

REQUEST FOR QUALIFICATIONS-PROPOSALS (RFQ-P) NO. RFQ-P 2011 Security and Surveillance
Consultant Services
(Attachment E, Sample Contract Form)

**CONTRACT BETWEEN
THE GREENBURGH HOUSING AUTHORITY
AND
[THE CONTRACTOR]**

INTRODUCTION

This contract by and between the Greenburgh Housing Authority (hereinafter "HA"), and _____, (hereinafter "Contractor") is hereby entered into this ____ day of _____, 2011.

Services pursuant to this contract shall begin on the ____ day of _____, 20__, and shall end on the ____ day of _____, 20__, unless otherwise extended, modified, terminated or renewed by the parties as provided for within this contract. Unless otherwise detailed herein, all references to "days" shall be calendar days (in the case that the last day referenced falls on a Saturday, Sunday or legal holiday, then the period of time shall be automatically extended to include the next work day).

1.0 Services and Payment:

Scope of Services: The services provided pursuant to this contract generally consist of those services for the HA as described herein and within the Appendices. Said services shall be provided on the dates and times determined by the HA.

Contract Amount: The total contract price is \$_____, which includes all costs and expenses.

The Contractor exceeds this amount at his/her own risk. The Contractor is under no obligation to provide additional services that would cause the Contractor's fees to exceed the fixed fee amount without prior revision of this amount by written change order.

Renewal Options: This contract is initially executed for the term established above. Renewal options can be executed only with the agreement of the Contractor, and either party can initiate renegotiation of the contract before said option is executed.

Time Performance: The Contractor will complete the task within the term of this contract.

Billing Method: To receive payment for services rendered pursuant to this contract the Contractor shall submit a fully completed invoice for work previously performed. At a minimum, the invoice shall detail the following information: (1) Unique invoice number; (2) Contractor's name, address and telephone number; (3) Date of invoice and/or billing period; (4) Brief description of services rendered; (5) Total dollar amount being billed. The HA will pay such properly completed invoice received on a Net 30 basis. Any invoice received not properly completed will not be paid unless and/or until the Contractor complies with the applicable provisions of this contract.

2.0 HA's Obligations: Pursuant to this contract, the HA agrees to provide the specific services detailed herein and shall be responsible for the following:

The HA shall provide the Contractor with all necessary content and materials, including personnel, business information, operations information and financial data (hereinafter "HA Materials") that the Contractor requires or reasonably requests to perform the services. The HA's failure to provide such information shall relieve the Contractor of its performance obligations hereunder until it receives such HA Materials.

Where Contractor requests HA Materials pursuant to a time-sensitive project, HA shall deliver the requested HA Materials within 48 hours of the Contractor's request. If HA fails to deliver requested HA Materials within such time, the Contractor shall be relieved of its performance obligations hereunder until it receives such HA Materials.

3.0 Contractor's Obligations: Pursuant to this contract, the Contractor agrees to provide the specific services detailed herein and also shall be responsible for the following:

Supervision and Oversight: The Contractor shall be solely responsible for providing supervision and oversight to all of the Contractor's personnel that are assigned to the HA properties pursuant to this contract.

Qualified Personnel: The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein and within the appendices. For the purposes of this contract, the term "qualified personnel" shall mean those personnel that have been investigated, tested and trained in the manner described within this contract and, as proposed by the Contractor within its proposal or as provided by the Contractor during the Contractor's normal conduct of business.

Compliance with Federal and State Laws: All work performed by the Contractor, pursuant to this contract, shall be done in accordance with applicable all Federal, State and local laws, regulations, codes and ordinances.

Insurance Requirements: The Contractor shall maintain the following insurance coverage during the effective term(s) of this contract:

Policy of General Liability Insurance, \$1,000,000 per occurrence, \$1,000,000 aggregate together with damage to premises and fire damage of \$50,000 and medical expenses for any one person of \$5,000 with a deductible not greater than \$1,000. The HA shall be named upon the certificate issued as an "additional insured," together with providing a copy of the corresponding endorsement evidencing the same.

Automobile Liability coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this contract, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$50,000/\$100,000 and medical pay of \$5,000 with a deductible not greater than \$1,000.

Worker's compensation coverage evidencing carrier and coverage amount, if applicable.

The Contractor shall provide to the HA with current certificate(s)/endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-reference insurance coverage, including naming the HA as an additional insured (where appropriate) during the term(s) of this contract shall constitute a material breach thereof.

Financial Viability and Regulatory Compliance: The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state and local licensing authorities and that it possesses all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding delinquent federal, state or local taxes or business assessments.

The Contractor agrees to promptly disclose to the HA any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by the Contractor to disclose such issue to the HA in writing within 5 days of such notification received will constitute a material breach of this contract.

The Contractor further agrees to promptly disclose to the HA any change of more than 50% of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within 5 days of said actions shall constitute a material breach of this contract.

All disclosures made pursuant to this section of the contract shall be made in writing and submitted to HA within the time periods required herein.

4.0 Modification: This contract shall not be modified, revised, amended or extended except by written addendum, executed by both parties.

5.0 Severability: The invalidity of any provision of this contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision herein.

6.0 Applicable Laws:

Compliance with Federal and State Laws: All work performed by the Contractor, pursuant to this contract, shall be done in accordance with applicable all Federal, State and local laws, regulations, codes and ordinances.

Jurisdiction of Law: The laws of the State of New York shall govern the validity, construction and effect of this contract, unless said laws are superseded by, or in conflict with applicable federal laws and/or federal regulations. This contract will be binding upon the parties, their heirs, beneficiaries, and devisees of the parties hereto. The parties agree that Tompkins County, New York is the appropriate forum for any action relating to this contract. Should any party hereto retain counsel for the purpose of initiating litigation or arbitration to enforce, prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys fees and costs incurred by such prevailing party. This contract may be signed in counterparts.

7.0 Notices, Invoices and Reports: All notices, reports and/or invoices submitted to the HA by the Contractor pursuant to this contract shall be in writing and delivered to the attention of the following person representing the HA:

**Olney Reynolds
Greenburg Housing Authority
9 Maple Street, White Plains, NY 10603**

8.0 Disputed Billings (Charges):

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

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

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

If the CO and the Contractor's representative are unable to resolve the dispute through such discussion within 10 days, the HA shall, within 10 days thereafter reserve the right to submit the matter to an arbitrator. The decision from arbitration will be binding upon both parties. If the decision is adverse to the HA, the HA shall pay the disputed amount. If the decision is in favor of the HA, the HA will retain the disputed amount.

9.0 24 CFR 85.36(i), Procurement: Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the HA and the Contractor each agree to comply with the following provisions:

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

If the Contractor is in material breach of the contract, the HA may promptly invoke the

termination clause detailed within Section No. 3 of Appendix No. 1, Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which is attached hereto, and terminate the contract for cause. Such termination must be delivered to the Contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.

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

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

The response to any protest received shall be conducted in accordance with Section No. 4.0 of the *Instructions to Proposers and Contractors* document.

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

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

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

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

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

Access to Records: Both parties hereby guarantee access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Record Retention: Both parties hereby guarantee retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

10.0 Additional Considerations:

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

Funding Restrictions and Order Quantities: The HA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the HA, if: (1)

funding is not available; (2) legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or (3) the HA's requirements in good faith change after award of the contract.

Permits. Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either the HA or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the Contractor and any costs that were submitted by the Contractor in response to the RFP shall reflect all costs required by the Contractor to procure and provide such necessary permits.

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

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

Freight on Bill and Delivery: All costs submitted by the proposer shall reflect the cost of delivering the proposed items and/or services to the location(s) specified within the RFP documents or within the contract. The Contractor agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the Contractor. Upon default, the Contractor agrees that the HA may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

Delays/Backorders: The CO must be notified in writing by the Contractor within 5 days of any delays and/or any incomplete services; and the estimated delivery date. Unless otherwise stipulated in the contract, any order that will take more than a maximum of 10 days past the original agreed upon delivery date, may at the option of the HA, be canceled and ordered from another source, if, in the opinion of the CO, it is in the best interests of the HA to do so.

Work on HA Property: If the Contractor's work under the contract involves operations by the Contractor on HA premises, the Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the HA's negligence, shall indemnify the HA, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the Contractor, its agents, employees, or subcontractors.

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

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

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

Attorney's Fees: In the event that litigation is commenced by one party hereto against the

other in connection with the enforcement of any provision of this agreement, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including reasonable attorneys' fees. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.

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

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

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

Limitation of Liability: In no event shall the HA be liable to the Contractor for any indirect, incidental, consequential or exemplary damages.

Indemnification:

The Contractor shall indemnify, defend, and hold the HA (and its officers, employees, and agents) harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character, which are caused by, arise out of, or occur due to any failure of the Contractor to (1) abide by any of the applicable professional standards within its industry, or (2) comply with the terms, conditions, or covenants that are contained in this contract; or (3) ensure that any subcontractors abide by the terms of this provision and this contract; provided, however, that Contractor will not be required to indemnify the HA against any loss or damage which was specifically caused by the HA providing inaccurate information to the Contractor, failing to provide necessary and requested information to the Contractor, or refusal to abide by any reasonable recommendation of the Contractor.

In this connection, it is expressly agreed that the Contractor shall, at its own expense, defend the HA, its officers, employees, and agents, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the Contractor has indemnified the HA. If the Contractor shall fail to do so, the HA shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the Contractor including attorney's fees and court costs.

Any money due to the Contractor under and by virtue of this contract, which the HA believes must be withheld from the Contractor to protect the HA, may be retained by the HA so long as it is reasonably necessary to ensure the HA's protection; or in case no money is due, its surety may be held until all applicable claims have been settled and suitable evidence to that effect furnished to the HA provided, however, neither the Corporation's payments shall not be withheld, and its surety shall be released, if the Contractor is able to demonstrate that it has adequate liability and property damage insurance to protect the HA from any potential claims.

The Contractor shall provide that any contractual arrangement with a subcontractor shall be in conformance with the terms of this Contract including the terms of this indemnity provision. The Contractor guarantees that it will promptly handle and rectify any and all claims for materials, supplies and labor, or any other claims that may be made against it or any of its subcontractors in connection with the contract.

11.0 Additional Federally Required Orders/Directives: Both parties agree that they will comply with the following laws and directives, where applicable:

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

Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The HA hereby extends this requirement to the Contractor and its private contractors.

12.0 Section 3 Clause: As detailed within 24 CFR 135.38, *Section 3 clause*, the following required clauses are hereby included as a part of this contract:

The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

13.0 Appendices: The following noted documents are placed under each of the noted appendix and are a part of this contract:

Appendix No. 1: form HUD-5370-C (10/2006), *General Condition for Non-Construction Contracts, Section I—(With or without Maintenance Work)*;

Appendix No. 2: REQUEST FOR QUALIFICATIONS-PROPOSALS (RFQ-P) NO. RFQ-P 2011, *Security and Public Safety Consultant Services Section 2.0 Scope of Work/Technical Specifications.*

Please note that, in the case of any discrepancy between this contract and any of the above noted appendices, the requirement(s) detailed within the body of this contract shall take first precedence, then the requirement(s) detailed within each appendix.

14.0 CERTIFICATIONS: The undersigned representative of each party hereby acknowledges by signature below that they have reviewed the foregoing and understand and agree to abide by their respective obligations as defined herein:

[The Contractor]:

By: _____ Date: _____
[Name], [Title]

GREENBURGH HOUSING AUTHORITY:

By: _____ Date: _____
[Name], [Title]