance with the *Inspection/Acceptance* clause. The period of ineligibility shall begin on the date of PIH-REAC's acceptance of the property inspection performed under this contract.

9.2 *Conflict of Interest*

An inspector may not inspect any property in which the contractor, inspector, or any business associate or any immediate family member of those parties has a financial interest in its ownership or management. An inspector may not inspect any property in which the contractor, inspector, or any business associates or immediate family members of the contractor or inspector has performed any other work of any nature under contract or purchase order from that property or owner. If an inspector has a conflict of interest and the contractor has no other inspector available to perform the inspection, PIH-REAC may terminate this contract and contract with another contractor for the inspection. Additionally, the contractor shall not provide training or consulting services to any Public Housing Authority (PHA) or property owner whose property the contractor has inspected during the time period from the issuance date of the purchase order through twelve (12) months after the purchase order expiration date. It is the contractor's responsibility to refrain from bidding on inspection work in which the contractor or the performing inspector has a conflict of interest.

9.3 *Property Repairs*

The inspector shall not repair any conditions found during inspections, or endorse, recommend, or otherwise advise the use of specific individuals or business firms for such repair work.

9.4 *Soliciting and Selling Other Products and Services*

Neither the contractor nor the inspector shall solicit the sale of, nor sell, any other services or items (e.g., smoke detector stickers) to the POA/ED or tenants during the scheduling process or the inspection.

9.5 *Observance of Federal Holidays*

The contractor shall not schedule or perform property inspections on any of the following days:

- New Year's Day;

- Martin Luther King, Jr. Day;
- Washington's Birthday;
- Memorial Day;
- Independence Day;
- Labor Day;
- Columbus Day;
- Veterans Day;
- Thanksgiving Day;
- Christmas Day; or
- Any other day designated as a Federal holiday, or as a holiday for Federal employees by Federal law, Executive Order or Presidential Proclamation.

When a Federal holiday, specified above, falls on a Saturday, the preceding Friday shall be observed.

When any such holiday falls on a Sunday, the following Monday shall be observed. Observances of such days shall not be cause for any extension of the period of performance of the purchase order or to the due date for required deliverables.

10.0 Federal Acquisition Regulation (FAR) and HUD Acquisition Regulation (HUDAR) Purchase Order Terms and Conditions

See Attachment 1.

Attachment 1

Small Business Set-Aside Program

The North American Industry Classification System (NAICS) code for this purchase order is 541350.

(2) The small business size standard is \$6,000,000.00.

Federal Acquisition Regulation (FAR) Clauses

52.219-6 Notice of Total Small Business Set-Aside. (June 2003)

(a) *Definition.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.*

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered non-responsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

52.213-4 Terms and Conditions -- Simplified Acquisitions (Other Than Commercial Items) (Oct 2003)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

(ii) 52.222-21, Prohibition of Segregated Facilities (Feb 1999) (E.O. 11246).

(iii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iv) 52.225-13, Restrictions on Certain Foreign Purchases (June 2003) (E.O.'s 12722, 12724, 13059, 13067, 13121, and 13129).

(v) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(2) Listed below are additional clauses that apply:

(i) 52.232-1, Payments (Apr 1984).

(ii) 52.232-8, Discounts for Prompt Payment (Feb 2002).

(iii) 52.232-11, Extras (Apr 1984).

(iv) 52.232-25, Prompt Payment (Feb 2002).

- (v) 52.233-1, Disputes (July 2002).
- (vi) 52.244-6, Subcontracts for Commercial Items (Apr 2003).
- (vii) 52.253-1, Computer Generated Forms (Jan 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, ***unless the circumstances do not apply:***

(1) The clauses listed below implement provisions of law or Executive order:

* * * * *

52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793) (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

* * * * *

(vi) 52.222-41, Service Contract Act of 1965, As Amended (May 1989) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wade Island, or the outer continental shelf lands).

* * * * *

(ix) 52.232-36, Payment by Third Party (May 1999). (Applies when the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Government-wide commercial purchase card to be used are identified elsewhere in this contract.)

* * * * *

(c) FAR 52.252-2, *Clauses Incorporated by Reference (Feb 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

FAR Clauses and Provisions: <http://www.arnet.gov/far/>

HUD Acquisition Regulation (HUDAR) Clauses and Provisions: <http://www.hud.gov/offices/cpo/hudar.cfm>

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights --

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of Clause)

52.243-1 Changes-Fixed Price Alternate I (APR 1984)

HUD ACQUISITION REGULATION (HUDAR) CLAUSES

2452.203-70 Prohibition Against the Use of Federal Employees (DEC 1992)

2452.209-72 Organizational Conflicts of Interest (APR 1984)

2452.239-71 Information Technology Virus Security (FEB 2000)

(a) The contractor hereby agrees to make every reasonable effort to deliver information technology products to HUD free of known computer viruses. The contractor shall be responsible for examining all such products prior to their delivery to HUD using software tools and processes capable of detecting all known viruses.

(b) The contractor shall include the following statement on deliveries of hardware, software, and data products, including diskettes, made under this contract: [product description, part/catalog number, other identifier, and serial number, if any]

“This product has been scanned for known viruses using [name of virus-screening product, including version number, if any] and is certified to be free of known viruses at the time of delivery.”

(c) The Contracting Officer may assess monetary damages against the contractor sufficient to compensate HUD for actual or estimated costs resulting from computer virus damage or malicious destruction of computer information arising from the contractor's failure to take adequate precautions to preclude delivery of virus-containing products in the delivery of hardware, software, or data on diskettes under this contract.

(d) This clause shall not subrogate the rights of the Government under any other clause of this contract.