

**REQUEST FOR PROPOSALS  
PROJECT BASED VOUCHER PROGRAM**

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**RESPONSE DATE AND TIME:  
April 18, 2017 at 2:00 PM**

RFP NO: 2017-02

Housing Authority of Prince George's County | 9200 Basil Court, Suite 500 , Largo, MD20774

## PURPOSE AND DEFINITIONS

The Housing Authority of Prince George's County (HAPGC) is making available up to One Hundred (100) Project-Based Housing Choice Vouchers (PBV) to support the preservation or creation of affordable housing opportunities for low and moderate income families in Prince George's County. PBVs may be awarded to a new construction project or a rehabilitation multi-family project. HAPGC's intent is to enter into a Housing Assistance Payment contract with an owner for up to fifteen years, which may be extended at the sole discretion of the Authority. Existing non rehabilitation housing units will not be considered under this proposal.

**New Construction** is defined as: Housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an Agreement between the HAPGC and the owner for use under the PBV program.

**Rehabilitated housing** is defined as : Housing units that currently exist but require at least \$5,000 in rehabilitation per unit.

### **Applicants should be aware of the following conditions:**

- The applicant must demonstrate some form of site control, such as outright building ownership, purchase contract or purchase option. All required land use approvals must be obtained.
- The project must meet all applicable requirements of the HUD Project Based Voucher Program Regulations, 24 CFR part 983, and the HAPGC rules and requirements for the Project Based Voucher Program included in HAPGC's Administrative Plan, available upon request. This Request for Proposals does not attempt to define all applicable rules and regulations.
- The project will be subject to a HUD subsidy layering review, in accordance with HUD subsidy layering regulations at 24 CFR 4.13.
- The project must comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The percentage of accessible dwelling units must comply with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR part 8, subpart C.
- The project must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable.
- In the case of an Agreement for development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in development of the housing.
- Activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58.
- Section 3 of the Housing and Community Development Act of 1968, as amended.

## INELIGIBLE HOUSING TYPES

The following housing types are NOT eligible for PBV awards under the RFP:

- a) Shared housing;
- b) Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;
- c) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, the PHA may attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;
- d) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;
- e) Manufactured homes;
- f) Cooperative housing;
- g) Transitional Housing;
- h) High-rise elevator project for families with children;
- i) Units that are occupied by an owner of the housing;
- j) Units that are occupied by families ineligible for the PBV program;
- k) A public housing dwelling unit;
- l) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);
- m) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
- n) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- o) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z-1). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
- p) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);
- q) A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);
- r) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
- s) Section 202 supportive housing for the elderly (12 U.S.C. 1701q);
- t) A Section 101 rent supplement project (12 U.S.C. 1701s);
- u) A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) ( *e.g.* , a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 *et seq.*);
- v) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, "housing subsidy" does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

## REQUIREMENTS FOR ORGANIZATIONS RECEIVING PROJECT-BASED VOUCHERS FROM HAPGC

- 1) The organization must be incorporated, and non-profit organizations must have received a 501(c)(3) tax-exempt determination.
- 2) The organization must have an oversight body that sets policy.
- 3) The organization must be annually audited by a certified public accounting firm and the results must be available to HAPGC upon request.
- 4) The organization must have in place insurance as follows:
  - a. Workers Compensation at statutory amount
  - b. Employer's liability not less than one million dollars (\$1,000,000.)
  - c. Commercial General Liability Insurance not less than one-million dollars (\$1,000,000.) per occurrence and two million dollars (\$2,000,000.) aggregate.
- 5) The organization must comply with all laws and regulations of Prince George's County and the State of Maryland, including but not limited to laws involving the use, maintenance and operation of structures, including building permits, zoning, code enforcement and rental certificates.
- 6) The organization must designate a point of contact for HAPGC.
- 7) The organization must be able to enter into an Agreement for Housing Assistance Payment (AHAP) contract and start the project for which PBVs have been requested within a 12 month period after the announcement of award for New Construction and within a 4 month period after the announcement of award for rehabilitated projects.

## PROPOSAL INSTRUCTIONS

All proposals must include:

- Completed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions (pg 10)
- All requirements under the eight tabs as described in the Format of Proposal Response
- A copy of the organizations most recent audit results

Respondents must submit one (1) clearly labeled original and three (3) copies of their proposal by 2:00 p.m. on Tuesday, April 18, 2017, in a sealed package labeled as follows:

Housing Authority of Prince George's County  
9200 Basil Court, Suite 500  
Largo, MD 20774

Attention: Eric C. Brown, Executive Director  
PROPOSAL - DO NOT OPEN  
PROJECT BASED VOUCHER PROGRAM  
SOLICITATION NO: 2017-02

Proposals must be mailed or hand-delivered. Emailed or faxed proposals will not be considered.

## **FORMAT OF PROPOSAL RESPONSE**

### **Tab 1 – Initial Term of the Housing Assistance Payment (HAP) Contract Requested**

#### **Minimum qualifications:**

The HAP contract term must be at least 5 years and no more than 15 years. The purpose of the HAP contract is to provide housing assistance payments for eligible families. In the case of newly constructed or rehabilitated housing the HAP contract will be executed after HAPGC has inspected the completed units and has determined that the units have been completed in accordance with the Agreement and the owner has furnished all required evidence of completion.

#### **Scoring Criteria:**

List the intended term of the initial Housing Assistance Payment Contract.

### **Tab 2 – Site Location**

Respondent must provide the following to meet minimum qualifications:

- The exact location of the project. The project must be within Prince George's County.
- Provide evidence that demonstrates some form of site control, such as a deed proving outright building ownership, a purchase contract or a purchase option. Contracts must be executed prior to execution of PBV Agreement.
- Provide evidence establishing that the property is appropriately zoned or evidence to indicate that any rezoning or variance would likely occur and not delay the project. Include expected timing of rezoning completion.

#### **Scoring Criteria:**

- Identify the project's proximity to shopping, significant health facility and neighborhood services, and if not within walking distance (1/4 mile) to these services identify the proximity to a bus service that will provide transportation to these services. Include a map that shows public transportation routes and the location of commercial and retail facilities.

### **Tab 3 – Design**

Respondent must provide the following to meet minimum qualifications:

- Number of PBV contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the PBV contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to PBV units;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description will include the rehabilitation work write up and specifications and plans. For new construction units, the description will include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.

**Scoring Criteria:**

- Show evidence that the architectural elevations, setbacks, and massing are considered acceptable for proposed use and in relation to adjacent land uses by the County Planning Department, or that plan modifications are under development to meet County Planning approval.
- Provide a comprehensive description of project amenities.

**Tab 4 – Development Experience**

Respondent must provide the following to meet minimum qualifications:

- List and briefly describe three (3) projects within the last five (5) years that exhibit respondent's experience in developing low-income housing units. For each project, provide the following information:
  1. Project name and location
  2. Brief description of the project. Indicate if new construction or rehabilitation and include financing sources and amounts. Include number of units, buildings, acreage.
  3. Owner entity or Developer Team
  4. Dates during which services were performed
  5. Describe the services performed and your role
  6. Population type and income levels served

**Scoring Criteria:**

- Respondent must demonstrate it has developed at least fifty (50), but one-hundred (100) or more preferred, low-income housing units as primary or co-sponsor in the past five (5) years.

**Tab 5 – Owner Experience**

Respondent must provide the following to meet minimum qualifications:

- Provide a complete disclosure of ownership status (for-profit or non-profit owner) and organizational structure.
- Identify the owner and other project principals and the names of officers, staff and principal members, shareholders, investors and other parties having a financial interest in the project. Provide a disclosure of any possible conflict of interest by any of these parties that would be a violation of the HAP contract. Information concerning any participant who is not known at the time of the application submission must be provided to HAPGC as soon as the participant is known.
- Demonstrate at least three continuous years of prior ownership experience in at least three multi-family rental housing projects of similar size (number of dwelling units) to the proposed project.
- Disclose any foreclosure or receivership actions, adverse government actions or health and safety violations, and any unresolved compliance agency audit findings.

**Scoring Criteria:**

- Respondent must prove that it has at least ten (10), but twenty (20) or more preferred, years of experience in owning affordable rental housing.

**Tab 6 – Management Experience**

Respondent must provide the following to meet minimum qualifications:

- Respondent must demonstrate the experience and capabilities of the Management Team in managing affordable multi-family rental properties. List and briefly describe three (3) projects within the last five (5) years that exhibit the Management Team’s experience in managing and maintaining multi-family rental housing properties of similar size (number of dwelling units) to the proposed project.
- Submit a proposed management plan.

Scoring Criteria:

- Respondent must demonstrate that it has at least ten (10), but twenty (20) or more preferred, years of experience in managing and maintaining affordable rental housing.

**Tab 7 – Project Feasibility/Readiness to Begin Construction**

Respondent must provide the following to meet minimum qualifications:

- The project must be financially feasible and operationally viable, as demonstrated via submission of a development pro forma and operating pro forma.
- Provide a project schedule indicating milestones including expected occupancy.
- Provide a development budget indicating sources and uses of funds.
- Provide an operating budget for the proposed duration of the HAP contract.

Scoring Criteria:

- Respondent must demonstrate if zoning and other required entitlements are approved the construction period or permanent period debt financing required for feasibility is conditionally committed and/or reserved by official governmental action. See Ranking and Selection Checklist for percent criteria.

**Tab 8 – Public Purpose**

HAPGC supports the preservation and creation of affordable housing opportunities in Prince George's County . Additional evaluation points are awarded for projects serving greater numbers of elderly and disabled low and very low-income families.

Scoring Criteria:

- At least 75% of units will be restricted to low- or very-low income occupancy. See Ranking and Selection Checklist for percent criteria.

**RANKING AND SELECTION CHECKLIST**

<b>A: TERM OF CONTRACT REQUESTED (MIN. 5 PTS. REQUIRED)</b>	<b>MAX. PTS. AVAIL.</b>
Fifteen years	10
Five to 10 years	5
Less than 5 years	0
<b>B: SITE LOCATION (MIN. 10 PTS. REQUIRED)</b>	<b>MAX. PTS. AVAIL.</b>
Site is within three miles of places of significant employment, offering a range of jobs for lower income workers, and a significant health facility.	10
Same as above but distance is more than three miles but less than five miles.	5
Site is within 1/4 mile of shopping, significant health facility and neighborhood services, or is within 1/4 mile of bus to these services.	10
Same as above but distance is more than 1/4 mile but less than two miles.	5
<b>C: DESIGN (MIN. 10 PTS. REQUIRED)</b>	<b>MAX. PTS. AVAIL.</b>
If architectural elevations, setbacks, and massing are considered acceptable for proposed use and in relation to adjacent land uses by County Planning Department staff; project amenities are appropriate for the planned use.	20
If the proposed project meets most of the above criteria and only slight modifications will be necessary to meet County Planning approval.	10
<b>D: DEVELOPMENT EXPERIENCE (MIN. 5 PTS. REQUIRED)</b>	<b>MAX. PTS. AVAIL.</b>
If applicant has developed 100 or more low-income housing units as primary or co-sponsor in the past five years.	10
If applicant has developed between 50 and 100 low-income housing units as primary or co-sponsor in the past five years.	5
<b>E: OWNER EXPERIENCE (MIN. 1 PT. REQUIRED)</b>	<b>MAX. PTS. AVAIL.</b>
If applicant has 20+ years of experience in owning affordable rental housing.	5
If applicant has 10 to 19 years of experience in owning affordable rental housing.	2
If applicant has 20+ years of experience in owning other types of rental housing.	2
If applicant has 10 to 19 years of experience in owning other types of rental housing.	1
<b>F: MANAGEMENT EXPERIENCE (MIN. 1 PT. REQUIRED)</b>	<b>MAX. PTS. AVAIL.</b>
If applicant has 20+ years of experience in managing and maintaining affordable rental housing.	5
If applicant has 10 to 19 years of experience in managing and maintaining affordable rental housing.	2
If applicant has 20+ years of experience in managing and maintaining other types of rental housing.	2
If applicant has 10 to 19 years of experience in managing and maintaining other types of rental housing.	1
<b>G: PROJECT FEASIBILITY/READINESS TO BEGIN CONSTRUCTION (MIN. 5 PTS. REQUIRED)</b>	<b>MAX. PTS. AVAIL.</b>
If zoning and other required entitlements are approved and 80% of amount of projected construction period or permanent period debt financing required for feasibility is conditionally committed and/or reserved by official governmental action.	20
If zoning and other required entitlements are approved and 50% but less than 80% of amount of projected construction period or permanent period debt financing required for feasibility is conditionally committed and/or reserved by official governmental action.	10
Evidence of zoning approval and financing less than criteria listed above.	5
<b>H: PUBLIC PURPOSE (MIN. 5 PTS. REQUIRED)</b>	<b>MAX. PTS. AVAIL.</b>
75% or more of units will be restricted to low- or very-low income occupancy	25
50% to 74% of units will be restricted to low- or very-low income occupancy	15
5% of units will be wheelchair assessable.	5



### **POINT OF CONTACT**

The sole point of contact in the Authority for purposes of this RFP prior to the award is HAPGC's Executive Director, who is the HAPGC Contracting Officer. All contact relative to this RFP should be made in writing and directed to:

Eric C. Brown, Executive Director  
Housing Authority of Prince George's  
County  
9200 Basil Court, Suite 500  
Largo, MD 20774  
Telephone: (301) 883-5531  
E-mail: ecbrown@co.pg.md.us

### **REQUEST FOR INFORMATION**

Any prospective offeror desiring an explanation or interpretation of this RFP must request in writing, email or regular mail, such request for information no later than seven (7) days prior to the proposal due date. Requests shall be directed to the Contracting Officer at the address listed under Point of Contact, above. Any information given to a prospective offeror concerning the solicitation will be furnished promptly to all prospective offerors, if that information is necessary in submitting an offer or if the lack of it would be prejudicial to any other prospective offeror. Oral explanations or instructions given before the award of the contract will not be binding on contract performance.

### **GENERAL INFORMATION**

- A. Prepare your proposal in a practical, legible, clear, and straightforward manner. RFPs containing any conditions, omissions, unexplained erasures or alterations, or irregularities of any kind, may be rejected by the Authority.
- B. RFPs submitted are irrevocable for 90 days following the closing date. This period may be extended at the HAPGC's request only with the offeror's written consent.
- C. Unless there is no need for negotiations with any other offerors, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise solicitors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of the conformance to the solicitation requirements. No offeror shall be provided any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt or proposal revisions based on negotiations.
- D. Any actual or prospective contractor may protest the solicitation or award of a contract for the serious violations of the principles of this Statement. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within ten calendar days after contract

award, or the protest will not be considered. All protests shall be in writing, submitted to the Contracting Officer, who shall issue a written decision on the matter. The Contracting Officer may at his discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

- E. Cancellation of solicitation: HAPGC reserves the right to cancel this solicitation when it is determined to be in the best interest of HAPGC to do so. HAPGC reserves the right to reject any and all proposals, to waive any formality in the RFP process, or to terminate the RFP process at any time, if deemed by the HAPGC to be in its best interest. The HAPGC reserves the right not to award a contract pursuant to this RFP. HAPGC shall have no obligation to compensate any proposer for any costs incurred in responding to this RFP.

A solicitation may be canceled and all bids or proposals that have already been received may be rejected if: the supplies, services, or construction are no longer required; ambiguous or otherwise inadequate specifications were part of the solicitation; the solicitation did not provide for consideration of all factors of significance to the Authority; prices exceed available funds; there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or for good cause of a similar nature when it is in the best interest of the Authority.

The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.

A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any solicitation or future procurement of similar items.

If all otherwise acceptable proposals received in response to an RFP are at unreasonable prices, or only one proposal is received and the price is unreasonable, the Authority shall cancel the solicitation and either: a) Re-solicit using a request for proposals; or b) Complete the procurement by using the competitive proposals method (when more than one otherwise acceptable proposal has been received), or by using the noncompetitive proposals method (when only one proposal is received at an unreasonable price); provided, that the Contracting Officer determines in writing that such action is appropriate, all offeror's are informed of the Authority's intent to negotiate, and each responsible offeror is given a reasonable opportunity to negotiate.

- F. If it becomes necessary to revise this RFP, amendments will be provided to all prospective offeror's that were sent this RFP or otherwise are known by the Authority to have obtained this RFP. Acknowledgement of the receipt of all amendments to the RFP must accompany the offeror's proposal. Failure to acknowledge receipt does not relieve the offeror from complying with all terms of any such amendment.

Housing Authority of Prince George's County

Certification Regarding Debarment,  
Suspension, Ineligibility and Voluntary Exclusion

I hereby certify that I meet the following criteria for participation:

- 1) I (we) have not been debarred or suspended by any government agency or subjected to a limited denial of participation under the Department and Suspension Rules of the United States Department of Housing and Urban Development (2 CFR Part 2424).
- 2) I (we) have not engaged in any drug-related criminal activity or any violent criminal activity.
- 3) Neither the federal government nor any state or local government has instituted an administrative or judicial action against me (us) in violation of the Fair Housing Act or other equal opportunity requirements.
- 4) No court or administrative agency has determined that I (we) have violated the Fair Housing Act or other equal opportunity requirements.
- 5) I (we) have not committed fraud, bribery or any other corrupt or criminal act in connection with any federal, state or local housing program.
- 6) I (we) am (are) not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

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# ATTACHMENTS

**Housing Authority**  
of Prince George's County

**PROJECT BASED VOUCHER**

**APPLICATION COVERSHEET**

Date of Application: \_\_\_\_\_

Total Project Based Vouchers Requested: \_\_\_\_\_

Legal Name of Organization \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_

Fax \_\_\_\_\_

Web site \_\_\_\_\_

Name of contact person regarding the application \_\_\_\_\_

Title \_\_\_\_\_

Tax ID Number \_\_\_\_\_

Email \_\_\_\_\_

Are you requesting an exception to the 25% PBV rule?

YES

NO

**Certifications**

By signing this application the following certifications are made:

1. The owner and agents will adhere to the 24 CFR 983 regulations governing the project based vouchers.
2. The owner and its agents will comply with all applicable fair housing and civil rights requirements found in 24 CFR 5.105(1), including, but not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Titles II and III of the Americans with Disabilities Act, as applicable.
3. The owner and its agents will comply with effective communication requirements pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR 8.6.

**Authorization**

Authorized Signature: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_



Housing Authority of Prince George's County

Certification Regarding Debarment,  
Suspension, Ineligibility and Voluntary Exclusion

I hereby certify that I meet the following criteria for participation:

- 1) I (we) have not been debarred or suspended by any government agency or subjected to a limited denial of participation under the Department and Suspension Rules of the United States Department of Housing and Urban Development (2 CFR Part 2424).
- 2) I (we) have not engaged in any drug-related criminal activity or any violent criminal activity.
- 3) Neither the federal government nor any state or local government has instituted an administrative or judicial action against me (us) in violation of the Fair Housing Act or other equal opportunity requirements.
- 4) No court or administrative agency has determined that I (we) have violated the Fair Housing Act or other equal opportunity requirements.
- 5) I (we) have not committed fraud, bribery or any other corrupt or criminal act in connection with any federal, state or local housing program.
- 6) I (we) am (are) not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_

Date: \_\_\_\_\_



**Housing Authority**  
of Prince George's County



Rushern L. Baker, III  
County Executive

Eric C. Brown, Executive Director

Paul E. Rowe, Chair – Board of Commissioners

**Current HAPGC 2017 FMRs for determining rents are:**

Dwelling Size	Payment Standard
Efficiency	\$1438
1 Bedroom	\$1542
2 Bedroom	\$1785
3 Bedroom	\$2358
4 Bedroom	\$2999
5 Bedroom	\$3449
6 Bedroom	\$3898
7 Bedroom	\$4348

# 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) 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.

## 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.

## 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.

## 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;

(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:]

# Certifications and Representations of Offerors Non-Construction Contract

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

OMB Approval No: 2577-0180 (exp. 7/30/96)

Public reporting burden for this collection of information is estimated to average 5 minutes 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.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

## 1. Contingent Fee Representation and Agreement

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

- (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.

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

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

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

The bidder/offeror 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 small business concern. "Women-owned," as used in this provision, means a small 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 enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned 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)

- |   |   |
|---|---|
| <input type="checkbox"/> Black Americans    | <input type="checkbox"/> Asian Pacific Americans  |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans   |
| <input type="checkbox"/> Native Americans   | <input type="checkbox"/> Hasidic Jewish Americans |

## 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

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

- (1) Is the person in the bidder/offeror'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/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror'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/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

#### 4. Organizational Conflicts of Interest Certification

(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 a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor's objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of 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 HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

#### 5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

#### 6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

#### 7. Offeror's Signature

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

\_\_\_\_\_  
Signature & Date:

\_\_\_\_\_  
Typed or Printed Name:

\_\_\_\_\_  
Title:

# 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) 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.

#### 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

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.

#### 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 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.