

# Request For Qualifications Affordable Housing Development Partner

Bay City Housing Commission  
315 14<sup>th</sup> Street  
Bay City, Michigan 48708

September 10, 2024



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# REQUEST FOR QUALIFICATIONS AFFORDABLE HOUSING DEVELOPMENT PARTNER

## SOLICITATION SUMMARY

The Bay City Housing Commission (BCHC) is seeking responses to its Request For Qualifications (RFQ) from qualified Development Partners to facilitate the development and construction of affordable housing in Bay City Michigan. It is anticipated that the development would be completed through the United States Department of Housing and Urban Development’s (HUD) Rental Assistance Demonstration (“RAD”) Program and other programs such as HUD’s Section 18: Demo/Dispo. Project financing would be a combination of investor equity from the sale of low-income housing tax credits (LIHTCs) from the Michigan State Housing Development Authority (MSHDA), conventional or FHA mortgages, grants and equity.

The Bay City Housing Commission owns two sites fronting Columbus Avenue in Bay City. One of the sites was previously planned for the development of 56 affordable housing units. The site plan was configured with a 4-story mid-rise building, and 17 townhomes. The project was paused during the pandemic and subsequently the entitlements expired. The Bay City Housing Commission staff is renewing the planning and entitlement processes to incorporate both sites in a phased development plan.



We are seeking a Partner who demonstrates substantial recent experience planning and completing the development and ongoing asset/property management for affordable housing developed under the Rental Assistance Demonstration (RAD) program. The Bay City Housing Commission has a portfolio of 193 units of scattered site housing in its public housing program from which to draw for the RAD conversion. Based on the pre-development work that has been completed, it is anticipated that low-income tax credits (LIHTC) will be sought as the primary funding source for the development costs. The RAD conversion of public housing units may be accomplished through a combination of RAD, RAD/Section 18 Blend and/or LIHTC funding without additional layers of income-based rental assistance. The final development plan for the consolidated site may produce as many as three LIHTC-funded projects at this location over the coming years.

The tenant populations to be served may be 100% comprised of current public housing residents or combined with non-public housing residents eligible under LIHTC guidelines. The final determination of unit mix and qualified populations will be determined by balancing the demand for affordable housing in the community with the economic feasibility derived from the available programs. Prior market demand studies completed in 2018 and 2020 projected demand for affordable housing in Bay City at 1,129 units with about half being subsidized.

The Bay City Housing Commission is not a passive partner in this project. The BCHC intends to provide ongoing asset and property management to the developed housing pursuant to management and operating agreements that will be created as the final step before determining its development partner.

Respondents to this RFQ must include corresponding resumes of its principles and key staff that would be associated with this project, and evidence of recent successful experience in financing, developing, rehabilitating, constructing, owning and/or operating similar properties. Respondents must demonstrate they have experience with at least three HUD RAD conversions using mixed finance sources of funding. Obtaining project-based vouchers may also be a potential source of rental assistance.

The complete RFQ (Request for Qualifications BCHC 2024 can be obtained on BCHC's Website under the Public Notices/Information Links tab at: <http://baycityhousing.com>.

Please direct all inquiries regarding Request for Qualifications to the following contact(s):

William G. Phillips  
Chief Executive Officer  
Bay City Housing Commission  
315 14<sup>th</sup> Street  
Bay City, Michigan 48708

Email: [Bill@baycityhousing.com](mailto:Bill@baycityhousing.com)

BCHC reserves the right to reject any or all responses, to advertise for new responses to accomplish this solicitation by any means determined to be in the best interest of BCHC. BCHC staff will evaluate responses to determine the best response to satisfy the needs of BCHC. The final selection shall be made by the BCHC Board of Commissioners.

**RFQ SCHEDULE OF EVENTS:**

Issue Date of RFQ	September 10, 2024
Deadline for Submission of Questions	September 24, 2024, at 5:30 p.m.
BCHC Response to Questions Issued	October 1, 2024, at 5:30 p.m.
Deadline for Submission of Responses	October 22, 2024, at 2:00 p.m.
Interviews (Optional)	November 6, 2024, and November 7, 2024
Award Date	December 4, 2024
Deadline for Objections to RFQ	December 11, 2024
Review and Negotiation of Development Agrmt.	December 11, 2024, to January 15, 2025
Latest Contract Start Date	January 15, 2025

## **PART 1 - GENERAL INFORMATION**

### About Us

The Bay City Housing Commission is a public housing agency (PHA) created by the City of Bay City in 1950, pursuant to Michigan Public Act 18. It serves as a conduit for funding and programs originating from the U. S. Department of Housing and Urban Development (HUD).

Today, the Bay City Housing Commission operates three housing programs, two programs provide project based rental assistance for tenants that pay 30% of their income as their rental payment and one program is unrestricted. The Five-year PHA Plan addresses the Public Housing Program only. However, to understand the full scope of operations, the reader should be aware of the total programmatic structure.

Public Housing Program comprised of 193 single family houses and duplex dwellings in a scattered site configuration located throughout Bay City neighborhoods. This portfolio received annual operating grants and capital funding grants for the public housing directly from HUD which, in turn, receives annual appropriations from the United States Congress.

The conversion of the Public Housing units under the Rental Assistance Demonstration Program (RAD) is continuing. Land has been acquired and development plans for the first phase have received local entitlement approvals. The project was paused during the pandemic to allow time for construction costs to stabilize. Plans to fund demolition and abatement of site conditions are underway. Depending on the timing of completion of demolition of existing site structures and abatement, activity on the development plan for a 56-unit multifamily development will resume.

Multifamily Program comprised of four high-rise buildings with a combined total of 527 units. Two buildings are designated for the elderly and two for families. Each property has a stated preference for persons with disabilities. Within the multifamily program there are two subsets of properties characterized by the financial structure. Multifamily properties have executed Housing Assistance Payment Contracts (HAP) with HUD to provide monthly contract rent to supplement the tenant paid portion of the total rent each month.

Maplewood Manor was substantially rehabilitated in 2016 using Low Income Housing Tax Credits (LIHTC) through the Michigan State Housing Development Authority (MSHDA). It is owned by investors that purchased the LIHTCs to generate the funds for rehabilitation. The property is managed by the Bay City Housing Commission by virtue of Management and Operating Agreements with the investors. When LIHTCs are purchased by the investors, the investors have the ability to select the asset and property management firm that operates the property.

Smith Manor, Pine Towers and Maloney Manor are currently owned exclusively by the Bay City Housing Commission following the repositioning/restructuring pursuant to the Rental Assistance Demonstration Program (RAD). However, it is likely these properties will be restructured using LIHTCs or another financing facility within the coming five to seven years.

Conventional Portfolio – This portfolio consists of six units (one 4-plex and 2 SFR). These units have no program restrictions, except that the 4-plex building is master-leased to a community nonprofit organization that, in turn, provides housing to transitional low-income individuals. The two single family houses are typically leased to Section 8 voucher holders through BECKA Management Group. BECKA Management Group is a housing agent through the Michigan State Housing Development Authority (MSHDA).

Housing Choice Vouchers (HCV) – The Bay City Housing Commission does not administer an HCV program.

## PART II - PROJECT INFORMATION

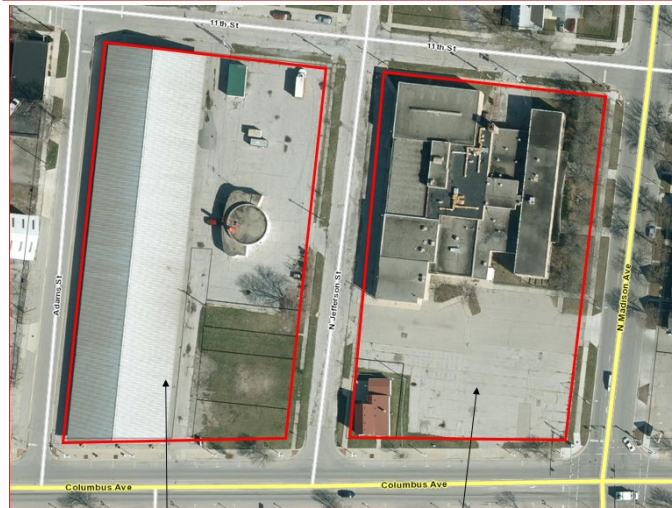
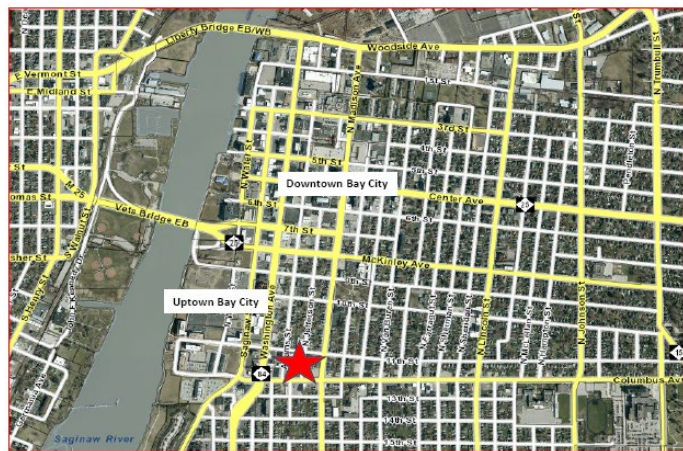
### General Overview

The site(s) for the affordable housing project are comprised of two parcels on Columbus Avenue, 111 N. Madison Ave (former YMCA) with 1.81 acres and 108 N. Adams St (former Bay County Market) with 1.87 acres. The sites are currently bisected by N. Jefferson Street.

Both sites are owned by the Bay City Housing Commission and thorough environmental investigations have been completed for both sites and a demolition plan designed for the former YMCA site.

The BCHC, in collaboration with the City Community Development Department, has applied for grants to fund the demolition and abatement on both sites.

The 111 N. Madison Avenue property was previously planned for 56 units of affordable housing for the BCHC. The previous site plan included a 4-story building along Columbus Avenue with 17 townhouse units on the north side of the site. The project has received special use permits allowing the 4-story height and a parking ratio less than one space per unit.



**PARCEL 2**  
 108 Adams St  
 Parcel #160-028-178-001-00 (1.57 ac.)  
 Parcel#160-028-178-003-00 (.06 ac.)  
 Parcel#160-028-178-004-00 (.11 ac.)  
 Parcel#160-028-178-005-00 (.07 ac.)  
 Parcel #160-028-178-002-00 (.06 ac.)  
 Total Size = 1.87 Acres

**Parcel 1**  
 111 N Madison  
 Parcel #160-028-251-002-00 (1.73 ac.)  
 Parcel #160-028-251-001-00 (.08 ac.)  
 Total Size = 1.81 Acres

The project was paused at the beginning of the pandemic and subsequently the land use entitlements reverted. There is now an opportunity to create a consolidated development plan for the entirety of the two properties. It may also be possible to vacate N. Jefferson Ave and consolidate both parcels, if that design is useful in achieving the development plan.

Since pausing the development, BCHC has pursued funding for the demolition, abatement and site remediation that is required to create developable sites. The deconstruction project was estimated at \$2,253,000. It is projected that funding may be available by the end of 2024 to accomplish this task.

The City of Bay City is finalizing its 2024 Master Plan. In January 2025, The City of Bay City is set to commence a new effort aimed at revising zoning ordinances to support the Master Plan. The development site is squarely within the targeted primary investment areas.

It is an important objective to assure that the development resulting from this effort be compatible with the Master Plan as well as serve the resident populations that will be housed there.

It is the intent of the BCHC to eventually convert all its public housing portfolio under RAD. The project is anticipated to have 2-4 development phases. It is possible to convert part of the affordable housing units with income-based rents using RAD in one phase and financing another phase only with LIHTCs that would cap rents at 60% of the area median income.

The Uptown Bay City development, two blocks away, provides substantial market-rate residential products to balance the housing supply. Proposed new rental housing developments on the north side of downtown will also provide a counterbalance.

### General Scope of Services

The successful candidate will work with the BCHC to produce the turnkey development and management of new affordable units using the RAD program as the baseline program to convert existing units from BCHC's public housing portfolio to new RAD multifamily housing. The turnkey process will include, among other things, the following benchmarks:

- Development Plan – Assist BCHC in determining the development plan appropriate for the conversion of existing public housing units and for the long-term viability of the development, including unit mix, architectural design and phasing and preliminary application scoring for LIHTCs.
- Project Feasibility - Preparation of preliminary development and operating proformas based on the program requirements, projected rents and financial underwriting.
- Land Entitlements - Obtain zoning and/or zoning variances, special use permitting and entitlements to support the development plan must be obtained through Bay City and any other public entity having jurisdiction over the project.
- RAD Program Approvals – resident meetings to receive input for the RAD conversion, make application and obtain Commitment to Enter into a Housing Assistance Contract (CHAP).

- LIHTC Application – When the project receives all required entitlements, RAD CHAP, the LIHTC application may be assembled and submitted.
- Development Fees: It is expected that there will be a Master Development Agreement executed between the Partner and BCHC that will incorporate the split of project development fees with BCHC.
- Property Management: The Master Development Agreement shall provide that the BCHC is the property management firm.
- Asset Management: The BCHC shall be the majority member of the managing general partnership for the limited dividend housing association that becomes the ownership entity.
- Development Strategy: In undertaking this initiative, as well as the other potential development/rehabilitation projects, BCHC’s fundamental goal remains that of creating new affordable and affordable-subsidized housing while preserving its current inventory at the best possible quality. BCHC is expecting its partner(s) to provide conservative, yet creative and innovative ways of financing and developing our development properties in carrying out the mission of providing affordable housing within a mixed-income environment. The Development Strategy must address the following:
  - *Integrating low-income housing tax credit rental units with the surrounding neighborhoods.*
  - *Reflecting the architectural nature of the larger community, through new building designs.*
  - *Building high quality housing that will be attractive, energy-efficient, and will have long-term viability without extraordinary capital improvement resources.*
  - *Leveraging funds to the maximum extent feasible without overleveraging the project beyond its reasonable cash flow generating capacity.*
  - *Ownership Structure: The Partner(s), and BCHC will develop an ownership structure that complies with all Federal regulatory requirements. The structure will identify and define the role of each entity involved. It is the intent of BCHC to negotiate a development agreement(s) with its partner or partners.*

### Roles and Responsibilities of the Partners

The expectation is that the Developer and BCHC must work together as a team to effectively develop the Project. This level of collaboration will require exceptional, thorough and timely communication between *Developer* and BCHC. Each Member of the project’s management entity shall engage in separate and distinct responsibilities to develop and operate the Project. Developer and BCHC agree to advise one another of all pertinent and material matters in connection with the financing, development, management, and long-term ownership of the Project and each party understands that it is bound by a confidentiality agreement regarding proprietary partner information.



BCHC's and Developer 's specific duties and responsibilities for the development, management and ownership of the Project will be set forth in a Development Agreement and Operating Agreement to be entered into between Developer and BCHC. Any predevelopment advances provided by BCHC shall be repaid through closing proceeds with the investor and lender(s).

#### Role of BCHC

- BCHC will be a majority owner of the Managing Member entity of the Company and shall participate in all stages of the development process of the Project such as the following:
- BCHC will serve as the property management company under a subcontract with the Developer's affiliated property management company that serves as the management company of record pursuant to LIHTC guidelines.
- BCHC shall maintain all books and records for the Company, and to assist Developer to manage all cost certifications, audits and tax returns for the Company.

#### Role of the Developer

The Developer will serve as the minority member of the Managing Member entity of the Company and will directly manage all phases of the Project's development. The Developer will be responsible for such activities as the following:

- Sponsorship and preparation of an application for Low Income Housing Tax Credits ("LIHTC") as administrated by the Michigan Housing and Development Authority ("MSHDA")
- Secure all sources of financing required to redevelop the Project.
- Assist BCHC in obtaining all city and county approvals for the development of the Project.
- Oversee the performance of the general contractor and subcontractors and all third parties engaged for the development of the Project.
- Provide all LIHTC basis and timing guaranties, operating deficit guaranties, construction guarantees and repurchase obligations to the Investor Member.
- Accept the Bay City Housing Commission will perform all property management functions as a subcontractor to the property management firm of record.
- Developer 's duties and responsibilities will be more specifically set forth in a development and operating agreement with the Company. In addition, the property management firm that is an affiliate of the Developer may also provide asset management and compliance oversight services for the Company and will review and approve the Company's reporting to investors, lenders, state agencies, taxing authorities, and other parties as detailed in a separate consulting agreement.
- Secure an option/right of first refusal for the BCHC with each LIHTC investor and minimize investor exit taxes due when the BCHC exercises its option or right of first refusal to reacquire the property at the end of the initial compliance period.

## PART III – QUALIFICATIONS

The Development Partner selected for this project must be capable of managing and overseeing the turnkey development and ongoing asset management of the affordable housing units to be constructed and converted under the RAD program. The selection committee will evaluate the following:

- Previous experience developing subsidized affordable housing using RAD, RAD/Section 18 Blend or Project-based Section 8 vouchers.
- Most recent experience completing development/conversion of Public Housing Agency (PHA)-owned projects using low-income housing tax credits (LIHTC).
- Previous experience managing affordable housing, including both public housing and low-income tax credit housing.
- Relationships with an architectural design firm with experience with direct experience acting as a general contractor for the development of more than 200 affordable housing units in at least three development projects in the prior five years.
- Relationships with an established General Construction Company with direct experience acting as a general contractor for the development of more than 200 affordable housing units in at least three development projects in the prior five years.
- Relationships with legal counsel with direct experience acting as legal counsel to a partnership to developed more than 150 affordable housing units in at least three development projects in the prior five years. Previous experience and success in securing financing for mixed finance affordable housing particularly Low-Income Housing Tax Credits and Tax-Exempt Bond Financing.
- The Partner(s) should be experienced in financing, managing, and developing multi-family rental housing, and may include design, construction, legal, and financing professionals as well as licensed general contractor with demonstrated financial capability.

### Qualification Response and Technical Response Requirements

The Partner(s) shall be required to submit the following information in narrative and/or diagrammatic presentation:

- All entities that compromise the team shall be identified, indicating their specialization(s) and specific contribution to the team. Respondents are encouraged to include specialists for all components of the program including design, construction, legal, and financing professionals, as well as expertise in integrating community and supportive services. The Project Manager shall be clearly identified. Ultimately, the identified Project Manager shall be held responsible for the performance of all members of the Development team. If the team members are unrelated parties, the managing party (Project Manager) should enter into individual agreements with each member to assure performance. Any M/WBE team members shall also be identified.
- Financial Statements. Respondents shall provide a current financial statement of the development entity, prepared by a Certified Public Accountant along with the most recent audit of such firm. The statement shall show assets, liabilities, and net worth

of the entity. These statements shall demonstrate the financial capacity of the Partner(s) or entity what would most likely be responsible for executing all applicable guarantees. Include a statement disclosing and describing any instance of non-compliance or default in any public housing transaction, including mixed finance or HOPE IV transaction, by the proposer, its affiliates or assigns.

- References. Three to five (3 - 5) references shall be submitted for each member of the development team. References that are relevant to the scope of work as anticipated in this REQUEST FOR QUALIFICATIONS are desirable.
- Certifications and Assurances. The REQUEST FOR QUALIFICATIONS as a general requirement specifies that all work be performed in accordance with professional standards, HUD regulations, requirements and criteria, and local codes, regulations, ordinances, and statues. It is BCHC's and BCHC's full expectation, and it will be a contractual requirement that the successful respondent fully and routinely meet this requirement.

Provide all required certifications on forms included as *Attachments* of the REQUEST FOR QUALIFICATIONS:

- Cover Letter of Interest
- Statement of Offeror's Qualifications and Projects Completed in Prior 5 Years
- Resumes of Principals and Key Development Staff
- Organizational Chart
- Form HUD 4571 Non-Collusive Affidavit
- Form HUD 5369A Representations, Certifications & Other Statements
- Form HUD 5369-B Instructions to Offerors
- Form HUD 5370-C, General Conditions for Non-Construction Contracts S.1
- Form HUD 92010 Equal Employment Opportunity Employment Certification

## **PART IV - PROCUREMENT PROCESS**

### Submission Package

Six (6) bound and secured copies of responses, one of which shall be clearly identified with original signatures and in printed form and a labeled USB Flash Drive, must be submitted to the Bay City Housing Commission on no later than 2:00 P.M. (EST) on the date listed in the RFQ Proposal 2024 Schedule of Events, without exception, at the following address, to be deemed responsive and eligible for consideration. All responses received will be opened and recorded immediately. No immediate decisions are rendered.

### Communications

All communications regarding this RFQ shall be in writing, preferably by email, and must be directed to the following Point of Contact for this RFQ. To assure that your response arrives at the proper place, on time, and to prevent opening by unauthorized individuals, your response must be identified on the envelope or package as follows:

William G. Phillips  
Chief Executive Officer  
Bay City Housing Commission  
315 14<sup>th</sup> Street  
Bay City, Michigan 48708  
Email: [bill@baycityhousing.com](mailto:bill@baycityhousing.com)

Oral Communications: Any oral communications shall be considered unofficial and non-binding with regard to this RFQ.

Questions/Clarifications Submission Deadline: Any questions or requests for clarification shall be directed to the Point of Contact via email on or before 2:00 P.M. (EST) on the date listed in the RFQ Proposal 2024 Schedule of Events.

Delivery Requirement: Each Respondent Shall assume the risk of the method of dispatching any communication or response to BCHC. BCHC assumes no responsibility for delays, delivery or system failures resulting from the dispatch.

#### Reservation of Rights

BCHC reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests for clarification.

#### Amendments

Only BCHC's official responses and other official communications pursuant to this RFQ shall constitute an amendment to this RFQ. Only BCHC's official, written responses and communications shall be considered binding with regard to this RFQ. BCHC reserves the right to determine, at its sole discretion, the method of conveying official responses and communications pursuant to this RFQ (e.g., written, facsimile, electronic mail, posting on BCHC's website or other electronic means).

#### Modification of Solicitation

BCHC reserves the right to increase, reduce, add, or delete any item, service or activity to this solicitation as deemed necessary where it is consistent with BCHC's policies or strategies to do so.

#### Due Diligence

All procurement transactions shall be conducted only with responsible contractors, that is, those Contractors who have the technical and financial competence to perform and who have a satisfactory record of integrity and performance. Where warranted and before awarding a contract, BCHC shall review the proposed Contractor's ability to perform the contract successfully, considering factors such as the Contractor's integrity, compliance with public policy, record of past performance (including vendor performance reports and contacting previous clients of the Contractor), and financial and technical resources (an extensive financial

review is normally conducted on all non-bonded procurement transactions over \$100,000 in total contract value). Contracts shall not be awarded to debarred, suspended, or ineligible Contractors. BCHC shall not contract with firms and/or individuals listed on List of Parties Excluded from Federal Procurement and Non-procurement Programs. If a prospective Contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared, and the prospective Contractor shall be advised of the reasons for the determination.

### Evaluation of Responses

All responses shall be evaluated based on the evaluation criteria outlined below. A Selection Committee shall be established and will be responsible for overseeing the selection process and making a recommendation for approval. The Selection Committee Shall determine a competitive range based on the established criteria and point system as detailed below. Each respondent that falls within the competitive range shall be granted an interview with the Selection Committee.

The Selection Committee may consider unacceptable any response for which critical information is lacking, or the submission represents a major deviation from the requirements of this RFQ. Minor omissions, such as incomplete references may be, at the sole option and discretion of the BCHC, corrected after the submission due date.

### Selection Process

BCHC will use the following process to evaluate responses. In their sole discretion, BCHC may change both this process and the schedule.

Review for Compliance with Submission Requirements:

Responses that arrive at BCHC by the due date and time will be opened by BCHC's CEO or his/her designee. BCHC will initially review all responses to determine if they comply with the submission requirements specified in this RFQ.

BCHC may reject any response without further review if BCHC, in its sole judgment, determines that the response does not comply with these requirements. BCHC may also reject without further review any response that in BCHC's sole judgment deviates significantly from the requirements of this RFQ. BCHC may, in its sole option and discretion, allow a respondent to later correct minor omissions, informalities or irregularities.

### Ranking

An Evaluation Committee that BCHC will convene (the "Committee") will review all responses according to the criteria set forth in this RFQ in order to form a recommendation to the Board based on the evaluation criteria.

The Committee will rank the respondents according to said criteria. BCHC may also request:

- visits to the Respondent's completed projects or offices,
- may or may not conduct independent discussions with respondents. The purpose of these discussions would be to ensure that each respondent understands the expectations of the partnership and the scope of work.

### Written Modification of Response

Each respondent may submit a written modification of their response within five (5) days after any such discussion.

### Selection of the Development Partner

The selection of the development partner shall be made by the Board of Commissioners at a regular public meeting.

BCHA Board reserves the right not to accept the highest-ranking candidate.

## **PART V – DEVELOPMENT AGREEMENT**

### Negotiation of Contract

BCHC will use its bests efforts to negotiate a contract with the chosen respondent(s), including an agreement for a fair and reasonable fee for the services provided. If negotiations are not successful, BCHC may attempt negotiations with another respondent, and so on until it contracts for a fair and reasonable price or BCHC terminates the process.

### Development Agreement and Execution

The parties will use their best efforts to negotiate and execute the Development Agreement within twenty-one (21) days after the prescribed forms are presented for review. The successful respondent shall execute and deliver to the BCHC Board, a signed contract and all insurance certificates, licenses, permits, etc., required in this solicitation and be ready to implement the services on the Commencement Date specified in the Development Agreement.

An acceptable Development Agreement should be executed no later than the Latest Contract Start Date listed in the RFQ Proposal Schedule of Events.

## **PART VI - ATTACHMENTS**

The attachments listed below must be completed, executed and returned along with the response to this Request For Qualifications:

1. Form HUD 4571 Non-Collusive Affidavit
2. Form HUD 5369A Representations, Certifications & Other Statements
3. Form HUD 5369-B Instructions to Offerors
4. Form HUD 5370-C, General Conditions for Non-Construction Contracts Section 1
5. Form HUD 92010 Equal Employment Opportunity Employment Certification

APPENDIX 39

NON-COLLUSIVE/NON-IDENTITY OF INTEREST AFFIDAVIT

(To be modified if law requires other Form)

A F F I D A V I T

(Prime Bidder)

State of \_\_\_\_\_ ) ss.

County of \_\_\_\_\_ )

\_\_\_\_\_ ,  
being first duly sworn, deposes and says:

(1) That undersigned is \_\_\_\_ (a partner or officer of the firm of, \_\_\_\_\_ etc.,) \_\_\_\_\_ the party making the foregoing proposal or bid; (2) that such proposal or bid is genuine and not collusive or sham; that said Bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any Bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the \_\_\_\_\_ (Owner) \_\_\_\_\_ or any person interested in the proposed contract; and (3) that no identity of interest exists or will between Bidder and the Owner or Architect.

WARNING: U.S. Criminal Code, Section 1001, Title 18 U.S.C. provides as follows: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement of entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

An identity of interest will be construed to exist:

- (a) If there is any financial interest of the owner in the general contractor;
- (b) If any of the officers or directors of the owner is also an officer, director, or stockholder of the general contractor;
- (c) If any officer or director of the owner has any financial interest whatsoever in the general contractor;

- (d) If the general contractor advances any funds to the owner; including providing a land option or any of the costs of obtaining a land option;
- (e) If the general contractor provides and pays, on behalf of the owner, the cost of any architectural or engineering service other than those of a surveyor, general superintendent, or engineer employed by a general contractor in connection with his/her obligations under the construction contract;
- (f) If the general contractor has any interest in the owner corporation as part of the consideration for payment;
- (g) When there exists (or come into being) any side deals, agreements, contracts or undertaking entered into or contemplated, thereby altering, amending, or cancelling any of the required closing documents.
- (h) When the contractor or any officer, director, stockholder, or partner of such contractor has any financial interest whatsoever in the architectural firm;
- (i) When the architect has stock or any financial interest in the contractor.
- (j) When the contractor or any officer, director, stockholder or partner of such contract provides any of the required architectural services; or where the contractor, or any officer, director, stockholder or partner of such providing an architectural services, acts as a consultant to the project architect.
- (k) When there exists (or comes into being) any side deals, agreements, contracts or undertaking, thereby altering, amending, or cancelling any of the required closing documents.

---

Signature of:

\_\_\_\_\_  
Bidder, if the Bidder is an individual;

By \_\_\_\_\_ Partner, if the Bidder is a partnership;

Title \_\_\_\_\_ Officer, if the Bidder is a corporation.

---



Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_

My commission expires \_\_\_\_\_, 19\_\_.

**U.S. Department of Housing  
and Urban Development**  
Office of Public and Indian Housing

**Representations, Certifications,  
and Other Statements of Bidders**  
**Public and Indian Housing Programs**

# Representations, Certifications, and Other Statements of Bidders

## Public and Indian Housing Programs

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### 1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

\_\_\_\_\_ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

### 2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1) [ ] has, [ ] has not employed or retained any person or company to solicit or obtain this contract; and

(2) [ ] has, [ ] has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

### 3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

#### 4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

#### 5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

#### 6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

#### 7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a) [ ] is, [ ] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [ ] is, [ ] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [ ] is, [ ] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- |                        |                              |
|------------------------|------------------------------|
| [ ] Black Americans    | [ ] Asian Pacific Americans  |
| [ ] Hispanic Americans | [ ] Asian Indian Americans   |
| [ ] Native Americans   | [ ] Hasidic Jewish Americans |

#### 8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

**9. Certification of Eligibility Under the Davis-Bacon Act** (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

**10. Certification of Nonsegregated Facilities** (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

**Note:** The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

**11. Clean Air and Water Certification** (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

**12. Previous Participation Certificate** (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [ ] is, [ ] is not included with the bid.

**13. Bidder's Signature**

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

\_\_\_\_\_  
(Signature and Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Address)

# Instructions to Offerors Non-Construction

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing



- 03291 -

## 1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

## 2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

## 3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

## 4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

## 5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

## 6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

#### **7. Contract Award**

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

#### **8. Service of Protest**

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

#### **9. Offer Submission**

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show **the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.**

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

# General Conditions for Non-Construction Contracts

## Section I – (With or without Maintenance Work)

### U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

**Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:**

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

### Section I - Clauses for All Non-Construction Contracts greater than \$100,000

#### 1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

#### 2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- (d) proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

#### 3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

#### 4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.



- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
  - (i) appeals under the clause titled Disputes;
  - (ii) litigation or settlement of claims arising from the performance of this contract; or,
  - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

#### 5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

#### 6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

#### 7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

#### 8. Contract Termination; Debarment

#### 9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

#### 10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

#### 11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
  - (i) Award of the contract may result in an unfair competitive advantage; or
  - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

#### 12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

### 13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

### 14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

### 15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

## 16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

## 17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

## 18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

## 19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

## 20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

## 21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) 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.
- (b) 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.
- (c) 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

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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.

- (d) 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.
- (e) 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.
- (f) 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.

## **22. Procurement of Recovered Materials**

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

**Equal Employment  
Opportunity Certification**  
Excerpt From 41 CFR §60-1.4(b)

U.S. Department of Housing  
and Urban Development  
Office of Housing  
Federal Housing Commissioner

Department of Veterans Affairs  
OMB Control No. 2502-0029  
(exp. 4/30/2020)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

**Provided,** That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

Firm Name and Address

By

Title

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **Excerpt from HUD Regulations**

200.410 Definition of term "applicant".

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

200.420 Equal Opportunity Clause to be included in contracts and subcontracts.

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

- (2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard race, creed, color, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

- (5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

- (7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference to the equal opportunity clause.

200.425 Modification in and exemptions from the regulations in this subpart.

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

- (1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

- (2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

- (3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

- (4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

- (5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.