



Request for Qualifications
For
Development Partner
For
Choice Neighborhood New Construction
in New Bern, NC

Issue Date: December 18, 2024

Pre-submission Conference and Site Tour: January 14, 2024, at 10:00 am ET

Deadline for Questions: January 16, 2024

Submission Deadline: February 3, 2024

**RFQ for Development Partner
for
New Construction Development**

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PART I- INTRODUCTION

1.1 General Information

The New Bern Housing Authority (NBHA) in North Carolina is requesting Statements of Qualifications submissions from comprehensive development teams with extensive experience with mixed-income housing development and implementation. The successful respondent will prove through its submittal that it possesses the qualifications necessary to implement a comprehensive and complex new construction revitalization strategy for the Trent Court public housing site and surrounding Choice Neighborhood (CN), including mixes of incomes, uses, and financing sources, which may include elderly and family units. NBHA anticipates entering into a long-term Master Developer Agreement (MDA) with the successful respondent.

Sealed responses to this solicitation will be received by NBHA until **5:00 p.m. ET on Monday, February 3, 2025.**

1.2 Agency Background

NBHA is a public housing authority serving New Bern and Craven County, North Carolina. Its remaining public housing property, Trent Court, was constructed in 1954 and is comprised of 218 units: 36 one-bedrooms, 122 two-bedrooms, 48 three-bedrooms, and 12 four-bedrooms.

1.3 Greater Five Points Choice Neighborhood Initiative

The City of New Bern and the NBHA jointly received a 2013 the Department of Housing and Urban Development (HUD) CN Planning Grant. The \$400,000 grant was used to draft a Transformation Plan for the revitalization of the Greater Five Points area, which included Trent Court and Craven Terrace as well as other property not owned or managed by NBHA. To download a copy of the original Transformation Plan, which was completed in 2016, go to <https://choicenewbern.com>.

The Greater Five Points Transformation Plan is a partnership between NBHA, the City of New Bern, and public and nonprofit entities whose collective goal is to transform one of New Bern's most historic, yet financially distressed, neighborhoods. The Transformation Plan describes a course of action for resident self- sufficiency, neighborhood reinvestment, housing and economic development and historic preservation.

Today, the sole target housing for Choice Neighborhood redevelopment is Trent Court, which consists of 218 dwelling units—all of which are over 70 years old. Of the 218 units, 108 are uninhabitable due to damage caused by Hurricane Florence in 2018. NBHA is working with the Federal Emergency Management Agency (FEMA) to obtain funding for redevelopment on- and off-site within the Greater Five Points area. The redevelopment of this property will include innovative, top-of-the-line mixed-income, mixed-use housing investments, as well as other catalytic and place-making neighborhood improvements.

NBHA is currently in the process of facilitating resident and community updates to the 2016 Transformation Plan. NBHA intends to utilize this updated Plan to submit a Choice Neighborhoods Implementation Grant application for FY2026, or sooner.

1.4 Method of Solicitation

NBHA is utilizing a Qualifications-Based Selection (QBS) method of procurement through this Request for Qualifications (RFQ) solicitation. Under this method, Developer compensation will not be used as an evaluation factor. Responses will be evaluated by an NBHA evaluation committee utilizing the evaluation criteria outlined in Part V of this RFQ. Based on the committee's evaluations, NBHA's Contracting Officer will determine which of the responsive firms may be capable of providing the services described in this RFQ and have a reasonable chance of award (the competitive range). NBHA may, at its sole discretion, enter into negotiations with the highest-ranked firm in the competitive range or request additional information and/or presentations/interviews with the firm or firms considered to be in the competitive range. The evaluation committee may then re-evaluate the competitive range firms based on their original proposals and the additional information provided.

NBHA will negotiate compensation and other key business terms with the top-ranked firm with the intention of reaching an agreement on fair and reasonable terms and entering into a Master Developer Agreement (MDA). If an agreement cannot be reached, NBHA will terminate negotiations with this firm and proceed to the next-highest rated firm until an agreement is reached on compensation and other business terms determined to be fair and reasonable.

If an award is made through this solicitation, all team members identified in the response to this RFQ will also be considered approved. The selected Development Partner will be required to comply with all applicable HUD regulations pertaining to procurement of contractor and technical services and identity of interests. The Development Partner will be required to follow a competitive solicitation process that is approved by NBHA for all other contractors in accordance with the terms and conditions of the MDA.

PART II- DEVELOPER RESPONSIBILITIES

The selected Development Partner will be expected to work with NBHA to: assemble and manage a team of qualified individuals, affiliates, subcontractors and consultants necessary to prepare viable redevelopment plans for each development project; secure the financing necessary to fund the redevelopment activities; obtain NBHA and HUD approval of redevelopment plans; and provide qualified professional project and property management services as determined by the MDA.

Throughout the redevelopment effort, the Development Partner will work closely with NBHA and all stakeholders, including but not limited to NBHA's residents, the surrounding community, NBHA consultants, the City of New Bern, and other Choice Neighborhood

partners. The Development Partner will be responsible for ensuring that the redevelopment plan is approved, financed and implemented in a timely fashion.

2.1 General

- a. Oversee and Implement Redevelopment Efforts: Provide the necessary staffing, expertise, supervision and guarantees to implement all aspects of the redevelopment fully and expeditiously as required by the MDA.
- b. Site Selection Validation: As previously noted, NBHA has identified properties as the primary sites for the implementation of the projects. The selected Development Partner will perform the due diligence necessary to determine if NBHA-identified sites are viable for purposes of the development process. In the event the Development Partner does not deem sites to be viable the Development Partner will assist with the site selections and acquisition of cost feasible alternate sites.
- c. Hire and Manage Consultants and Contractors Necessary for Planning and Implementation: The Development Partner will procure other consultants and/or contractors and coordinate all tasks necessary for implementation of the redevelopment plan. At a minimum, the Development Partner will need to procure, oversee and manage all consultants necessary to complete funding applications, architectural, environmental review, market analysis, geo-technical studies, civil, mechanical and electrical engineering, and any other activities deemed necessary to implement the project by the Development Partner and NBHA and successfully lease up and manage each completed development phase.
- d. Maintain Communication Regarding Project Progress with NBHA, HUD, all key stakeholders, and the larger public: NBHA will establish a regular schedule of team meetings, in which the Development Partner will participate. Moreover, the Development Partner will be responsible for submitting monthly progress reports to NBHA, in such formats and media as NBHA might direct, detailing project progress and milestones achieved; updated critical path schedule; budget status and projections; Section 3 and M/WBE participation and other information deemed relevant by NBHA.
- e. Develop and Maintain Quality Control Measures: The Development Partner is responsible for ensuring the Project is implemented and managed with the highest quality standards. The Development Partner will be required to implement quality assurance and control measures to ensure effective performance by all parties in all aspects of the program.
- f. Develop and Maintain a Detailed Development Schedule and Critical Path Schedule: Develop and maintain a detailed schedule of events, predicated on financing deadlines that include pre-development activities, construction start, project

stabilization and permanent loan close. Develop a Critical Path Schedule for all phases of construction, and lease-up and stabilization.

- g. Foster Resident Involvement in Project Implementation: Facilitate and foster the involvement of public housing and other neighborhood residents in the design and implementation of the redevelopment plans. In cooperation with NBHA, keep residents informed of the status of the revitalization, assist in providing job opportunities for residents during and after implementation, and assist/encourage resident-owned business opportunities throughout the redevelopment phases.
- h. Be Responsive to Local Community, Neighborhood, and Governmental Interests: Promote and maintain good relations with community and neighborhood groups, and federal, state, and local governments.
- i. Compliance with Laws, Rules and Regulations: The Development Partner will comply with all applicable Federal, State, and local laws, rules and regulations. The Development Partner will also establish systems and manage all Development Team Members proposed as well as all contractors, consultants and others providing service during the redevelopment effort to ensure their compliance with applicable Federal, State, and local laws, rules and regulations.
- j. MDE/WBE/DBE Opportunities: The Development Partner will take affirmative steps necessary to assure that minority, women-owned and disadvantaged business enterprises are used to the greatest extent feasible consistent with Presidential Executive Orders 11625, 12138 and 12432. The selected Development Partner shall have a viable program in place to assure the goals are met or exceeded. A monthly report (or on other agreed to schedule) shall be provided to NBHA by the Development Partner to accurately demonstrate the level of effort and compliance.
- k. Resident/Local Employment and Contracting: The Development Partner shall develop and implement a comprehensive Section 3 Program consistent with NBHA's Section 3 hiring requirements, as well as meeting other policy objectives aimed at improving the economic circumstances of individuals, households and companies in New Bern. Applicable City of New Bern Executive Orders and Ordinances may also apply. See Attachment III for more explicit discussion and explanation of Section 3 Requirements.

2.2 Predevelopment

- a. Prepare Feasibility Assessments, Market Analyses and Appraisals: The Development Partner will manage the preparation of feasibility assessments, market analyses and appraisals necessary to develop a viable redevelopment approach consistent with the historic community, flood and storm mitigation, and the goals of the updated Transformation Plan.

- b. Assist NBHA to obtain necessary HUD approvals: At the appropriate time, NBHA may have to submit applications to HUD for Section 18 or Rental Assistance Demonstration (RAD) programs. Information the Development Partner is required to provide pertaining to this application(s) shall be complete and timely.
- c. Prepare Redevelopment Plans: The Development Partner will work in consultation NBHA, NBHA residents, the community and other CN partners and stakeholders to update the existing Transformation Plan to be consistent with current needs, program goals and as acceptable to NBHA and HUD.
- d. Obtain Environmental Clearances: In collaboration with NBHA, procure the consultants and prepare the necessary documents to obtain environmental clearances from all interested agencies, including HUD and/or FEMA environmental review approval (for the entire redevelopment effort and/or in phases as appropriate) under 24 CFR Part 50 or 58, as applicable.
- e. Plans and Specifications: The Development Partner will be responsible for the preparation of all construction Plans and Specifications necessary to implement the construction of the project. Plans and Specifications must comply with the requirements of all local, State and Federal permitting and regulatory entities; including, but not limited to, Section 504 and Uniform Federal Accessibility Standards (UFAS) and meet HUD requirements for broadband infrastructure. In addition, Plans and Specifications must be prepared with the intent for the project to meet the highest possible cost-effective standards for energy efficiency. Plans and Specifications must also be comprehensive and must meet or exceed industry standards of quality and sustainability. Plans and Specifications must also be of the highest quality so that construction change orders and disputes are minimized. All Plans and Specifications will be subject to review and approval by HUD, FEMA and NBHA.

2.3 Financing

- a. Produce an Overall Financing Plan: Produce an attainable financing plan for the overall redevelopment effort. The Financing Plan will reflect the goals of the master plan. The financing plan must demonstrate a sensitivity and approach to using public funds from any source in the most efficient manner, maximizing leveraging of such funds to the greatest extent possible.
- b. Financing Application(s): In accordance with the MDA, the Development Partner will be required to pursue diligently and use best efforts to obtain all financing necessary to implement the redevelopment plans in a timely fashion, which may include, but not be limited to: tax credits; tax-exempt bonds; federal, state and local funds; and private debt.

- c. Maximize the Leveraging of Public and Private Resources: The Development Partner will be expected to maximize the leveraging of public and private resources by pursuing all reasonable sources of financing and utilizing a variety of partners and partnerships. Additionally, the Development Partner will take full responsibility for securing all financing sources in a timely fashion; coordinating discussion and negotiations with financial institutions and private partners, inclusive of NBHA; and ensuring NBHA is involved in all aspects of the selection of financial partners to assure that proposed terms are both competitive and reasonable. In this regard NBHA expects to fully participate in the review/approval of solicitation documents, proposals, business terms and related contractual documents.
- d. Obtain Equity Investment: Using an open and competitive process, the Development Partner will obtain equity financing commitments with the best terms currently available as required by the MDA and subject to NBHA's approval.
- e. HUD Development Proposal(s): The Development Partner will work with NBHA to prepare the necessary HUD CN, RAD, or mixed-finance development proposals and related submissions for each phase required to obtain HUD approval.
- f. Guarantees: In accordance with the MDA, the Development Partner will provide all guarantees required for the successful financing of the redevelopment effort, including completion guarantees, operating deficit guarantees, and tax credit adjuster or recapture guarantees and guarantees of performance under the Agreement.
- g. Operating Feasibility: As required in the MDA, structure such reserves and other resources as will reasonably guarantee the long-term operating feasibility of the Project, including NBHA subsidized units, utilizing no more subsidy than committed by NBHA (as applicable).
- h. Accounting/Financing: The Development Partner shall maintain accounting records and ensure Project financing is available at the appropriate times and utilized in the appropriate manner, in compliance with the MDA.

2.4 Construction

- a. Hire Qualified General Contractors and Oversee Construction Activities: The Development Partner will create and implement a competitive process for selecting the most qualified General Contractor. All such entities must have all necessary licenses, financial capacity and capabilities to perform the work. During construction, the Development Partner shall provide oversight and management of construction activities by coordinating with all development team members and attending job-site meetings to ensure the expeditious implementation of construction activities. As regular onsite

construction monitoring is critical to the success of the project; the Development Partner must have a full-time onsite presence during the term of construction.

- b. Facilitate Necessary Site Improvements: Pursuant to the Agreement, the Development Partner shall initiate and complete site work and infrastructure construction in collaboration with NBHA, local and regional public utility agencies, and other private utilities.

2.5 Ownership and Asset Management

- a. Organize Ownership Entities: Upon completion of the redevelopment plan and its acceptance by NBHA, the selected Development Partner will be expected to organize the necessary phase-specific ownership entities and structures, in compliance with the MDA, as approved by NBHA, and as required by applicable financing entities.
- b. Ensure the Short- and Long-Term Viability of the Redeveloped Project: The Development Partner shall coordinate with and oversee the selected property management firm to develop and implement marketing, re-occupancy, asset and property management plans that will ensure the short- and long-term viability of the Project, and ensure ongoing operation of the Project in full compliance with all applicable requirements and regulations, in compliance with the MDA.
- c. Market and Lease-up the Rental Units: The Development Partner shall create and implement a marketing and lease-up strategy for the rental units to ensure that stabilized occupancy is achieved in compliance with all applicable financing and land use agreements. Such strategy will accommodate persons and families on NBHA properties' eligible waitlists and will comply with goals and requirements of the Choice Neighborhood program.
- d. Manage the Redeveloped Project: The Development Partner may be responsible for the management of all components of the redeveloped site, subject to negotiation, lender/investor requirements, CN program requirements, and all applicable laws and regulations applicable to the development.

Additionally, NBHA shall have an option and right of first refusal to acquire the Development in the event a bona fide offer to purchase the Development is received by the owner entity or at any time after the expiration of the LIHTC compliance period. Such right and option shall be for a purchase price equal to the minimum required pursuant to Section 42 of the Internal Revenue Code. Such rights shall be set forth in the Partnership Agreement or the Operating Agreement for each owner entity.

PART III- ROLE OF NBHA

NBHA's level of participation throughout the development process will be determined by the terms and conditions codified in the MDA. At a minimum, NBHA's level of participation will include all activities necessary to comply with applicable HUD regulatory requirements and the terms and conditions agreed to in the MDA.

3.1 General

- a. Landowner/Site Control: It is NBHA's intent to enter into a long-term ground lease on the development site, or portion thereof, with the Owner Entity of each development phase. NBHA expects to receive annual ground lease payments for each development site.
- b. HUD Contact: NBHA will be responsible for all communication with HUD and/or FEMA, which includes the submission of program and evidentiary documents to obtain all HUD approvals including, but not limited to, land disposition approval, review of construction plans and CN, RAD, or mixed-finance approvals. To the extent any such documents or evidentials are within the particular knowledge or responsibility of the Development Partner, NBHA will expect the Development Partner to be principally responsible for preparing such documents and evidentials as NBHA may direct. NBHA will assume primary responsibility for the disposition of the site as necessary to phase-specific owner entities.
- c. Provider of Funding/Operating Subsidies: NBHA may grant, loan, or otherwise make available to the Development Partner funds for the development of the affordable units to assist in the leveraging of funds for the overall revitalization effort. The Development Partner will be required to leverage NBHA funds by securing private and other public funding and to secure all funding for non-public housing units, as deemed appropriate by NBHA. Further, NBHA will coordinate any available Project-Based Vouchers with Twin Rivers Opportunities.
- d. Relocation: NBHA will be responsible for any necessary relocation of residents during the development project(s).

3.2 Predevelopment

- a. Due Diligence: NBHA will be involved in all aspects of due diligence activities and will assist with coordination with the City, agencies, and other entities as appropriate.
- b. Site/Unit Designs: NBHA will be involved in the design processes to finalize the site plan, the building designs and floor plans and must approve each stage (schematic, design development and construction document) before the design team is authorized to begin the following stage. Also, NBHA will review and pre-approve any submissions to HUD for review and approval of construction drawings and

specifications. All designs must be to CN standards and consistent with the goals and preferences identified in the Transformation Plan.

- c. Performance Monitor: NBHA will monitor MDA-established performance measures throughout the life of the development.

3.3 Financing

- a. Predevelopment Funding: NBHA expects the selected Development Partner to provide predevelopment funding for each development based on mutually agreed upon terms in the MDA.
- b. Development Funding: NBHA has a limited amount of capital funds and resources available and expects that the selected Development Partner will maximize the use of other outside funding resources to fully leverage any secured public and private commitments, including a Choice Neighborhoods Implementation Grant.
- c. Approve Lender or Equity Solicitation and Terms: NBHA intends to participate in the development of the solicitation documents for investors and lenders. NBHA will also participate in negotiations with the selected investors and lenders and will approve the final terms and conditions of the equity or loan agreements.

3.4 Development Partner Oversight

- a. Asset Manager: NBHA will continue to have asset management responsibilities related to the developed properties under the redevelopment project(s). NBHA will monitor and enforce the terms of its Lease and the Regulatory and Operating Agreement with the Development Partner and require that all housing units be managed in accordance with applicable local, state and federal requirements. NBHA will create an asset management division to manage the property after a 2-year transition period from Stabilized Occupancy.
- b. Procurement Approval: NBHA will monitor the various Development Partner solicitation documents for the project to ensure they are in compliance with the terms and conditions described in the MDA and are in the best interest of the project and redevelopment initiative.
- c. Monitor Development Partner's Compliance with Section 3: NBHA will monitor the Development Partner's plans and efforts for reaching established Section 3 goals and objectives.
- d. Monitor Development Partner's Compliance DBE/MBE/WBE Contracting Goals: NBHA will monitor the Development Partner's plans and efforts for reaching eligible

Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) goals and objectives.

- e. Inspection by Landowner: NBHA as Landowner reserves for itself, its authorized agents, and HUD and its authorized agents, the right to enter the property at any time to inspect the Project and any work in progress for the purpose of protecting or furthering NBHA's and/or HUD's interest.

3.5 Contract Administration

- a. Payment Processing: NBHA will have the right to review/approve all payments made regardless of the funding source in accordance with the terms and conditions of the MDA.
- b. Contract Amendments: NBHA will have the right to review all project-related contract amendments and deliverables as outlined in the terms and conditions of the MDA.
- c. Approval of Deliverables: NBHA will have the right to review and approve in advance all project-related deliverables including but not limited to design documents, other studies, and construction to ensure compliance with the terms and conditions of the associated contracts and the MDA.

PART IV- SUBMISSION REQUIREMENTS

All responses to this RFQ must contain the information listed below in a format, which correlates with each of the items listed.

1. Cover Letter

Provide a 1–2-page cover letter that includes the following:

- a. Summary of key information about the firm and its qualifications.
- b. Description of other affiliates, subcontractors or consultant Team Members proposed for this engagement including, but not limited to co-developers, design firms, legal and accounting firms, consultants, property management firms, etc.
- c. Contact information for the primary contact person, including email/phone number.

2. Relevant Project Experience

Provide an overview of the Respondent and each Team member's experience in the development of projects similar to what is requested in this solicitation. Include the following information for the past five (5) years for the Respondent and each Team Member, as applicable:

- a. List of substantially complete Choice Neighborhoods housing projects and/or neighborhood transformational mixed-income housing projects, detailing client name; units/mix; total cost and cost per unit; sources of financing; investor name and equity raise; start and completion dates. Describe how the example demonstrates a successfully implemented Choice Neighborhoods project, including outcomes; how the project engaged residents, community members, and stakeholders; and how the project achieved established measurable outcomes. Similar information may also be provided for non-Choice Neighborhoods comprehensive neighborhood transformation projects that are similar in scope, magnitude, income mix, community engagement, and financing. Please also denote any relevant experience with the North Carolina Housing Finance Agency (NCHFA), as applicable.
- b. Describe the development team’s prior experience working together
- c. Describe experience in historic neighborhoods and how the Respondent honored the neighborhood’s historical significance within the development process.
- d. Describe experience with environmentally sustainable and climate resilient development and working in communities affected by natural disasters and/or flooding.
- e. Describe experience with affordable housing and/or mixed-income property management, including number of units currently managed.
- f. Describe how the Respondent meets all applicable CN threshold requirements detailed in the FY2024 Choice Neighborhoods Implementation Grant NOFA.
- g. Describe experience in submitting successful Choice Neighborhoods Implementation Grant or similar funding applications.

3. Key Staff Experience

Provide profiles of key staff of the Respondent and each key Team Member that would be providing services.

4. Proposed Roles and Key Business Terms

Provide a detailed narrative demonstrating the Development Partner’s understanding of the steps, processes, and issues involved in implementing a multi-phase project of this scope and magnitude.

Provide Development Partner’s proposed plans for involving NBHA throughout the planning and implementation of the redevelopment effort, including the proposed roles and responsibilities for both NBHA and the Development Partner.

Provide initial proposed business terms as a starting point for negotiations:

- a. NBHA proposed share (%) of total Developer Fee
- b. NBHA proposed share (%) of total Predevelopment Costs
- c. Developer commitments to obtain other development funding sources
- d. Developer commitment to including project and construction management expenses within their developer fee.
- e. Developer commitment to include NBHA in all financing solicitations and approvals
- f. Developer commitment to incorporate HUD Form 5370 C, General Conditions for Non-Construction Contracts (see Attachment II) into the resulting MDA without exceptions, if selected.
- g. Developer commitment to complete all due diligence and other steps necessary to submit a CN Implementation Grant Application for FY2026, as available.

5. Financial Capacity

Provide three concurrent years of the Respondent's most recent audited or Certified Public Accountant prepared financial statements from each member of the Development Partner's team who will be providing any guarantees in connection with the development and operation of the project. The statements must include an Income Statement as well as a Balance Sheet showing assets, liabilities and net worth of the entity. Financial statements should be included as a separate PDF attachment to the submission email and may be marked "Confidential."

6. DBE/MBE/WBE Experience and Participation Plans

- a. Describe Respondent's experience with DBE/MBE/WBE contracting on prior projects.
- b. Describe Respondent's plans for maximizing DBE/MBE/WBE contracting for NBHA projects.

7. Section 3 Plan

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.

- a. Describe Respondent's past experience with Section 3 contracting on prior projects.
- b. Describe Respondent's plans for maximizing Section contracting for NBHA projects.

8. Required Certifications

Complete the certification forms provided in Attachment IV

PART V- PROCUREMENT PROCESS

5.1 RFQ Contact

NBHA Procurement Officer: Reginal Barner

Address: 1307 Tatum Drive New Bern, NC 28560

Phone Number: (252) 633-0800

Email: rbarner@newbernha.org

5.2 RFQ Schedule

RFQ Issued	December 18, 2024
Pre-Submission Conference and Site Tour	January 14, 2025, at 10:00 am ET Meeting Location: New Bern Housing Authority Admin Office 1307 Tatum Drive, New Bern, NC 28560 Respondents are strongly encouraged, but not required, to attend in person. The option to attend the Pre-Submission Conference online at 10:00 am ET is also available. In person attendees will proceed afterwards with the site tour. (Online Pre-Submission Conference Link: https://us06web.zoom.us/j/88689568193?pwd=sed25azcKD7i4jbg5iCCeM0OBwlwV.1)
Deadline for Questions	January 16, 2025, at 5:00 pm ET All questions must be submitted in writing to rbarner@newbernha.org
Deadline for Submission	February 3, 2025 Any submissions received after the deadline will be considered non-responsive.

5.3 Submission

Please submit one full electronic copy of the submission in PDF form by email, with the subject line "Development Partner Qualification for Choice Neighborhood New Construction" to rbarner@newbernha.org. Financial Statements should be included as a separate PDF attachment and marked "Confidential."

5.4 Evaluation and Award Process

NBHA reserves the right to cancel this RFQ or to reject, in whole or in part, any and all submissions received in response to this RFQ upon its determination that such cancellation or rejection is in the best interest of NBHA. NBHA further reserves the right to waive any minor informality in any submissions received, if it is in the public interest. The decision as to who shall receive a contract award, or whether or not an award shall be made as a result of this RFQ, shall be at NBHA's absolute sole discretion.

Qualifications received in response to this solicitation may be evaluated using a two-stage evaluation process. During Stage I of the evaluation process, firms will be evaluated and scored by an Evaluation Committee based on the Evaluation Criteria as described at the end of this section. NBHA may decide to enter into negotiations with the highest-ranked firm at this point or, at its sole discretion, NBHA may initiate a Stage II process.

During Stage II of the evaluation process NBHA will allow firms that NBHA has determined have a reasonable chance of being selected, to provide a presentation of their firm's experience and capabilities and to clarify any questions the Evaluation Committee may have about their firm. After completion of Stage II interviews, the Evaluation Committee will re-evaluate each of the Stage II firms. NBHA will then enter into negotiations with the highest-ranked firm from the Stage II evaluation.

If a contract cannot be negotiated with this firm, negotiations will be terminated. NBHA will then initiate negotiations with the next highest-ranked firm. This procedure will continue until a mutually satisfactory contract has been negotiated.

NBHA reserves the right to make no award or decline to enter into negotiations should it believe that no respondent to this RFQ will be capable of delivering the necessary level of services with acceptable terms and/or time period. NBHA further reserves the right to forego Stage II of the evaluation process and enter into negotiations with the highest ranked firm from Stage I of the evaluation process. NBHA may, in its sole discretion, determine that it will be in the best interest of NBHA and/or the redevelopment project to contract with multiple firms through this solicitation process.

Contract award may be subject to approval by NBHA Board and the United States Department of Housing and Urban Development (HUD), as applicable.

Estimated Selection Timeline:

Submissions Due: February 3, 2025
 Requests for Interviews: February 7, 2025
 Interviews: February 10-11, 2025
 Notification of Award: February 20, 2025

The selected developer should be prepared to work with New Bern consultants between approximately February 24 – March 7 to discuss housing building types, capacity on potential redevelopment sites, and more in preparation for a design charette with the community. The charette is anticipated for the week of March 17 and the selected developer should be in attendance.

Given the anticipated timeline, the selected developer should be prepared to work in good faith with NBHA and its consultants as MDA terms are negotiated. NHA maintains the right to terminate negotiations with the selected developer if parties cannot reach mutually satisfactory terms.

5.5 Evaluation Criteria

Each submission will be evaluated based on the Evaluation Criteria contained in the following table:

Evaluation Factor	Points
<p><u>Respondent and Team Experience</u></p> <p>The degree to which the respondent and its team demonstrates:</p> <ul style="list-style-type: none"> • Successful experience in the planning, redevelopment, financing, construction and management of Choice Neighborhood and/or similar mixed-income, multi-phase, transformation development projects of comparable scope and complexity. • Cohesion of the team, as demonstrated by previous experience working together. • Degree to which developer would meet all applicable CN threshold requirements established by the last published Choice Neighborhood Implementation Grant Notice of Funding Availability (NOFA) • Respondent must commit to complete the due diligence and other steps necessary to submit a Choice Neighborhood Implementation Grant Application in FY2026 or sooner. 	20
<p><u>Relevant Project Experience</u></p> <ul style="list-style-type: none"> • Respondent demonstrates that the key staff proposed for the developer and proposed team members have significant successful experience in their respective disciplines as required for the 	20

<p>planning, development, and operation of developments of comparable size, scope, and complexity.</p> <ul style="list-style-type: none"> • Respondent must have a minimum of one completed Choice Neighborhood or similar comprehensive mixed-income neighborhood transformation project to be scored. 	
<p><u>Historic and/or Sustainable Development Experience</u></p> <ul style="list-style-type: none"> • Respondent demonstrates successfully working in historically significant communities. • Respondent demonstrates successfully working in communities that have experienced natural disasters/flooding, and experience with environmentally sustainable and climate resilient development. 	10
<p><u>Methodology</u></p> <ul style="list-style-type: none"> • Respondent demonstrates knowledge of the steps, processes, and issues involved in implementing a Choice Neighborhood redevelopment project. • Respondent's proposed roles and key business terms provide the best value for NBHA, competitiveness for the Choice Neighborhood grant application, and the success of the implementation. 	20
<p><u>Financial Resources and Financial Capacity</u></p> <ul style="list-style-type: none"> • Ability to obtain, structure, and implement financing for such projects. • The financial capacity as evidenced by financial statements, the firm's most recent audit and bank references, and the Development Partner's discussion of how it intends to honor all guarantees should the need arise. 	15
<p><u>DBE/MBE/WBE Experience and Participation Plans</u></p> <p>Plan for meeting or fostering MBE/WBE/ SBE/DBE objectives as addressed in Section 4, item 6.</p>	10
<p><u>Section 3 Plan/Requirements</u></p> <p>Plan for meeting or fostering Section 3 objectives as addressed in Section 4, item 7.</p>	5

PART VI GENERAL CONDITIONS

6.1 Conflict of Interest

- a. The respondent warrants that to the best of its knowledge, belief and, except as otherwise disclosed, it does not have any organizational conflict of interest. Conflict of interest is defined as a situation in which the nature of work under this solicitation and the firm's organizational, financial, contractual or other interests are such that:
 - i. Respondent may have an unfair competitive advantage; or
 - ii. The respondent's objectivity in performing the work solicited may be impaired. In the event the respondent has an organizational conflict of interest as defined herein, the respondent shall disclose such conflict of interest fully in the Statement of Qualifications submission.
- b. The respondent agrees that if, after award, he, she or it, discovers an organizational conflict of interest with respect to this solicitation, he, she or it, shall make an immediate and full disclosure in writing to the NBHA Contracting Officer. This shall include a description of the action, which the respondent has taken or intends to take to eliminate or neutralize the conflict. NBHA may, however, disqualify the respondent or if a contract has been entered into with the respondent, terminate said contract, in its sole discretion.
- c. In the event the respondent was aware of an organizational conflict of interest before the award of a contract and intentionally did not disclose the conflict to the NBHA Contracting Officer, NBHA may disqualify the respondent.
- d. The provisions of this Section shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the respondent. The respondent shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.
- e. No member of or delegate to the U.S. Congress or Resident Commissioner shall be allowed to share any part of the contract awarded under this solicitation or to any benefit that may arise there from. This provision shall be construed to extend to any contract made with the successful respondent.
- f. No member, officer, or employee of NBHA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which NBHA was activated, and no other public official of such locality or localities who exercises an respect to the project, shall during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in any contract or the proceeds thereof resulting from this solicitation.

- g. No member, officer or employee of the respondent selected to perform the services described above shall, during the term of their contract, or for one year thereafter, have any interest direct or indirect, in any contract that they are responsible for procuring, managing or overseeing.
- h. NBHA reserves total discretion to determine the proper treatment of any conflict of interest disclosed under this Section.

6.2 Cost of Preparing the Statement of Qualifications

All costs incurred, directly or indirectly, in response to the Request for Qualifications shall be the sole responsibility of and shall be borne by the respondents.

6.3 Form of Contract

The acceptance of the proposed firm's offer for the services specified herein will be made by issuance of a duly authorized MDA. Respondents are cautioned to make no assumptions or accept any representations by a representative of NBHA concerning the award until an MDA is negotiated and executed.

6.4 Government Restrictions

In the event any governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the goods or services offered, it shall be the responsibility of the successful firm to immediately notify NBHA in writing specifying the regulation which requires alteration. NBHA reserves the right to accept any such alternation, including any reasonable price adjustments occasioned thereby, or to cancel the contract at no expense to NBHA.

6.5 Non-Conformance to Conditions/Specifications/Scope of Services

Services will be inspected for compliance with specifications. Services not conforming to specifications may not be accepted at the firm's expense. Services not provided in accordance with the Scope of Services may result in the firm being found in default. In the event of default, all procurement cost may be charged against the firm. Any violations of these stipulations may result in the firm's name being removed from NBHA's Statement of Qualifications mailing list.

6.6 Assignment of Transfer

The successful firm shall not assign or transfer any interest in the contract, in whole or part, without written approval of NBHA. Claims for sums of money due, or to become due from NBHA pursuant to the contract, may be assigned to a bank, trust company or other financial institution. NBHA is hereby expressly relieved and absolved of any and all liability in the event a purported assignment or subcontracting is attempted in the absence of the firm obtaining NBHA's prior written consent the contract.

6.7 Availability of Records

The Comptroller General of the United States, HUD, NBHA, and any duly authorized representative of each, shall have full and free access to, and the right to audit and to make excerpts and transcripts from, any and all pertinent books, records, documents, invoices, papers and the like, of the vendor, or in the possession of the firm, which shall relate to, or concern the performance of the contract.

6.8 Patents, Licenses, and Royalties

The successful firm shall indemnify and save harmless the City of New Bern, NBHA and their employees from liability of any kind, including cost and expenses for or on account of any copyrighted, patented, or not patented invention, process or article manufactured or used in the performance of the contract, including its use by NBHA. If the vendor uses a design, device or material covered by letters, patent or copyright and understood that the proposal prices shall include all royalties or cost sing from the use of such design, device or materials involved in the work. Further, all residual rights to Patents, Licenses and Royalties (e.g. software and license to sue same purchased) shall revert to NBHA at the end of the Agreement.

6.9 Permits and Licenses

The successful firm shall obtain all permits and licenses that are required for performing its work. The firm shall pay all related fees and costs in connection with required permits and licenses. Proof of ownership shall be made on all software used in the execution of the contract. The firm will hold the City of New Bern and NBHA harmless for any violation of software licensing resulting from breaches by employees, owners and agents of the firm.

6.10 Taxes

The successful firm is responsible for all state and federal payroll and/or social security taxes. The firm shall hold NBHA harmless in every respect against tax liability

6.11 Advertising

In submitting a Statement of Qualifications, the firm and their consultants agree not to use the results as a part of any commercial advertising.

6.12 Insurance

- a. The selected firm shall maintain at its expense during the term of the Contract the following insurance.
 - i. Worker's Compensation Employer's Liability of \$500,000 per accident; \$500,000 each disease; and \$500,000 for each disease/each employee.
 - ii. Automobile Liability Insurance in an amount not less than \$5,000,000 per occurrence and \$5,000,000 aggregate.
 - iii. Professional Liability Insurance in the amount of \$1 million.
 - iv. General Liability Insurance in the amount of \$5,000,000 per occurrence and \$5,000,000 aggregate.

NBHA shall be named as additional insured on all policies.

- b. The selected firm shall not hold the City of New Bern and NBHA liable for any personal injury incurred by their respective employees, agents or consultants, contractors or subcontractors while working on this Project. The firm agrees to hold the City of New Bern and NBHA harmless from any such claim by its employees, agents, consultants, contractors or subcontractors, unless a Court having jurisdiction finds there is gross negligence of an employee of NBHA while acting within the scope of their employment.
- c. The insurance company covering the firm must be licensed to do business in the State of North Carolina and have a Best's Guide rating of "A+" or higher.

6.13 Proof of Liability Insurance

The successful firm shall furnish to NBHA a certified copy of the policy or policies covering the work as required in the specifications as evidence that the insurance required will be maintained in force for the entire duration of the contract with NBHA. NBHA and the City of New Bern must be listed as an additional insured.

6.14 Standards of Conduct

The successful firm shall be responsible for maintaining satisfactory standards of its employee's competence, conduct, courtesy, appearance, honesty, and integrity. It shall be responsible for taking such disciplinary action with respect to any of its employees as may be necessary.

6.15 Removal of Employees

NBHA may request the successful firm to immediately remove from assignment to NBHA and/or dismiss any employee found unfit to perform duties due to one or more of the following reasons:

1. Neglect of Duty.
2. Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by words or actions or fighting.
3. Theft, vandalism, immoral conduct or any other criminal action.
4. Selling, consuming, possessing, or being under the influence of intoxicants, including alcohol or illegal substances while on assignment at NBHA.

6.16 Supervision

The successful firm shall provide adequate competent supervision at all times during the performance of the contract. To that effect, a qualified consultant and one or more alternates shall be designated in writing to NBHA prior to contract start. The firm or his designated representative shall be readily available to meet with NBHA personnel. The successful firm shall provide the telephone numbers where its representatives) can be reached.

6.17 Performance Evaluation Meeting

The selected firm shall be readily available to meet with representatives of NBHA weekly the first month of the contract and as often as necessary to resolve any and all performance problems identified at these meetings.

6.18 Disputes

- a. Issues Causing Protest: Any respondent which disputes the reasonableness, necessity, or competitiveness, of the terms and conditions of this solicitation or who has been adversely affected by a decision concerning a notice of intended or actual award, may file a written notice of protest with the contact person listed in the solicitation.
- b. Filing the Protest: The respondent must first advise the contact person listed in the solicitation in writing within 48 hours after receipt of the bid solicitation or intended or actual notice of award of their intent to file a formal written notice with the contact person listed in the solicitation.
- c. Content of Formal Written Notice: The formal written notice should be printed, typewritten, or otherwise duplicated in legible form. The formal written notice of protest should contain the information that follows:
 - i) The name and address of the respondent filing the protest and an explanation of how his substantial interests have been affected by the bid solicitation or by NBHA's notice of intended or actual award.
 - ii) A statement of how and when the respondent filing the protest received notice of the bid solicitation or notice of intended or actual award.
 - iii) A statement of all issues of disputed material fact. If there are none, the protest must so indicate.
 - iv) A concise statement of the ultimate facts alleged, as well as NBHA's policies, which entitle the respondent filing the protest to relief.
 - v) A demand for relief the respondent deems themselves entitled.
 - vi) Any other information which the respondent contends is material
- d. Response to Protest: Upon receipt of a timely filed Notice of Protest and meeting the above requirements, the solicitation process, or award process will be stopped until the protest is resolved. The Contracting Officer may set forth in writing particular facts and circumstances which require continuance of the solicitation process without the above-mentioned delay in order to avoid material increased costs or immediate or serious danger to health, safety or welfare. This written

documentation will specifically detail the facts underlying the Contracting Officer's decision and will constitute final agency action.

- e. Resolution: The Contracting Officer may request such information pertaining to the matter, as he/she deems appropriate. Within seven (7) days of the date that the formal written protest is referred to him/her, the Executive Director will notify the Respondent making the protest his/her decision.

6.19 Federal, State, and Local Reporting Compliance

The firm shall provide such financial and programmatic information as required by NBHA to comply with all Federal, State and local law reporting requirements.

6.20 Section 3 Clauses

Every applicant, recipient, contracting party, contractor, and subcontractor shall incorporate or cause to be incorporated a "Section 3 Clause" in all contracts for work in connection with a Section 3 covered development. All Statement of Qualifications must also include a Compliance Plan for Section 3 requirements. (See Attachment III)

6.21 Project Personnel

Except as formally approved by NBHA, the key Statement of Qualifications shall be for the individuals who will actually complete the work, at the proposed levels of effort. Changes in staffing must be proposed in writing to NBHA and approved by NBHA in writing.

6.22 Payment

To the extent required and pursuant to the schedule of deliverables in accordance with the final Development Agreement negotiated by the parties NBHA may make periodic payments for services provided as required under its agreement with the selected Developer/Development Team.

Payment made by NBHA to the selected Developer/Development Team will be a form approved by NBHA's Board of Commissioners. Upon review and acceptance of the invoice, payment shall be due and payable within 30 days.

6.23 Notices

All written notices required to be given by either party under the terms of the contract resulting from the contract award shall be addressed to the firm at their legal business residence as given in the contract. Written notices to NBHA shall be addressed as provided in the contract.

6.24 Cancellation

Irrespective of any default, hereunder NBHA may also at any time at its sole discretion cancel the contract in whole or in part. In the event of cancellation, the Firm shall be entitled receive equitable compensation for all work completed and accepted prior to such termination or cancellation as shall be indicated in the contract.

6.25 Laws

The contract shall be governed by the laws of the State of North Carolina and applicable federal law.

6.26 Contract Documents

Written contract documents will be prepared by NBHA and the selected Development Partner. Modifications may be adopted based on final negotiations and specific requirements of the contract under this RFQ.

6.27 Travel

All travel and miscellaneous expenses will be borne by the firm selected.

6.28 Contract Award

The Contract for the selected Developer/Development Team shall be subject to the approval of NBHA's Board of Commissioners.

ATTACHMENTS

Attachment I – HUD Form 5369-B Instructions to Offerors Non-Construction

Attachment II – HUD Form 5370-C General Conditions for Non-Construction Contracts

Attachment III – Section 3 Economic Opportunities for Low and very Low-Income Persons

Attachment IV - 2 CRF 200 General Provisions, Required Contract Clauses

Attachment V – Required Certifications:

- HUD Form 5369-A Representations, Certifications, and Other Statements of Bidders
- HUD 2992 Limited Denial of Participation (LDP/Suspension or Debarment Status Certification)
- HUD 50071 Non-Collusive Affidavit
- Identity of Interest Disclosure Certificate
- Schedule of Addenda Certification for Contracts, Grants, Loans, and Cooperative Agreements Provisions

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.

(1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract 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 he 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 his 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 as 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."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40

U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the next subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. As such, FEMA requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.
- a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ I; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:
 - (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

- (2) The contract requires the approval of FEMA, regardless of amount.
 - (3) The contract is for federally-required audit services.
 - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or

attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.
2. If any funds other than 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 in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.”

11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:
- b. Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor

will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

Certification Regarding Debarment and Suspension

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant		Date
Signature of Authorized Certifying Official		Title

**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. 3/31/2020)

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 \$105,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

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

- 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.

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 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

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.

Certification of Payments to Influence Federal Transactions

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

Applicant Name

Program/Activity Receiving Federal Grant Funding

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official

Title

Signature

Date (mm/dd/yyyy)



Certification for Contracts, Grants, Loans, and Cooperative Agreements

CFR Part 18 - Certification of Regarding Lobbying, "Bryd Anti-Lobbying Amendment, 31 U.S.C. section 1352 (as amended)

The Undersigned certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

If any funds other than 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 in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

"The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date



Addendum Checklist

Solicitation: _____

Solicitation #: _____

Acknowledgment of Addenda and Responses to Written Questions Offeror/Bidder acknowledges having checked the SHA website, at [https/](https://) for all Addenda and responses to written questions through the end date of _____ Eastern Standard Time.

Noted addenda numbers are listed below with the date of receipt.

Addendum Number: _____ Date Received: _____

Addendum Number: _____ Date Received: _____

Addendum Number: _____ Date Received: _____

Addendum Number: _____ Date Received: _____

Addendum Number: _____ Date Received: _____

Addendum Number: _____ Date Received: _____

Firm Name (Please Print)

Signature

Printed or Typed Name

Date



Identity of Interest Disclosure Certificate

The undersigned hereby certifies that: (check one)

There has not been and is not now any identity of interest between seller, owner and/or general contractor on the one hand and any subcontractor, material supplier or equipment lessor on the other.

Attached to and made a part of this certification is a signed statement fully describing any identities of interest and separate cost certifications from any individual or entity having an identity of interest with the owner or general contractor. All amounts shown have been reduced to give effect to the amount(s) of any kickbacks, rebates, adjustments, discounts, or any other devices which had the effect of reducing the actual cost.

I am aware that this certification by me may be used to induce the U.S. Department of Housing and Urban Development to make Federal funds available for this project under the Housing Choice Neighborhood-New Construction Program, and that under Title 18 U.S. Code, Sections 1001 and 1010 it is a crime to knowingly make false statements to the United States on this matter and that penalties upon conviction can include a fine and imprisonment.

_____ by _____

(Owner)

(Date)

_____ by _____

(General Contractor)

(Date)



Section 3 Economic Opportunities for Low and very Low-Income Persons

This part establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 ([12 U.S.C. 1701u](#)) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

Contracting Clause.

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for contracting opportunities described in [paragraph \(1\)](#) of this section should be given to:

(i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and

(ii) YouthBuild programs.

This Low-income Resident Hiring Plan pertaining to the above noted contract is hereby formulated to meet the Agency's standards to ensure that employment and other economic opportunities are generated by the award of this contract, if feasible.

1.0 Low-income resident Hiring Goals. As a result of receiving award of this contract, our firm will need to hire additional employees and we hereby commit to the following number of Low-income Resident New Hires:

[Table No. 1]

(1)	(2)	(3)	(4)
	Total Number of Current Permanent Employees	Total Number of New Hires that will result from award of this contract	Goal: Total Number of Section 3 New Hires that the contractor anticipates will result from award of this contract
Classification			
Trainees			
Apprentices			
Journeypersons			
Laborers			
Supervisory			
Superintendent			
Professional			
Clerical			
Other:			

2.0 INTERVIEWING AND POTENTIAL HIRING OF AGENCY RESIDENTS. Our firm hereby agrees to, as a part of our new hire process for any open positions at any time during the period of time this contract is in effect, if our firm hires any new employees (for any position), we will:

- 2.1 Review the Agency's listing of resident(s) who have registered, thereby declaring his/her desire to interview and accept a job; and,
- 2.2 In the same manner that we do with other applicants, conduct an interview with such resident(s) who have claimed experience within a certain skill set or field and have expressed a desire to interview; and,
- 2.3 If, as a result of the interview and any applicable testing or checking that our firm conducts for all persons interviewing, the resident(s) qualifies for the position and passes all such testing (i.e., skills test; drug tests; credit checks; background check; etc.), we hereby agree to offer the position to the Agency resident.
- 2.4 Our firm hereby agrees that all Agency resident(s) will, during the interview process, be treated equal to and in the same manner as, any non-resident person who interviews with our firm.

