



New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

Ph 830-625-6909 ■ Fax 830-625-6915 ■ [www.nbhatx.us](http://www.nbhatx.us)

REQUEST FOR QUALIFICATIONS

FOR

DEVELOPMENT PARTNER

FOR

HOUSING AUTHORITY OF THE CITY OF NEW BRAUNFELS, TEXAS

RFQ# 2023 – 0001

# nbha

New Braunfels Housing Authority

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## Table of Contents

<b>I. INVITATION</b> .....	<b>3</b>
<b>II. PROFILE OF THE AUTHORITY</b> .....	<b>4</b>
<b>III. SCOPE OF WORK</b> .....	<b>5</b>
<b>DEVELOPER PARTNER ROLE</b> .....	<b>6</b>
<b>NBHA ROLE</b> .....	<b>8</b>
<b>NBHA WILL PLAY THE FOLLOWING ROLES IN THE DEVELOPMENT EFFORT:</b> .....	<b>8</b>
<b>IV. SUBMISSION REQUIREMENTS</b> .....	<b>11</b>
<b>V. EVALUATION CRITERIA</b> .....	<b>16</b>
<b>EXHIBIT A</b> .....	<b>18</b>
<b>LOCATION OF PROJECT</b> .....	<b>18</b>
<b>REPRESENTATIONS, CERTIFICATIONS, AND</b> .....	<b>24</b>
<b>OTHER STATEMENTS OF BIDDERS</b> .....	<b>24</b>
<b>PUBLIC AND INDIAN HOUSING PROGRAMS</b> .....	<b>24</b>
1. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION .....	25
2. CONTINGENT FEE REPRESENTATION AND AGREEMENT .....	25
4. ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATION.....	26
5. BIDDER'S CERTIFICATION OF ELIGIBILITY .....	26
6. MINIMUM BID ACCEPTANCE PERIOD.....	26
7. SMALL, MINORITY, WOMEN-OWNED BUSINESS CONCERN REPRESENTATION .....	27
8. INDIAN-OWNED ECONOMIC ENTERPRISE AND INDIAN.....	27
9. CERTIFICATION OF ELIGIBILITY UNDER THE DAVIS-BACON .....	27
10. CERTIFICATION OF NO SEGREGATED FACILITIES (APPLICABLE TO CONTRACTS EXCEEDING \$10,000) .....	27
NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NO SEGREGATED FACILITIES .....	28
13. BIDDER'S SIGNATURE .....	28
GENERAL CONDITIONS FOR NON-CONSTRUCTION U.S. DEPARTMENT OF HOUSING AND URBAN .....	1
GENERAL CONDITIONS FOR NON-CONSTRUCTION U.S. DEPARTMENT OF HOUSING AND URBAN .....	1
<b>EXCERPT FROM 41 CFR §60-1.4(B)</b> .....	<b>7</b>



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Ph 830-625-6909 ■ Fax 830-625-6915 ■ [www.nbhatx.us](http://www.nbhatx.us)

I. INVITATION

The Housing Authority of the City of New Braunfels (“NBHA”), Texas requests sealed proposals (RFQ #2023-0001) from qualified developers to partner with NBHA in redeveloping its Public Housing Portfolio into a mixed-income, mixed-use community. Potential partners who have developable land and/or existing mixed income housing projects that may be suitable for replacement housing and are interested in collaborating with NBHA are encouraged to respond.

Proposals in response to this Request for Qualifications must be received electronically via email at:

[icantu@nbhatx.us](mailto:icantu@nbhatx.us)

no later than 4:00 pm (CDT) on December 15, 2023. Submissions should be in MS Word or PDF format. Additionally, respondents will deliver a digital version on a USB drive via mail or hand delivery to:

New Braunfels Housing Authority  
300 Laurel Ln  
New Braunfels, TX 78130

Questions regarding the interpretation of this Request for Qualifications should be submitted via email no later than November 17, 2023, by 4 p.m. (CDT) to [icantu@nbhatx.us](mailto:icantu@nbhatx.us).

An optional non-mandatory pre-response conference via Zoom Conference November 10, 2023 @ 1:30 p.m. (CDT). If you would like a virtual meeting invite, please email [icantu@nbhatx.us](mailto:icantu@nbhatx.us) or the request.

No proposals shall be withdrawn for a period of 120 days subsequent to the opening of the proposals without the consent of NBHA.



## New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

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### II. PROFILE OF THE AUTHORITY

The Housing Authority of the City of New Braunfels d/b/a New Braunfels Housing Authority (“NBHA” or the “Authority”) is a public housing agency created by resolution of the City of New Braunfels in 1968 pursuant to the Texas Housing Authorities Law (now Chapter 392 of the Texas Local Government Code) and federal law. NBHA is a unit of government, and its functions are essential governmental functions. The property of NBHA is used for essential public and governmental purposes and is exempt from all taxes, including sales tax on all its purchases of supplies and services. NBHA enters into and executes contracts and other instruments that are necessary and convenient to the exercise of its powers. NBHA maintains contractual arrangements with United States Department of Housing and Urban Development (“HUD”) to manage and operate its low rent public housing program and administers the Section 8 Housing Assistance Payments Programs. NBHA programs are federally funded along with development and modernization grants and rental income. Its primary activity is the ownership and management of over 170 public housing units. It also administers rental assistance for almost 297 privately owned rental units through the Section 8 program. It operates and manages its housing developments to provide decent, safe, sanitary, and affordable housing to low-income families, the elderly, and the disabled, and implements various programs designed and funded by HUD.

NBHA consist of two (2) specific Public Housing Sites:

- 1) Laurel Plaza
  - Approximately 5-acre site consisting of 100 units of
  - Detached Community Center
  - SFF style Administrative office building
  - Housing offices attached to midrise 5 story dwelling units
  
- 2) Villa Serena
  - Approximately 14-acre site consisting of 35 duplex units, and community center;



## New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

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The governing body of the Authority is its Board of Commissioners (“Board”) and is comprised of five members appointed by the Mayor of the City of New Braunfels. The Board appoints an Executive Director (ED) to administer the affairs of the Authority.

### III. SCOPE OF WORK

NBHA seeks proposals from qualified, experienced, and capable real estate developers, with financial strength and resources, who have a demonstrated record of accomplishment in successfully developing/re-developing properties into sustainable mixed-income, mixed-use communities, that also provide programmatic and functional space for the needs of its residents to include a childcare center at one of the intended sites. The goal is to choose from the proposals received, a development firm that will partner with NBHA to redevelop the NBHA public housing community into a new mixed-income, mixed-use community at the locations identified in **Exhibit A** of this document.

For the public housing community listed in **Exhibit A**, NBHA is considering that the property will be demolished and that the units will be replaced using a variety of funding mechanisms including, but not limited to, Low Income Housing Tax Credits, New Market Tax Credits, Tax Increment Financing, Affordable Housing Bonds, FHA Insured Financing, conversion to the Rental Assistance Demonstration Program (“RAD”), private financing, etc.

NBHA expects that the public housing community will be redeveloped as a vibrant sustainable mixed-income, mixed-use community, with a variety of housing types and mixed-use opportunities integrated, where appropriate. NBHA is open to strategies that consider public housing replacement units in a variety of ways and encourages respondents to be creative in their approach.

If NBHA is approved for RAD or other subsidies in the redevelopment plan, there would be an opportunity to request RAD project-based vouchers and subsidy to be included in new developments. For example, replacement public housing could be built back on the original public housing site, built on newly acquired sites, or included in existing



## New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

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development deals that the responder brings to the transaction. All public housing replacement sites must meet HUD's Site and Neighborhood Standards.

### DEVELOPER PARTNER ROLE

The developer partner ("Developer") will be expected to work collaboratively with residents, NBHA, the City and other stakeholders throughout the planning and redevelopment process as follows:

- **Development Plan** - Develop a comprehensive redevelopment plan for the site. For sites with existing housing plans or plans currently under development, the developer partner will participate in the planning process and/or propose plan refinements for review and approval by NBHA. Developer is responsible for ensuring that the final redevelopment plan is financially viable and implementable, and identifying and/or providing for development offsite, if needed.
- **Development Team** - Developer will hire and oversee a qualified team to implement the plan, including architects, engineers, general contractors, relocation specialists and property managers; develop a construction strategy and implementation schedule; oversee the design, construction, and quality control of the development; design and construct all infrastructure and site improvements; provide regular reports to NBHA on the progress of the development efforts; work with NBHA and its legal team to create an ownership structure for the development which will include an affiliate of NBHA, which shall have options to acquire the developments at a specified date or period in the future. NBHA shall be a co-developer of the developments earning a developer fee commensurate with its services, equity and risk assumed.
- **Pre-Development** - Developer will be responsible for all predevelopment planning and tasks including environmental and geotechnical testing, analysis of the condition of existing utilities at the site, market and economic analyses,



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300 Laurel Ln, New Braunfels, TX 78130

Ph 830-625-6909 ■ Fax 830-625-6915 ■ [www.nbhatx.us](http://www.nbhatx.us)

entitlement plans and permits, environmental reviews and clearances, assisting with HUD's RAD Section 18 demolition/disposition approval process, relocation, and demolition and remediation. Developer must be able to fund pre-development activities.

- Financing - Developer will produce an overall financing plan by phase and by component that maximizes and leverages public and private resources; develop detailed development and operating budgets, which include the underwriting of relocation and supportive services costs; diligently pursue and use best efforts to secure financing; prepare funding applications; obtain equity investment using the competitive processes and commitments on the best terms available; provide all guarantees required for the successful financing of the project, including construction completion guarantees, operating deficit guarantees, tax credit adjuster or recapture guarantees and guarantees under a negotiated Master Development Agreement (MDA); and structuring reserve and other accounts that will reasonably guarantee the long-term operating feasibility of the replacement units, including guaranteeing for quality construction and long-term maintenance against significant deterioration of the property beyond reasonable wear and tear over its lifetime, and the right to purchase the site after 15-year tax credit obligation is exhausted.
- Submissions and Requirements - Developer will assist NBHA to prepare and submit development proposals and documents for HUD review and approval; comply with all applicable federal and local laws, regulations, ordinances, and local building codes; obtain all required land use approvals including building permits and zoning approvals; adhere to RAD and other program requirements for replacement housing, if any.



## New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

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### NBHA ROLE

NBHA will play the following roles in the development effort:

- Land ownership - NBHA owns the land parcels included in this RFQ and expect to retain ownership. NBHA will enter into a long-term ground lease with the selected entity, subject to HUD approval. Land that is newly acquired for the project will be subject to negotiation depending on the highest and best use.
- Financing - NBHA will participate in all financial structuring decisions, including review and approval of financial arrangements and terms and conditions of any loan documents. Should bonds be issued as a part of the financing structure, Developer shall provide NBHA with the best strategy for bond issuance.
- Design Review/Construction Monitoring and Approval - All designs are subject to NBHA's review and approval. Design review may also be subject to HUD review. Design and construction must be of a high quality and should guarantee against significant deterioration of the property beyond reasonable wear and tear over its lifetime. NBHA will also monitor construction and will have the right to review and approve construction documents. The cost for a project manager shall be underwritten into the development budget.
- HUD Contact - NBHA will coordinate all communications with HUD. NBHA will have responsibility for submission of program documents and will secure HUD approvals including, but not limited to, demolition/disposition, RAD approval, development proposal and related evidentiary documents, acquisition proposals, and relocation plan. Developer will assist in the preparation of these documents.
- Operating Subsidy - NBHA may make certain financial contributions toward the cost of operating the public housing replacement units, subject to HUD approval. The nature of the subsidy will be determined based on the final program approved by NBHA to include ACC and or PBV Funding. NBHA will not provide any subsidy amount greater than what it receives from HUD, less any amount retained by NBHA for monitoring and asset management responsibilities. The developer partner is





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Ph 830-625-6909 ■ Fax 830-625-6915 ■ [www.nbhatx.us](http://www.nbhatx.us)

responsible for knowing fully HUD restrictions that may apply and understanding how they may affect the development.

- Relocation - The developer partner will work with NBHA to develop a suitable relocation strategy that ensures responsible relocation of existing families and the NBHA office(s), consistent with the Uniform Relocation Act and any other requirements for relocation.
- Asset Manager and Regulatory Oversight - NBHA will continue to have regulatory responsibility for all subsidized units and other units in which NBHA or any other affiliates have an ownership interest. NBHA will monitor and enforce the terms of its agreements with the developer partner and NBHA will provide regulatory oversight for all units financed with NBHA or public funds.
- Property Management & Maintenance - NBHA or an entity mutually chosen by NBHA, and the Developer shall be the property Management & Maintenance of the redeveloped or newly constructed beginning with lease up.

**RESPONDENTS MUST ADHERE TO THE FOLLOWING OBJECTIVES:**

1. Develop a comprehensive housing plan than ensures that all existing affordable units are replaced on site or in other sustainable, healthy, vibrant locations. The finished project should be of high-quality design and construction that guarantees against significant deterioration of the property beyond reasonable wear and tear over its lifetime.
2. Explore a multi-faceted approach to create a vibrant, sustainable, mixed-income and mixed-use neighborhood. NBHA expects that the final plan will accommodate a diversity of housing and family types, community amenities, services, programming and sustainable site improvements and landscaping. The plan should include a mix of market rate and affordable housing units, subject to market demand, and reflect the desires and needs of families.



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3. Develop and include an appropriately sized and equipped facility space to provide quality day care services to children between the ages of birth to at least 5 years 12 months of the residents of the NBHA's Public Housing and HCV Programs. The number of children the facility will accommodate should be commensurate with the number of units provided with redevelopment of the Villa Serena site. The design of the childcare center will allow it to meet standards of the State of Texas and appropriate regulatory authorities for childcare and educational facilities. An operator has yet to be identified.
4. Establish an accessible, pedestrian-oriented environment that can serve as a model of effective accessibility through quality streetscape, open space, and design.
5. Promote community interconnectivity between residents of the community. The redevelopment should be integrated into the fabric of the surrounding area and the site plan design and layout should encourage integration within the site itself. For example, the design of community spaces should encourage multi-generational uses and diversity of options.
6. Feature high quality, context sensitive architectural design that is respectful to the surrounding neighborhood. The selected partner will be expected to utilize design principles that are compatible with the neighborhood and community surrounding the site(s) and create designs that are appealing and architecturally attractive.
7. Develop a creative and viable financial plan that does not rely principally on NBHA funding.
8. Facilitate a process that ensures public engagement of impacted residents, community members, the City, the County, public agencies and institutions, businesses, and other key stakeholders in the planning and implementation.



New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

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IV. SUBMISSION REQUIREMENTS

All respondents shall submit one (1) digital copy with dividing tabs and an electronic version saved to (2) flash drives of their proposals. Proposals must contain the following information:

1. Cover Sheet
2. Letter of interest, including an executive summary of the respondent's proposal
3. Company resume, including resumes of firms and persons that will perform the Scope of Work
4. Discussion of the knowledge and experience of the firm and key personnel who will be performing all facets of the work that is the same as, or substantially similar to, what is required in the Scope of Work
5. Detailed work plan for the Scope of Work. This section should include the following:
  - Responder should specify interest in the site, including the development approach, a narrative concept of what you might propose to develop (preliminarily) and how you will go about it. Note that the narrative concept must have sufficient detail for NBHA to evaluate preliminary program and planned uses; phasing of relocation, demolition, and construction; financing approach and timing; design and unit features; income mix and marketing.
  - Existing projects that responder is engaged in that may be relevant as potential replacement housing or subsidy transfer sites.
  - Proposed business terms which should include, but be not limited to, all fees for development services and timing; methodology for operating subsidy and type; distribution of net operating income; treatment of available land; any role of NBHA, if different from role as articulated in this solicitation.



## New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

Ph 830-625-6909 ■ Fax 830-625-6915 ■ [www.nbhatx.us](http://www.nbhatx.us)

- Approach to engaging residents and the community. Include a description of approach and methodology to engage residents and the community.
  - Section 3 and M/WBE plan and compliance. Include a detailed plan of how the responder will meet or exceed Section 3 requirements. Include a discussion of the approach and methods the team will use to ensure strong participation by Section 3, women and minority-owned businesses.
  - Three (3) references that can attest to the capabilities of the firm and the key personnel to perform the Scope of Work for those projects.
6. Financial Capability: Provide the past three years audited financial statements and a current financial statement. The responder must also indicate financial capacity to complete development projects and demonstrate an ability to secure financing for the project; provide required construction completion and operations guarantees to funders and investors.

### **Insurance Requirements (For Information Only)**

Once a respondent receives an award, or unless otherwise waived in the contract, the selected respondent will be required to provide and maintain the following Insurance requirements:

- All insurance must be written with an insurance company authorized to do business in the state in which the project is located and shall be placed with insurers with an A.M. Best rating of A-VIII or better.
- Commercial General Liability insurance is required for any vendor who will be doing hands on work at NBHA properties. NBHA and its affiliates must be named as an Additional Insured and as the Certificate Holder.
  - \$1 million Each Occurrence
  - \$1 million Personal and Advertising Injury
  - \$2 million General
  - \$4 million Products-Completed Operations Limit
  - Contractor must disclose to NBHA any endorsements that limit or exclude coverage customarily provided. NBHA reserves the right, prior to acceptance of the developer's response, to either require additional types

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## New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

Ph 830-625-6909 ■ Fax 830-625-6915 ■ www.nbhatx.us

- of liability coverage or require greater limits based on the nature of the operations being performed.
- The insurers will provide to NBHA on a primary basis and agree not to seek contribution from NBHA's insurance. Insurers also agree to waive right of subrogation against and NBHA.
- Commercial General Liability insurance will remain in force with annual policy periods for the period of the statute of repose applicable to the project.
- Automobile Liability
  - NBHA and its affiliates must be named as an additional insured and as the certificate holder. This is required for any vendor that will be using their vehicle to do work on NBHA properties.
  - \$1 million – Any One Accident – Combined Single Limit
    - NBHA reserves the right, prior to acceptance of the respondent's response, to require greater limits based on the nature of the operations being performed.
    - Workers' compensation and employers' liability policy:  
Workers' Compensation coverage is Statutory and has no pre-set limits. Employer's Liability limit is \$500,000. Workers' Compensation is required for any vendor made up of more than two persons. A Waiver of Subrogation in favor of NBHA must be included in the Workers' Compensation policy. NBHA and its affiliates must be a Certificate Holder.
    - NBHA reserve the right, prior to acceptance of the respondent's response, to either require additional types of workers' compensation or employers' liability coverage or require greater employers' liability limits based on the nature of the operations being performed.
- Professional Liability
  - NBHA and its affiliates must be named as a Certificate Holder. This is required for vendors who render observational services to NBHA such as appraisers, inspectors, attorneys, engineers or consultants - \$1,000,000.
- Umbrella or Excess Liability



## New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

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- In addition, Developer shall provide umbrella or excess liability insurance providing in excess of the underlying Commercial General Liability, Business Auto Liability and Employers' Liability insurance above, with the following minimum limits:
    - \$5 million – Each Occurrence
    - \$5 million – Annual Aggregate (where applicable in the underlying)
  - Such umbrella or excess liability policy shall provide substantially the same coverage as the underlying Commercial General Liability (including NBHA as additional insured), Business Automobile Liability or Employers' Liability insurance and shall expressly provide that the umbrella or excess policy will drop down over a reduced or exhausted aggregate limit of the underlying insurance. The umbrella or excess policy shall also be primary insurance to NBHA (including primary insurance to NBHA's own Commercial General Liability and Umbrella policies) and the developers umbrella insurer agrees not to seek contribution from NBHA's insurance.
  - NBHA and its affiliates must be named as an Additional Insured and as a Certificate Holder.
  - NBHA reserves the right, prior to the acceptance of the developer's response, to require greater limits based on the nature of the operations being performed.
- Any general contractors, subcontractors and others engaged by the developer shall comply with all the above requirements.

NBHA reserves the right to amend the Scope of Work or any part of this Request for Qualifications prior to or after the submission deadline. If so, prior to the submission deadline, NBHA shall issue a written addendum to all those prospective respondents who were issued a copy of this Request for Qualifications. If necessary, based on the nature and extent of the addendum, NBHA may extend the deadline.

If an amendment is made after the submission deadline, NBHA shall issue a written amendment to all those who submitted a proposal, and, if necessary, provide a date for



New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

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submitting additional information based on the amendment. Absent an amendment by NBHA and minor omissions mentioned below, no modification to a respondent's submission shall be accepted after the submission deadline.

All proposals will become the property of NBHA. NBHA reserves the right, in its sole discretion, to cancel this Request for Qualifications, reject any or all proposals, either in whole or in part, with or without cause, and waive any informality in this Request for Qualifications process. Final awards will be subject to available funds.

NBHA considers as NON-RESPONSIVE any response for which critical information is lacking or whose submission represents a substantial deviation from the requirements of this Request for Qualifications.

Any contact during the procurement process between the respondent and the Board of Commissioners, evaluation panel, or NBHA employees, regarding this Request for Qualifications, is disallowed, except as stated above.

The procured respondent will not be considered an NBHA employee. NBHA assumes a respondent's proposal of certain personnel to be a statement regarding respondent's personnel and their availability to do the work.

All costs incurred by the respondent in preparing its response proposal are to be borne by the respondent.



New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

Ph 830-625-6909 ■ Fax 830-625-6915 ■ www.nbhatx.us

V. EVALUATION CRITERIA

All proposals received will be reviewed and evaluated by an Evaluation Panel assigned by the NBHA Executive Director. Proposals will be considered in terms of the evaluation criteria indicated in the table below. Proposals will be scored against these criteria and a rank ordered list will be generated to identify the highest scoring proposers. NBHA may choose to conduct interviews before selecting a developer. NBHA retains its right to select solely based on the written proposals and references. Consequently, respondents are encouraged to make the proposals as comprehensive as possible. Some or all respondents may be invited to interview and to present the proposals in more detail and to answer any questions the Evaluation Panel may have.

Knowledge and Experience	Knowledge and experience of the respondent’s key personnel who will be performing the work that is the same as, or substantially similar to, what is required in the Scope of Work.	50
Detailed Work Plan	Development approach; preliminary concept; relocation; demolition and construction; financing approach and timing; design and unit features; income mixing and marketing.  Proposed business terms, including, but not limited to, all fees for development, services, and timing; methodology for operating subsidy and type; distribution of net operating income; plan to deliver high quality construction as described above; treatment of available land; any role of NBHA, if different from role articulated in this solicitation.  Approach and methodology to engage residents and the community  Approach and methodology to ensure strong participation by Section 3 and M/WBE plan and compliance.  Attestations of reference as to your capabilities to perform the scope of work.	25





New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

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Financial Capacity	Firm's documented financial stability and the ability to obtain financial commitments from other state and local agencies, private investors, and banks. A proven track record of a creative and viable financial plan that does not rely principally on NBHA funding.	25
	<b>Written Response Points</b>	<b>100</b>
Interview	A list of questions will be provided prior to the interviews	25
	<b>Total Points</b>	<b>125</b>

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New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

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## ***Exhibit A.***

Location of Project<sup>1</sup>

Site	Location	Acreage	# Units	Occupancy Status
Laurel Lane Apartments	300 Laurel Ln, New Braunfels, TX 78130	+/- 5.058	100, 60std. 40 1br	Occupied
Villa Serena Duplexes	109 Rosa Parks Dr, New Braunfels, TX 78130	+/- 13.506	70, 30- 2bd 36 -3bd 4 -4bd	Occupied

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<sup>1</sup> All measurements should be verified.

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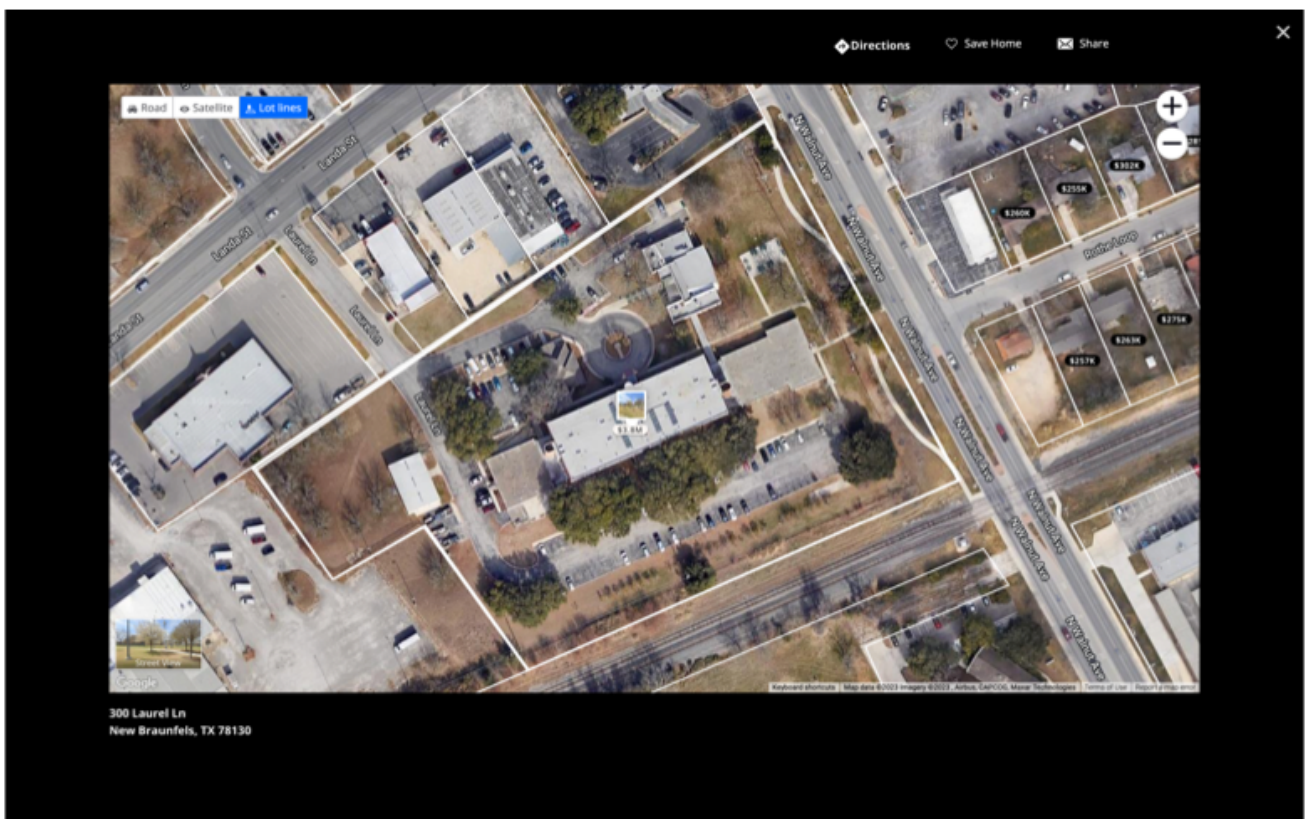
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## Google Site Location

- 300 Laurel Lane, New Braunfels, TX 78130



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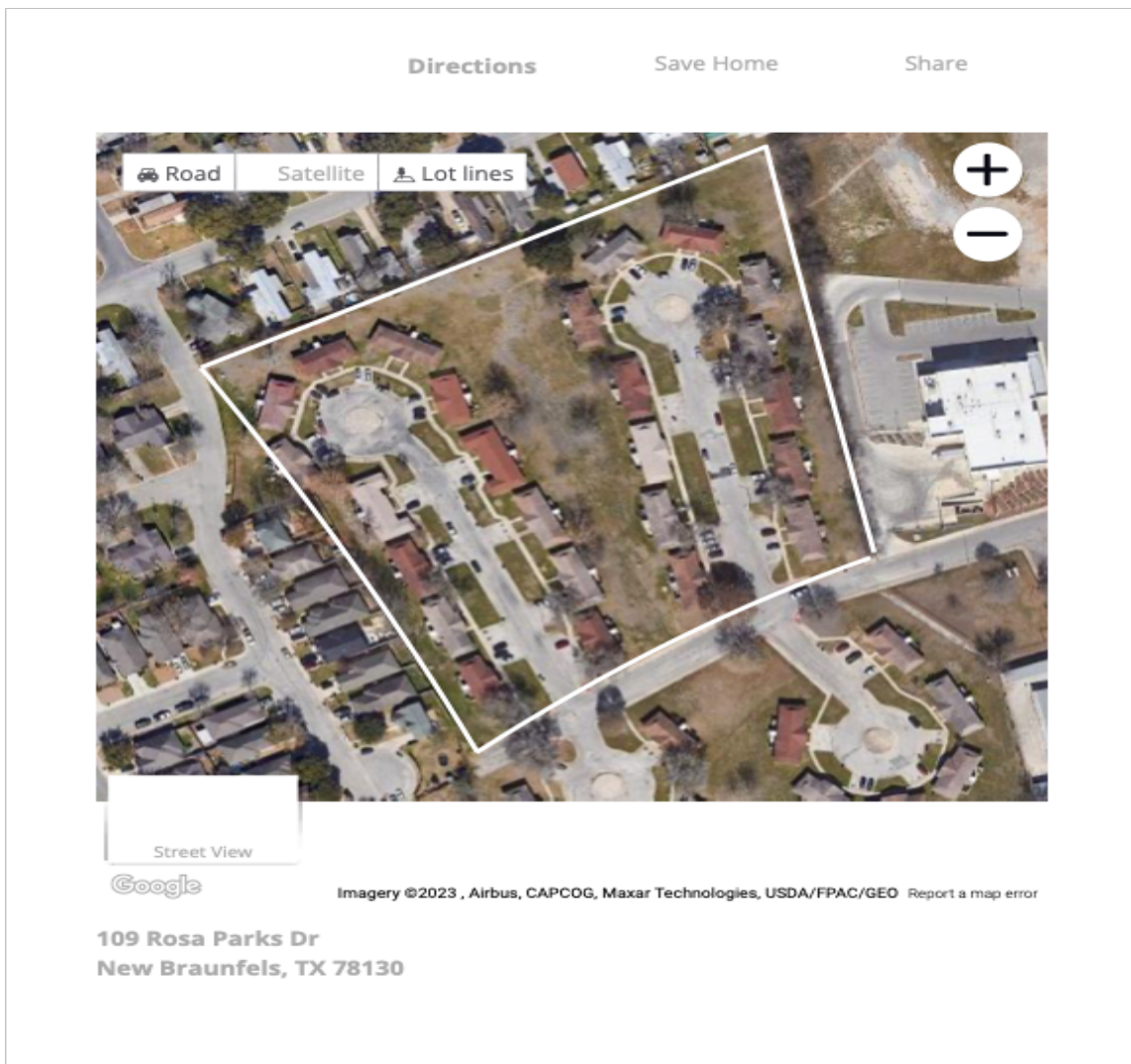
Ph 830-625-6909 ■ Fax 830-625-6915 ■ [www.nbhatx.us](http://www.nbhatx.us)

## Google Site Location

- Villa Serena – 109 Rosa Parks Dr, New Braunfels TX 78130

109 Rosa Parks Dr, New Braunfels, TX 78130 | Zillow

10/2/23, 1:53 PM



[https://www.zillow.com/homes/109-Rosa-Parks-Dr-New-Braunfels,-TX-78130\\_rb/250722930\\_zpid/](https://www.zillow.com/homes/109-Rosa-Parks-Dr-New-Braunfels,-TX-78130_rb/250722930_zpid/)

Page 1 of 9



New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

Ph 830-625-6909 ■ Fax 830-625-6915 ■ www.nbhatx.us

NON-COLLUSIVE AFFIDAVIT

State of \_\_\_\_\_

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

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

He/She \_\_\_\_\_

(Partner or Officer of the Firm of, etc.)

is the party making the foregoing proposal/bid, that such proposal or bid is genuine and not collusive or sham; that said proposer/bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any other proposer/bidder or person, to put in a sham proposal/bid or to refrain from proposing/ bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to affix the proposal/bid price of affiant or of any other proposal/bidder, or to fix any overhead, profit or cost element of said proposal/bid price, or of that of any other proposer/bidder, or to secure any advantage against the Housing Authority of the City of New Braunfels or any person interested in the proposed contract; and that all statements in said proposal/bid are true.

Signature of: \_\_\_\_\_

Name of Proposer/Bidder if Bidder is an Individual

\_\_\_\_\_  
Name of Partner if Proposer/Bidder is a Partnership



New Braunfels Housing Authority

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Name of Officer if Proposer/Bidder is a Corporation

State of \_\_\_\_\_

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

Subscribed and sworn to before me \_\_\_\_\_ this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

My commission expires \_\_\_\_\_ 20\_\_\_\_\_.



New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

Ph 830-625-6909 ■ Fax 830-625-6915 ■ www.nbhatx.us

Hold Harmless Agreement

The Contractor/Vendor/Professional Service shall indemnify and hold harmless the Housing Authority of the City of New Braunfels (NBHA) and its Board, employees, agents and representatives from and against all claims for personal injury or property damage, including claims against the Housing Authority, its Board, employees, agents and representatives, and all losses and expenses, including reasonable attorney’s fees that may be incurred by NBHA defending such claims, arising out of or resulting from the performance of the work to the extent in part by any negligent act or omission of the Contractor/Vendor/Professional Service, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and not to the extent it is caused in part by any party indemnified hereunder. In any and all claims against NBHA or any of its Board, employees, agents and representatives by an employee of a Contractor/Vendor/Professional Service, any Subcontractor, anyone directly or indirectly employed by any of them for whose acts any of them are liable the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor/Vendor/Professional Service or Subcontractor under Workers’ Compensation Acts, Disability Acts, or their Employee Benefit Act.

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

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

Street Address:

\_\_\_\_\_

City, State, & Zip Code:

\_\_\_\_\_

# nbha

New Braunfels Housing Authority

300 Laurel Ln, New Braunfels, TX 78130

Ph 830-625-6909 ■ Fax 830-625-6915 ■ [www.nbhatx.us](http://www.nbhatx.us)

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

## Table of Contents

Clause	Page
1. Certificate of Independent Price Determination	1
2. Contingent Fee Representation and Agreement	1
3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	1
4. Organizational Conflicts of Interest Certification	2
5. Bidder's Certification of Eligibility	2
6. Minimum Bid Acceptance Period	2
7. Small, Minority, Women-Owned Business Concern Representation	2
8. Indian-Owned Economic Enterprise and Indian Organization Representation	2
9. Certification of Eligibility Under the Davis-Bacon Act	3
10. Certification of No Segregated Facilities	3
11. Clean Air and Water Certification	3
12. Previous Participation Certificate	3
13. Bidder's Signature	3

### 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 (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 determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to (ii) As an authorized agent, does certify that the principal's contracts exceeding \$100,000) named in subdivision (b)(2)(i) above have not participated, and will

(a) The definitions and prohibitions contained in Section 1352 of not participate, in any action contrary to subparagraphs (a)(1) title 31, United States Code, are hereby incorporated by reference through (a)(3) above; and in paragraph (b) of this certification.

other remedy pursuant to the contract.

(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 No Segregated 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 No segregated Facilities

A Certification of No segregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

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

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

The bidder certifies that:

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

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

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

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

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

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

13. Bidder's Signature

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

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

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

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

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

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

# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The HA may

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

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

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

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

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

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

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

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

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

[Describe bid or proposal preparation instructions here:]

# General Conditions for Non-Construction

## Contracts

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

U.S. Department of Housing and Urban

Development

Office of Public and Indian Housing

Office of Labor Relations

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

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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.

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

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

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

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

**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 thereof 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

form HUD-5370-C (10/2006)

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.

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



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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**

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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.

# General Conditions for Non-Construction

U.S. Department of Housing and Urban

Development

Office of Public and Indian Housing

Office of Labor Relations

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

## Contracts

### Section II – (With Maintenance Work)

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-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

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

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Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

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#### 1. Minimum Wages

(a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its

- subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
- (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
  - (2) The classification is utilized in the area by the industry; and
  - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

#### 2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on

account of the Contractor or subcontractor to the respective employees to whom they are due.

### 3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
- (i) Name, address and Social Security Number;
  - (ii) Correct work classification or classifications;
  - (iii) Hourly rate or rates of monetary wages paid; (iv) Rate or rates of any fringe benefits provided;
  - (v) Number of daily and weekly hours worked;
  - (vi) Gross wages earned;
  - (vii) Any deductions made; and (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

### 4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
- (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of  
  
form HUD-5370-C (10/2006)  
  
Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;
  - (ii) A trainee program which has received prior approval, evidenced by formal certification by the

- U.S. Department of Labor, ETA; or
  - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

### 5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
- (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

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forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

(ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.

(iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

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 the 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 provisions set forth in paragraph (a) of this clause, 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 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld,

(b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

## 6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

(a) 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 40 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 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

form HUD-5370-C (10/2006)



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from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any 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 provisions set forth in paragraph (b) of this clause.

**7. Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

**8. Non-Federal Prevailing Wage Rates**

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

form HUD-5370-C (10/2006)

# Certification for a Drug-Free Workplace

U.S. Department of Housing  
and Urban Development

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Applicant Name

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Program/Activity Receiving Federal Grant Funding

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Acting on behalf of the above-named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above-named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the un-lawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1)The dangers of drug abuse in the workplace;

(2)The Applicant's policy of maintaining a drug-free workplace;

(3)Any available drug counseling, rehabilitation, and employee assistance programs; and

(4)The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by para-graph a. that, as a condition of employment under the grant, the employee will ---

Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

(1)Abide by the terms of the statement; and

(2)Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction; e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

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2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here  if there are workplaces on file that are not identified on the attached sheets.

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)

## Equal Employment Opportunity Certification

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

Department of Veterans Affairs and Urban  
OMB Control No. 2502-0029  
(exp. 9/30/2016)

Name of Authorized Official

Title

Signature

Date

X

form HUD-50070 (3/98)  
ref. Handbooks 7417.1, 7475.13, 7485.1 & .3

### Excerpt From 41 CFR §60-1.4(b)

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

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

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

state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction

contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to

administering agency in the discharge of the agency's primary responsibility for securing compliance.

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

Firm Name and Address

By

Title

form HUD-92010 (3/2006)

VA form 26-421

section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

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

200.410 Definition of term "applicant".

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

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

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

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

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

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

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

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

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

(6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in

Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

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

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

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

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

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

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

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

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

(5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not

reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial

supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.