

United States Department of the Air Force

Air Combat Command (ACC), Air Force Global Strike Command (AFGSC), Air Force Space Command (AFSPC) and Air Force Center for Engineering and the Environment (AFCEE)



**Privatization of Military Family Housing
Beale, FE Warren, Malmstrom, and Whiteman Air
Force Bases (“Western Group”)**

Solicitation No. AFCEE-09-0002

APPENDIX I Non-Disclosure Agreement

**PROPOSALS ARE DUE NO LATER THAN
5:00 P.M. EST 21 SEPTEMBER 2010 AT:**

ALVAREZ & MARSAL REAL ESTATE ADVISORY SERVICES
C/O EMAX FINANCIAL & REAL ESTATE ADVISORY SERVICES, LLC
60 Broad Street, Suite 3501
New York, NY 10004
Voice: 212.813.3510 Fax: 212.813.3505
Email: western@emaxllc.com
Web site: www.amafpress.com/projects/western

APPENDIX I. NON-DISCLOSURE AGREEMENT

NON-DISCLOSURE AGREEMENT CONCERNING PROPRIETARY INFORMATION

During the Source Selection process and the administration phases of the Western Group Housing Privatization Project, it may be necessary for the Government's representatives, Alvarez & Marsal Real Estate Advisory Services c/o Emax Financial & Real Estate Advisory Services, LLC and its subcontractors, to be furnished Proprietary Information (as defined below) from Offerors. With respect to such information, it is agreed as follows:

- (1) "Proprietary Information" shall include, but not be limited to, performance, sales, financial, contractual and special marketing information, ideas, technical data and concepts originated by the disclosing Offeror, not previously published or otherwise disclosed to the general public, not previously available without restriction to others, nor normally furnished to others without compensation, and which the Offeror desires to protect against unrestricted disclosure or competitive use, and which is furnished pursuant to this Non-Disclosure Agreement and appropriately identified as being proprietary when furnished.
- (2) In order for Proprietary Information disclosed by an Offeror to be protected in accordance with this Non-Disclosure Agreement, it must be: (a) in writing; (b) clearly identified as Proprietary Information at the time of its disclosure by each page thereof being marked with an appropriate legend indicating that the information is deemed proprietary by the disclosing party; and (c) delivered with a letter of transmittal to a "Receiving Party" identified in Paragraph 3 below. Where the Proprietary Information has not been or cannot be reduced to written form at the time of disclosure and such disclosure is made orally and with prior assertion of proprietary rights therein, such orally disclosed Proprietary Information shall only be protected in accordance with this Non-Disclosure Agreement provided that complete written summaries of all proprietary aspects of any such oral disclosures shall have been delivered to the individuals identified in Paragraph 3 below, within 20 calendar days of said oral disclosures. Neither party shall identify information as proprietary that is not in good faith believed to be confidential, privileged, a trade secret, or otherwise entitled to such markings or proprietary clause.
- (3) In order for an Offeror's Proprietary Information to be protected as described herein, it must be submitted in written form as discussed in Paragraph 2 above to Alvarez & Marsal Real Estate Advisory Services c/o Emax Financial & Real Estate Advisory Services, LLC or one of its subcontractors (collectively, "Receiving Party").
- (4) Each Receiving Party covenants and agrees that it will, notwithstanding that this Non-Disclosure Agreement or the foregoing Source Selection process or administration phases may have terminated or expired, keep in confidence, and prevent the disclosure to any person or persons outside its Organization (as defined below) or to any unauthorized person or persons, any and all information which is received from the Offerors under this Non-Disclosure Agreement and that has been protected in accordance with paragraphs 2 and 3 hereof, provided, however, that the Receiving Party shall not be liable for disclosure of any such information if the same:
 - A. Was in the public domain at the time it was disclosed, or
 - B. Becomes part of the public domain without breach of this Agreement, or
 - C. Is disclosed with the written approval of the other party, or
 - D. Is disclosed after three years from receipt of the information, or
 - E. Was independently developed by the Receiving Party, or
 - F. Is or was disclosed by the disclosing party to a third party without restriction, or
 - G. Is disclosed pursuant to the provisions of a court order.

“Organization” as used in this Paragraph 4 includes subcontractors of the Receiving Party that are performing work for it on the Solicitation for which the Offeror has submitted the confidential information. As between the parties hereto, the provisions of this Paragraph 4 shall supersede the provisions of any inconsistent legend that may be affixed to said data by the disclosing party, and the inconsistent provisions of any such legend shall be without any force or effect. Any protected information provided by one party to the other shall be used only in furtherance of the purposes described in the foregoing Source Selection process or administration phases, and shall be, upon request at any time, returned to the disclosing party. If either party loses or makes unauthorized disclosure of the other party’s protected information, it shall notify such other party immediately and take all steps reasonable and necessary to retrieve the lost or improperly disclosed information.

- (5) The standard of care for protecting Proprietary Information will be that degree of care a prudent individual would use to prevent disclosure, publication, or dissemination of his/her own Proprietary Information.
- (6) The Receiving Party shall not be liable for the inadvertent or accidental disclosure of Proprietary Information if such disclosure occurs despite the exercise of the same degree of care as the Receiving Party normally takes to preserve its own such data or information.
- (7) In providing any information hereunder, the Offeror makes no representations, either express or implied, as to the information’s adequacy, sufficiency, or freedom from defect of any kind, including freedom from any patent infringement that may result from the use of such information, nor shall the Offeror incur any liability or obligation whatsoever by reason of such information, except as provided under Paragraph 4, hereof.
- (8) Notwithstanding the termination or expiration of the foregoing Source Selection process or administration phases of the project, the obligations of the Receiving Party with respect to Proprietary Information shall continue to be governed by this Non-Disclosure Agreement.
- (9) This Non-Disclosure Agreement contains the entire agreement relative to the protection of information to be exchanged hereunder and supersedes all prior or contemporaneous oral or written understandings regarding this issue. This Non-Disclosure Agreement shall not be modified or amended, except in a written instrument executed by the parties.
- (10) Nothing contained in this Non-Disclosure Agreement shall, by express grant, implication, estoppel or otherwise, create in either party any right, title, interest, or license in or to the inventions, patents, technical data, computer software, or software documentation of the other party.
- (11) Nothing contained in this Non-Disclosure Agreement shall grant to either party the right to make commitments of any kind for or on behalf of any other party without the prior written consent of that other party.
- (12) The effective date of this Non-Disclosure Agreement shall be the date of the last signature below.
- (13) This Non-Disclosure Agreement shall be governed and construed in accordance with the laws of the States of California, Montana, Wyoming and Missouri if no federal law applies.
- (14) This Non-Disclosure Agreement may not be assigned or otherwise transferred by either party in whole or in part without the express prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. This consent requirement shall not apply in the event either party shall change its corporate name or merge with another organization. This Non-Disclosure Agreement shall benefit and be binding upon the successors and assigns of the parties hereto.
- (15) It is understood that neither the Receiving Party, the Receiving Party’s employer, nor the Receiving Party’s agents may participate as an Offeror, subcontractor, or consultant to an Offeror or Offeror’s subcontractor with respect to the Western Group AFB Housing Privatization Project.
- (16) This agreement may be executed and delivered in counterparts.

Offeror:

Name

Date

Receiving Parties:

Name

Date

Name

Date

Name

Date