

REVERSE AUCTION PROGRAM
Uniform Physical Condition Standards (UPCS) Inspection Services
PURCHASE ORDER TERMS AND CONDITIONS
Effective: April 15, 2017

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, Office of Public and Indian Housing (PIH) Real Estate Assessment Center (REAC) under its Uniform Physical Condition Standards (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 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 Attachment 1). Therefore, the contractor should download the version in effect when the purchase order is awarded.

1.1 Definitions

“Contractor” means the legal entity to which the purchase order is awarded. The contractor shall be legally responsible for all work performed and for complying with all terms and conditions of the purchase order. The contractor must be considered a small business for NAICS code 541350.

“Inspector” is defined as the individual who is certified by REAC in the UPCS inspection protocol. The inspector conducts the on-site property inspections. An inspector may be a contractor, employee of a contractor, a subcontractor (at any tier) to a contractor, or an employee 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 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 the purchase order will be the period stated in the email purchase order award notification issued to the contractor. The contractor shall complete all work and submit all inspection results by the end of that period. The contractor may not exceed the period of performance without approval from REAC or the HUD Contracting Officer.

If the contractor cannot complete the inspection work within the specified performance period, the contractor must send a formal request to extend the purchase order period of performance through HUD's Secure Systems. In order for the request to be considered, the inspection must have been properly scheduled, the request received before the end of the performance period, and a rationale for the extension provided. REAC will review the extension request to determine whether it is justified. If an extension is not granted, the contractor will be responsible for completing the inspection work by the stated 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 Technology Requirements

The contractor shall have:

- All necessary hardware and software to communicate via email; and
- Internet access that supports electronic transmission of property profile data and inspection results.

The contractor shall ensure that the hardware used for the inspection work is compatible with the HUD-provided UPCS software and HUD's Secure Systems. HUD will not compensate the contractor for upgrades to, or replacement of, hardware or software. See also the clause at HUDAR 2452.239-71, Information Technology Virus Security.

The contractor shall ensure that inspections are being performed with the most recent HUD-provided UPCS software.

4.0 Communications Between REAC and Contractors

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

All email communication to REAC should be sent to the RAP inbox at:
ReacReverseAuctionProgram@hud.gov.

The Technical Assistance Center (TAC) can be contacted at:
1-888-245-4860; or REACTAC@hud.gov

4.1 Contact Information and SAM Account Maintenance

The contractor shall maintain current information in the System for Award Management (SAM), including banking information (see paragraph 9,1) The contractor should provide REAC with any alternate contact information not available in SAM. The contractor is responsible for the accuracy of all information provided to REAC and SAM.

The contractor shall email the RAP inbox with any changes to its email address or other contact information. The contractor shall provide any changes to previously provided contact information to REAC as soon as they are known.

In addition, the contractor is responsible for ensuring that its inspectors maintain current contact information in HUD's Secure Systems.

4.2 Failure to Maintain Contact

The contractor shall respond within three business days to communications from REAC. Repeated failure of the contractor to maintain contact with, or respond to, REAC may result in the termination of the contract. HUD does not assume responsibility for inaccurate contact information.

5.0 Pre-Inspection

5.1 Scheduling Protocol

The contractor shall:

- Schedule the awarded inspection(s) within 20 calendar days of the email award notification, or as specified in the offering statement.
- Schedule the inspection directly with the Property Owner Agent/ Executive Director (POA/ED) or appointed representative. REAC will provide the contractor with the contact information through HUD's Secure Systems.
- 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. The contractor shall provide a minimum of three unique dates in an effort to arrive at a mutually agreeable date.
- Identify to the POA/ED the name of the inspector who will be conducting the inspection.
- Email the property and copy the RAP inbox with a confirmation of the inspection schedule within 24 hours of agreement. The template to be used is available in Attachment 2: Required Email Text for Inspection Confirmation.
- Enter the inspection date and time, and inspector's user ID in the Secure Systems Scheduler module within 24 hours of agreement.
- Ensure that the inspection does not start for at least 20 calendar days after the contractor confirms the date of the inspection with the POA/ED, unless the POA/ED waives the 20-day wait time.
- Not conduct inspection activities on weekends, locally-observed holidays, or Federal holidays

(please see paragraph 10.7 Observance of Federal Holidays, for a detailed list of government-observed holidays).

- Ensure the inspector does not enter units prior to 9:00 a.m. or after 6:00 p.m.
- Use the estimated inspection duration indicated for the property when developing the inspection schedule.
- Include enough time in the inspection period to allow for reasonable anticipated contingencies, including travel time, weather-related and other delays, calls to TAC, and others.
- Report any changes to the property profile, particularly those that may affect the duration of the inspection or sample size, as outlined in paragraph 5.1.2.

Any exceptions to the above requirements must be approved by REAC via email. If approved, the contractor shall retain a copy for six-months.

A contractor who does not adhere to the scheduling protocols above may be prohibited from participating in the next five auctions.

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 subject to REAC inspection;
- Any reason(s) why the property should not be inspected; and
- Any other data provided by 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.

It is also recommended to request measurements for parking lots and other outdoor areas to assist the inspector in properly recording this information on the day of the inspection.

5.1.2 Property Profile Discrepancies

If the contractor learns of discrepancies in the profile information during the scheduling phase, the contractor should call TAC as soon as the discrepancies are identified. TAC should be able to resolve the discrepancy and provide the correct building and unit information.

If there is a significant discrepancy that affects the estimated duration of the inspection by more than half a day, the contractor should report the property uninspectable as described in paragraph 5.5 and provide the details and TAC reference number in the comments. 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 during the scheduling phase and the inspector discovers a significant discrepancy after arriving at the property, the

inspector will conduct the inspection using the correct unit sample size for the awarded price.

5.1.3 Inspection Confirmation

The inspection date and time must be confirmed in writing with the POA/ED within 24 hours of the oral agreement. Refer to Attachment 2: Required Email Text for Inspection Confirmation. The contractor shall complete the template by filling in all required information indicated in italics (e.g., names, dates, etc.). REAC must approve any modification of confirmation text before it is sent.

The contractor must email a copy of the confirmation email to the RAP inbox.

The contractor shall request 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 REAC, and shall retain the POA/ED confirmation for a period of six months.

5.2 Changes to the Inspection Schedule

Changes to the inspection schedule should be rare and must be accepted by REAC. If the confirmed inspection schedule is changed for any reason, the contractor must update the Secure Systems Scheduler with the new, confirmed inspection schedule within one business day of making the change. At the same time a copy of the confirmation email for the new schedule must be sent to the RAP inbox.

If the inspection date and time is changed within three business days of the previously scheduled date, the contractor must provide justification to REAC and call TAC. Changes made within three business days of the start of the inspection should be rare and may not be accepted by REAC. If the change is not accepted by REAC, the inspection may be terminated for default.

5.3 Failure to Inspect on Scheduled Date and Time

If the contractor fails to have an inspection conducted at the date and time that is entered into the Secure Systems Scheduler and does not notify REAC in advance of the changed date and time in accordance with paragraph 5.2, HUD may:

- accept the inspection for the reduced price shown in paragraph 8.2; or
- terminate the inspection for default.

Repeated failures to conduct inspections on the date time scheduled without proper notification and approval, may result in a prohibition of participating in five auctions.

5.4 Substitution of Inspectors

The contractor shall make any substitution of an assigned inspector in Secure System's Scheduler and notify the property. The correct inspector ID must be in Secure Systems so that the inspector of record is able to download the inspection in accordance with UPCS protocol.

5.5 Reporting Properties Uninspectable

When the POA/ED is contacted to schedule the inspection and indicates the property is no longer in HUD's inventory; not due for an inspection; or buildings and units are off-line or not inspectable, the contractor is required to report the inspection as "Uninspectable" in the Secure Systems Inspection Oversight Module.

If the the contractor is unable to schedule an inspection for other reasons, such as inaccurate or incomplete contact information or an uncooperative property representative, the contractor should report it as uninspectable.

Reports of uninspectable properties must include relevant information such as the name and telephone number of the property representative, a brief explanation as to why the property is uninspectable, and a TAC reference number if one was obtained. The contractor must provide this information in the Inspection Oversight module.

5.5.1 Verification of Uninspectable Properties

REAC will research the reported issues, and if the property is uninspectable the contractor will receive an email with the updated status of Verified Uninspectable (VU). Once the inspection has been VU, the contractor is not required to take further action on the inspection and is authorized payment in accordance with paragraph 8.3.

If REAC is able to resolve the reported issues the inspection will be considered Verified Inspectable (VI). The contractor will receive an email and is responsible for scheduling and conducting the inspection. The inspection should be scheduled in accordance with paragraph 5.1 with the deadlines beginning on the day the VI email was sent by REAC.

5.6 Circumstances Beyond the Contractor's Control

If the contractor is made aware of circumstances beyond the contractor's control that affect the inspection schedule (such as a natural disaster, fire, severe flooding, etc.), the contractor must notify REAC immediately by calling TAC to obtain a reference number.

The inspection should then be unscheduled in Secure Systems scheduler and the TAC reference number provided in the comments. The contractor should then work with the POA/ED to reschedule the inspection.

If the contractor cannot reschedule the inspection for any reason, the property should be reported uninspectable as described in paragraph 5.5.

5.7 Cancellations

Cancellations can only be authorized by REAC, and an inspection may be cancelled at any time. In such cases, REAC will notify the contractor via email. The contractor is responsible for ensuring the

POA/ED and inspector is notified of the cancellation. See paragraph 8.5 for payment terms.

6.0 Inspections

6.1 UPCS Protocol

The inspector shall comply with all UPCS inspection protocol requirements in effect at the time of an inspection. This includes all rules, guidance, instructions, bulletins, and standards. Some examples are the inspector insurance requirements and the protocol for inspecting units with bed bugs.

Contractors will be notified in advance about inspections that are required to be conducted using a modified protocol, such as New York City Housing Authority or Puerto Rico Housing Authority. If a modified protocol is required, it is the contractor's responsibility to ensure the assigned inspector is aware of, and abides by, the modifications. A pre-bid conference call may be required in order to bid in such an auction.

The Compilation Bulletin and other guiding documentation for UPCS protocol is available at: https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/products/pass/qa

6.1.1 Property Representation

In accordance with UPCS protocol, a property representative must accompany the inspector during the entire inspection. When a representative is unavailable for a confirmed inspection, the contractor must call TAC for a reference number. The inspection may be unsuccessful as described in paragraph 7.5.

If the inspector completes an inspection without a property representative the inspection will be rejected and a re-inspection may be required as described in paragraph 7.6.

6.1.2 Errors in Property Profile or Sample Size

If any discrepancies in the profile are discovered on the day of inspection, TAC must be called so the issues can be resolved prior to the inspector creating the sample.

If the inspector fails to accurately verify the profile or uses an incorrect sample size, the inspection results will not be accepted by REAC and a re-inspection may be required as described in paragraph 7.6.

6.1.3 Observed Health and Safety Hazards

In accordance with UPCS protocol, 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 the inspector observed and recorded. The inspector must obtain a signature from the property representative on the form that acknowledges receipt prior to leaving the property.

The form for this notification is provided as Attachment 4 in the RAP Business Rules: Notification of Exigent and Fire Safety Hazards. No modification of this form is allowed.

6.2 Inspector Code of Conduct

UPCS-certified inspectors must adhere to the Inspector Code of Conduct, which can be viewed at: https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/products/pass/inspectors

7.0 Post-Inspection

7.1 Uploading Inspection Results

In accordance with UPCS protocol, an inspection must be uploaded within 24 hours of completing the inspection.

7.2 REAC Inspection Review

Each inspection is subject to a review by REAC to ensure the product is acceptable. The review includes, but is not limited to, verification of the property profile, analysis of inspection observations, timestamp data analysis, and inspections conducted by HUD's Quality Assurance (QA) inspectors. REAC may request and consider feedback from field offices, owners, tenants, and POA/EDs, and use any other method REAC deems appropriate in making its assessment of the quality of the inspection. An inspection may be placed on hold pending the results of a QA inspection or awaiting requested feedback.

This review will be the basis for REAC's acceptance or nonacceptance of the inspection.

7.3 Quality Assurance

QA reviews will be used to monitor and evaluate the inspector's performance and inspection quality to determine compliance with UPCS protocol.

7.3.1 *Independent Quality Assurance (IQA)*

A scheduled inspection may be selected for an IQA inspection in which a HUD QA inspector conducts a full inspection for comparison with the contract inspection. The IQA inspection is conducted on the same day or within a few days of the contract inspection. Each UPCS inspector will be subject to an IQA inspection.

If the comparison finds that the contract inspection does not meet REAC standards, the inspection will be considered unsuccessful. The contractor will receive an email and is authorized payment in accordance with paragraph 8.4. REAC will then provide the inspector with training tailored to address the concerns identified in the comparison in order to strengthen the inspector's knowledge and skills. This may include a training inspection conducted with a QA inspector.

If the comparison finds the contract inspection did meet REAC standards, the inspection

will be considered successful. The contractor will receive an email and is authorized payment of full bid price.

If the comparison finds the contract inspection was excellent (meets standards at 90% or greater), the contractor may receive an incentive payment in addition to the full bid price. The contractor will receive an email and is authorized payment of the full bid price plus the amount of the incentive payment, which will be specified in the offering statement (refer to paragraph 8.6).

7.3.2 *Quality Control Inspection (QCI)*

After an inspection has been uploaded, an inspection may be selected for a QCI inspection review in which a HUD QA inspector conducts a full inspection for comparison with the contract inspection.

If the comparison finds that the contract inspection does not meet REAC standards, the inspection will be considered unsuccessful. The contractor will receive an email and is authorized payment in accordance with paragraph 8.4. REAC will then provide the inspector with training tailored to address the concerns identified in the comparison in order to strengthen the inspector's knowledge and skills. This may include a training inspection conducted with a QA inspector.

If the comparison finds the contract inspection did meet REAC standards, the inspection will be considered successful. The contractor will receive an email and is authorized payment of full bid price.

If the comparison finds the contract inspection was excellent (meets standards at 90% or greater), the contractor may receive an incentive payment in addition to the full bid price. The contractor will receive an email and is authorized payment of the full bid price plus the amount of the incentive payment, which will be specified in the offering statement (refer to paragraph 8.6).

7.3.3 *Collaborative Quality Assurance (CQA)*

A CQA inspection is a training tool used to strengthen and reinforce the inspector's skills and knowledge with regard to UPCS protocol. A HUD QA inspector performs this review side-by-side with the inspector while a contract inspection is being conducted.

HUD QA staff may contact the contractor to schedule a CQA inspection with a specific inspector and/or inspection.

7.3.4 *Limited Quality Assurance (LQA)*

This review is performed after the contract inspector has uploaded the inspection, and is used to determine if the inspection is a true representation of the physical condition of the property. If the LQA inspection determines the inspection did not meet REAC standards, the inspection may be rejected and a re-inspection may be required (paragraph 7.6).

7.4 **Successful Inspection**

An inspection is considered to be successful when the inspector completes the inspection, uploads the results, and the inspection is reviewed and accepted by REAC.

7.5 Unsuccessful Inspection

An inspection is considered to be unsuccessful when the inspector uploads an incomplete or poor quality inspection. Examples include, but are 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;
- A property representative halts an inspection before it is completed;
- The POA/ED failed to notify all residents prior to the inspection; or
- An uploaded inspection that does not pass REAC's review.

7.5.1 Verification of Unsuccessful Inspection

When the inspector is on-site and unable to complete an inspection, TAC must be called immediately. TAC will provide a reference number which must be included in the inspection upload.

If requested, the contractor must provide additional information such as 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.

If REAC verifies the inspection was unsuccessful, the contractor will receive an email and will be authorized payment in accordance with paragraph 8.4.

7.6 Required Re-inspections

REAC will notify the contractor by email if an inspection is rejected and a re-inspection is required. The email will specify the particular property, 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 by REAC, and may require a HUD QA inspector to be present. The re-inspection is subject to all requirements of the original inspection, including scheduling and written notification as outlined within this document.

In cases in which REAC requires a re-inspection, the rejected inspection work is not subject to payment until REAC determines that the required re-inspection is acceptable. When a re-inspection is required, the contractor shall re-inspect the property at no additional cost to HUD (see *Inspection/Acceptance* clause in Attachment 1).

7.7 Late Inspections

An inspection is considered late if the contractor fails to complete and upload the inspection

results by the end date of the period of performance of the purchase order. REAC may elect to not accept a late inspection or to accept it at the reduced price set forth in paragraph 8.2.

8.0 Payment Terms

8.1 Accepted Inspection

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

If an accepted inspection is considered late, the inspection may be paid at the reduced rate described in 8.2.

8.2 Late Inspection

A late inspection is not subject to full payment unless the contractor can prove to REAC's satisfaction that the cause for late delivery or deficient performance was due to circumstances beyond the contractor's control.

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

If REAC elects to accept and pay for an inspection when the contractor failed to conduct the inspection on the date and time scheduled (see paragraph 5.3), the contractor shall be paid 50 percent of the contractor's price for the inspection.

8.3 Uninspectable Property

HUD will pay the contractor 75 dollars for each VU property (see paragraph 5.5.1).

8.4 Unsuccessful Inspection

HUD will pay the contractor 50 percent of the contractor's price for each verified unsuccessful inspection (see paragraph 7.5).

8.5 Cancelled Inspection

If REAC cancels an inspection (see paragraph 5.7), the contractor shall be paid:

- 50 percent of the contractor's price if REAC cancels within 72 hours of the scheduled inspection starting time.
- 75 dollars if REAC cancels 72 hours or more hours before the scheduled inspection starting time.

8.6 Incentive Payment

If the contractor receives an email notification that an inspection was found to be of excellent quality and is eligible for an incentive payment, the contractor shall be paid the contractor's price plus the incentive price.

The incentive price for each auction will be specified in the offering statement for that auction.

8.7 Invoices

Payment terms for each inspection in a final status will be Net 30. Invoices will be paid within thirty days. For inspections being paid using the Citibank MasterCard system, the Contractor charging against its account will be treated as the invoice (see paragraph 9.2.1). For inspections being paid by direct deposit (see paragraph 9.1), the upload of the inspection shall be considered the Contractor's submission of an invoice for payment.

When an inspection is reported uninspectable the report will be deemed the submission of the invoice. REAC will determine if an inspection is verified uninspectable (VU) or verified inspectable (VI) within thirty days.

8.8 Overpayments

If the Contractor sends the Government a check to remedy a duplicate payment or an overpayment by the government, it will be converted into an electronic funds transfer (EFT). This means the Government will copy the check and use the account information on it to electronically debit the Contractor's account for the amount of the check. The debit from the Contractor's account will usually occur within 24 hours and will be shown on the regular account statement.

The Contractor will not receive the original check back. The Government will destroy the Contractor's original check, but will keep a copy of it. If the EFT cannot be processed for technical reasons, the Contractor authorizes the Government to process the copy in place of the original check.

9.0 Payment Method

9.1 Direct Deposit

REAC is transitioning from the Citibank MasterCard accounts to direct payments by HUD's shared service provider for financial management, the Department of the Treasury's Administrative Resource Center (ARC). During the transition period, REAC will inform the Contractor whether payment for an inspection will be made through Citibank or ARC at the time of auction.

When ARC is making the payment to a Contractor for work performed, it will use the Contractor's banking information located in SAM to make the direct deposit. REAC may combine payment for multiple inspections into one direct deposit.

9.2 MasterCard Level II Merchant Service Provider Account

9.2.1 *Mandatory Use of MasterCard Account*

The Contractor shall be responsible for establishing and maintaining an active MasterCard Level II Merchant Service Provider account. This account will enable Contractors to invoice for inspection services using a credit card account provided and held by HUD.

HUD will not pay any fees incurred by the Contractor to enlist with a Level II Merchant Service account.

When a contractor is approved to participate in the RAP, HUD will provide the purchase card account information needed for invoicing. HUD is currently using Citibank to facilitate this credit card account. This account will be tied to the Contractors personal account and payments will be processed electronically and deposited directly into the Contractor's personal account.

Contractors shall not share the HUD purchase card account number with others and shall only use the account to obtain payment for inspection services accepted and approved by HUD. Unauthorized use of the HUD purchase card account may result in the contractor's termination from the RAP.

The MasterCard Level II Merchant Service Providers is an electronic payment system. Using a Merchant Service Provider enables the contractor to accept credit card payments through a "virtual terminal" (internet website) using the purchase card account number provided by HUD.

There are three commonly used levels of data in the merchant service account industry. (Level I, Level II and Level III). At a minimum, HUD requires use of a MasterCard Level II Merchant Service Provider to ensure Contractors are using an invoicing platform that provides data security and has additional fields within the interface that holds required transactional information.

It is the responsibility of the Contractor to ensure the Level II MasterCard vendor has an invoicing interface that allows the user to enter the following information with each transaction; purchase amount, date, merchant category code, company name, tax id number and inspection number. This information must be placed in fields that are permanently attached to each payment transaction.

9.2.2 *Payment Process*

Once REAC accepts an inspection in accordance with the Inspection/Acceptance clause herein, REAC recognizes the inspection number as an authorized identification number for invoicing.

One of the primary fields in the merchant service provider interface for invoicing may be labeled as Authorization Code or Point of Sale. Contractors must place the inspection number for the inspection they are invoicing in this field or any field that will be permanently attached to the transaction.

Contractors should verify with the merchant service provider that they are placing the

inspection number in a primary field that holds information that will transfer with the transaction. Transactions processed electronically for payment that do not carry an inspection number will be considered improper payments. Improper payments are rejected by HUD.

9.2.3 Improper Payments

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 inspection number in a field that will permanently reside with the payment transaction. It is the responsibility of the contractor to monitor all transactions with the Level II MasterCard merchant service provider to ensure they have processed transactions as required by HUD.

9.3 Payment Questions

For questions regarding the payment process, payment terms, or the status of any payment, the contractor should contact TAC.

10.0 Prohibitions

The contractor is responsible for ensuring inspections are not conducted by inspectors that are prohibited as described below.

10.1 Re-inspection of Same Properties

The inspector shall be ineligible to conduct an inspection of any property 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 REAC's acceptance of the property inspection conducted under this contract.

10.2 Conflict of Interest

The contractor is responsible for ensuring the inspector of record has no conflict of interest or perceived conflict of interest.

10.2.1 Financial Interest

An inspector may not inspect any property in which the contractor, inspector, business associate, or immediate family member of the contractor or inspector has a financial interest in its ownership or management. This includes employees of the property owner or manager and members or directors of a property's board of commissioners.

10.2.2 Non-Financial Interest

An inspector may not inspect any property if the inspector or contractor has a non-financial interest in the property, or a relationship with the owner or manager of the property, that would compromise the inspector's or contractor's objectivity. Such relationships may include, but are not limited to: current resident of the property; former employee of the property owner whose

employment was terminated for cause; non-paid member of the board of commissioners that governs the property; an individual with litigation pending or recent against the property owner or manager; or an individual who has a pending or recent grievance or complaint filed against the property owner or manager.

10.2.3 Other Work

An inspector may not inspect any property in which the contractor, inspector, business associate, or immediate family member of the contractor or inspector has performed any other work of any nature, either under contract or via any other arrangement for the property, or the property owner or manager, with the limited exception for pre-REAC inspections and consulting services completed more than 12 months before the assigned inspection.

The contractor shall require a certification from the inspector that the inspector has not performed any pre-REAC inspections or consulting services within 12 months on any properties that have been assigned as a result of a RAP auction (if the inspector is also the Contractor, then he/she will complete the certification and file it accordingly). This certification will be maintained by the contractor for a period of three years and made available to HUD upon request.

10.2.4 Obscured Objectivity

An inspector may not inspect a property where there is any other condition, situation or relationship that exists where the objectivity of the inspector or contractor may be called into question.

10.3 Future Involvement with Property Owners

The contractor shall not provide training or consulting services to any public housing authority, multi-family property owner, or other property-type owner whose property the contractor has inspected during the time period from the issuance date of the purchase order through twelve months after the purchase order expiration date.

10.4 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.

10.5 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., pre-REAC consultation, smoke detector stickers, etc.) to the POA/ED or tenants during the scheduling phase or during the inspection.

10.6 Elimination and Mitigation Conflicts of Interest of Prohibited Activities

The contractor shall take steps to promptly eliminate or mitigate a conflict of interest or other

prohibited activity, including removing an inspector from any inspection where the inspector has such a conflict or is prohibited. The burden shall be on the contractor to prove that a conflict of interest has been eliminated or mitigated to HUD's satisfaction.

If the contractor cannot eliminate or mitigate a conflict of interest or other prohibited activity to HUD's satisfaction (e.g., if an inspector has a conflict of interest and the contractor has no other inspector available to conduct the inspection), the contractor may request to forfeit the inspection.

If the contractor does not take satisfactory action to mitigate a conflict of interest or other prohibited activity, the inspection may be terminated for default.

10.7 Observance of Federal Holidays

The contractor shall ensure that an inspection does not occur on any of the following observed Federal holidays:

- New Year's Day;
- Martin Luther King, Jr. Day;
- Presidential Inauguration 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.

See the Office of Personnel and Management website (www.OPM.gov) for specific dates of observed Federal holidays. Observances of such days shall not be cause for any extension of the period of performance of the purchase order.

11.0 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).

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(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.

Attachment 2: Required Email Text for Inspection Confirmation

Subject Line: Physical Inspection of [*insert property name and property ID and Inspection ID*]

Name of Property Owner
Property Name
Property Address
City, State
Inspection #, Property ID

Dear [*name of property owner*]:

This confirms our phone conversation with [*property representative's name*] on [*date of scheduling call*] that the referenced property is scheduled for inspection beginning at [*time*] on [*date*], through [*time*] on [*date*]. Please note that the inspection will not include weekends or [*insert any Federal holiday falling during the inspection period*]. If there is any delay, you will be contacted by telephone and we will set new dates, if necessary.

Please provide the required written notice of the inspection to your residents that includes the agreed upon inspection dates and three days following. It is not necessary for the tenants of units selected for inspection to be present during this inspection.

Please note that your representative must accompany the inspector at all time while on-site. Your representative should be prepared to provide access to all units identified in the inspection (when the tenant is not present or the unit is vacant) and all other areas of the property (e.g., maintenance facilities, offices). The inspector will inform your representative of the units that have been selected for inspection on the day of the inspection, which is the result of a sample drawn on-site.

The inspection will include the entire property: project grounds, common areas, office, maintenance work areas, laundry rooms, community room, etc., and a sample of buildings and units selected at random. On the day of the inspection, the inspector will verify data provided on the property profile, as per our previous discussion. Please have available the following information to assist with the verification:

- Total number of buildings and number of units within each building;
- The unique building identifier (i.e., the address or some other identifier that will enable the identification of each building for future inspections);
- All applicable certifications, including inspections of elevators, sprinkler systems, fire alarms, and boilers; lead-based paint testing certification and HUD's disclosure form (Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards) for housing built prior to 1978 (including elderly properties) are also required;
- Current rent-roll (used for reference only, rent amounts are not necessary);
- Site-map or plot plan showing property layout and building locations, if available;

- Total square footage of the Parking Lots/Driveways/Roads and Walkways/Steps; if you do not provide these area measurements at the time of the inspection, I will provide an estimate of the square footages to HUD;
- Current occupancy percentage rate; and
- Copy of written notification to the residents of the inspection.

Please be advised that the terms of my contract with HUD do not permit me or the inspector to discuss with you or your representative, or provide advice on, any deficiencies observed and recorded during the inspection. We appreciate that you may have different views regarding the deficiency definitions, but the inspector must classify deficiencies in accordance with HUD's established inspection protocol. Differences of opinion regarding the facts of the inspection may be discussed with HUD staff later.

HUD's Offices of Housing and Public Housing require that all exigent health and safety hazards be mitigated immediately. An exigent hazard is one that poses an immediate threat to life, health or property. During the inspection, the inspector will record all health and safety hazards. Before leaving the property, the inspector will provide your representative with a written list of all such health and safety hazards and ask your representative to sign the form to acknowledge receipt. The signature only acknowledges receipt of the form and does not indicate the representative's or your concurrence with its contents.

Be advised that HUD REAC may conduct a Quality Assurance (QA) inspection to verify the results of the inspection. If your property is selected, the QA inspection may occur on the day of the scheduled inspection or within 30 days. If your property is selected, your cooperation will be required and is appreciated.

Please reply to this email message to confirm receipt. If you have additional questions, please contact me by email or at *[insert phone number]*.

I wish to thank you and your staff in advance for your help with this inspection.

Sincerely,

Contractor Name – PIH-REAC Inspector #

cc: ReverseAuctionProgram@hud.gov