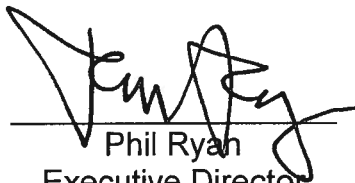


**REQUEST FOR QUALIFICATIONS
A/E INDEFINITE DELIVERY CONTRACT PROGRAM**

REQUEST FOR QUALIFICATIONS

The Metropolitan Development and Housing Agency (MDHA) is soliciting Qualification Based Proposals, from qualified firms to provide Architectural and Engineering services under our Indefinite Delivery Contract Program for a two (2) year period. Requests for Qualifications may be picked up between 7:30 A.M. and 4:00 P.M. daily, Monday through Friday at the Metropolitan Development and Housing Agency's Construction Department, 712 South Sixth Street, Nashville, Tennessee. A Pre-Proposal Conference will be held **November 17, 2009** in the MDHA Cafeteria, located at 701 South Sixth Street, at 2:00 P.M. Proposals will be received until 4:00 P.M. on **December 3, 2009** at the MDHA Construction Department Office. The criteria for evaluating these Proposals will be based on the items set forth in the Request for Qualifications. An award will be made to the most responsive and responsible proposers, which in the judgment of MDHA, best meets the current needs and long term goals of MDHA. Additionally, other requirements or restraints that may be imposed by the U.S. Department of Housing and Urban Development will be weighed in the decision. The MDHA reserves the right to reject any Qualifications and/or waive any informalities in the solicitation process.

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY



Phil Ryan
Executive Director

Date: November 9, 2009

**REQUEST FOR QUALIFICATIONS
A/E INDEFINITE DELIVERY CONTRACT PROGRAM**

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FORM HUD 5369B INSTRUCTION TO OFFERORS

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FORM HUD 5370C GENERAL CONTRACT CONDITIONS NON-CONSTRUCTION

**REQUEST FOR QUALIFICATIONS
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1.0 GENERAL SCOPE OF WORK & INTRODUCTION

The Metropolitan Development and Housing Agency (MDHA) is soliciting Qualification Based Proposals from qualified firms to provide architectural and engineering services under our Indefinite Delivery contract program for a two (2) year period with a fee amount of not to exceed \$500,000 annually. Multiple firms may be selected to provide these services on an as-needed basis. It is MDHA's intent to utilize these firms on projects that are "small" in scope and that will not require a fee in excess of \$75,000 per project.

2.0 SCOPE OF WORK

2.1 OBJECTIVE

A. MDHA intends to use the services of the consultants on an undetermined number of projects to be designated by MDHA during the term of this agreement. Services to be provided include but are not limited to the following:

1. Preparation of concept designs.
2. Preparation of construction documents including any/all drawings, specifications and details necessary for contract bidding purposes.
3. Preparation of construction cost estimates.
4. Review of studies, evaluations, reports and construction documents for completeness, technical adequacy and optimum construction feasibility and economy.
5. Assistance in the bid process.
6. Review of shop drawings, catalog cuts or other construction contractor submittals for approval or recommendation for any other appropriate action.
7. Provide construction-monitoring services.

B. The consultant shall be experienced in all facets of design of new construction and renovation of residential and commercial buildings, roads, site development and utilities (water, sewer, storm drain, steam gas, electric, telephone and communication). Experience with sustainable design regarding energy and water is required. The firm's team shall be comprised of Architects, Engineers, Landscape Architects and appropriate subconsultants (i.e. surveyors, lead-based paint and asbestos abatement, etc.), registered and/or licensed to do work in the State of Tennessee.

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- C. The consultant may either provide the above disciplines in his/her firm, or through joint ventures or agreements with other firms. In developing a team, proposers are required to adhere to MDHA's Diversity Business Enterprise Program. MDHA is committed to providing greater economic opportunities to minority, women and small businesses.
- D. It will be incumbent upon the firm to insure that all services are performed using prudent architectural and engineering practices in accordance with the latest codes and regulations and any other applicable design standards.

2.2 IMPLEMENTATION

It is imperative for MDHA that the consultant services begin expeditiously upon execution of the contract.

2.3 ACCEPTANCE OF WORK

- A. Work will normally be allocated to each firm chosen on a rotation basis except:
 - 1. When consultant's prior work commitments prevent the firm from meeting MDHA's schedule.
 - 2. When one consultant has unique expertise, which would make it more qualified to perform a particular task.
 - 3. When costs or other factors make the award to a particular firm in the best interest of MDHA.
- B. MDHA will hold conferences to outline the required services for each individual work effort to be assigned to the Consultant. The Consultant will, within a reasonable time (but not in excess of five business days) following each conference, provide a written proposal which shall include a description of the services to be provided; proposed time for completion; personnel to be employed on the assignment; and a schedule of each employee's rate reflecting base salary cost, overhead, and profit. Price shall be based on the accepted hourly rate multiplied by the Consultant's proposed number of hours for each appropriate category or discipline plus any approved costs.

When agreement has been reached on the services to be performed, period of performance and total price, a Notice to Proceed shall be executed authorizing the Consultant to begin.

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- C. On each project the Consultant shall propose a firm fixed price with the understanding that the Consultant shall perform all tasks and work necessary and incidental to bring the work to the appropriate level of competition as mutually agreed upon.
- D. The Consultant shall employ the proposed staff to provide the services required in the professional quality and timeliness agreed upon. Only subconsultants listed in the submittal may be employed in this work. Substitutes may only be used with the prior notice and written approval of MDHA.
- E. MDHA and the Consultant will mutually agree upon the work schedule for each project. The failure of the Consultant to satisfactorily complete work assignments within the time specified on a single work assignment wherein MDHA has given notice that the completion date is critical may be cause for termination.
- F. All documents that are prepared by the Consultant and form a part of his/her services shall, upon completion, become the property of MDHA. The Consultant shall be responsible for the protection and/or replacement of any contract document in his/her possession. MDHA shall receive all original drawings and the Consultant shall retain reproducible copies.
- G. MDHA shall furnish information, data, reports and maps as are existing and identified by the Consultant, which may be for the carrying out of the work. MDHA shall cooperate with the Consultant in every way possible, providing, their needs are made known.
- H. MDHA will not provide clerical assistance to the Consultant and MDHA personnel will not be asked to undertake surveys, analyses, tabulations, summaries, etc., for Consultant produced data or documentation.
- I. MDHA may conduct reviews and provide comments on drawings and specifications at the normal event times, i.e., schematics, design development, fifty percent (50%) construction documents, ninety-five percent (95%) construction documents, one hundred percent (100%) construction documents. Three sets of each shall be provided at normal intervals for review purposes. Review points will be established with each task assigned.
- J. Any work assignment in which it is necessary to obtain site surveys, soil borings and soil reports will be undertaken by the Consultant.
- K. The Consultant will deliver to MDHA the original of the drawings, plans and specifications.

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- L. MDHA's acceptance of required designs, etc., shall not relieve the Consultant from the obligation to correct any defective work, whether previously or subsequently noted, and all incomplete, inaccurate or defective work shall be remedied by the Consultant on demand and at no cost to MDHA. Defective work may be defined but not limited to such matters as erroneous tabulations, incomplete surveys, maps or reports and incorrectly assembled reports, plans, specifications, etc., which is caused by error or omission after the final delivery by the Consultant.

3.0 PROPOSAL FORMAT AND EVALUATION CRITERIA

- 3.1** An original and **five (5)** copies of the Proposal must be submitted in a sealed envelope and addressed to:

Harold Haynes, Director of Construction
Metropolitan Development and Housing Agency
712 South Sixth Street
Nashville, Tennessee 37206

The Original submittal is to be marked on the outside of the proposal "Original".

- 3.2** The submittal shall be arranged in the following format and sequence and will be evaluated using the factors and assigned values listed below:

A. Letter of Interest – The letter should identify the proposer's interest in the project, authorized negotiator, all members of the proposed team as well as relationships among them, description of the organization and include Attachment A with additional information regarding the firms background.

B. Experience (35%)

The proposals shall indicate proposer's recent relevant experience. Specifics should be given to demonstrate successful performance on those contracts. If sub-consultants or a joint-venture is proposed, indicate past working relationships.

C. Specialized Expertise of Team Members (25%)

The proposal shall list individuals with one-page resumes who will be used on the contract and their experience with HUD projects. This includes sub-consultants to be used as well. The proposal shall also include success in providing economic opportunities to minority, women and small businesses. Proposers are to submit Form 2001 to indicate efforts to contact DBE subconsultants for teaming purposes. Form 2002 is to be submitted to indicate if submitting as a Joint Venture with a DBE firm. Form 2003 is to be submitted to indicate DBE firms that will be a part of the proposed team. Forms are located

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in Attachment G. Any significant change from the proposed list of team members that is not acceptable to MDHA can be grounds for termination of the contract.

D. ORGANIZATIONAL CAPACITY (25%)

The Proposal shall indicate the availability of the proposers' team members to complete projects in a timely and efficient manner. Provide a list of recent projects and indicate how timely they were completed and were they within the owners budget, and if not, why.

E. HUD SECTION 3 REQUIREMENTS (15%)

The proposal shall indicate a plan to provide opportunities for employment and training for lower income residents within each project area tasked, and a separate plan to award subcontracts for work in connection with the project to business concerns which are located, or owned in substantial part, by persons residing in the area of the project, as described in HUD Regulations 24 CFR 135. Proposers submitting as a Business Claiming Status as a Section 3 Business are to complete HUD Section 3 Worksheet and the Section 3 Business Concern Affidavit located in Attachment H with all documentation required. All proposers are to include in this section the Bidder Certification and Compliance Agreement also located in Attachment H. A current list of Section 3 Businesses certified through the MDHA is located on the last page of the DBE Directory in Attachment G.

F. Form HUD 5369C

G. Attachments

3.3 Any proposal may be withdrawn prior to award of the contract(s).

3.4 MDHA reserves the right:

- A.** To waive informalities required herein;
- B.** To request additional information;
- C.** To supplement, amend or otherwise modify the terms or schedules set forth herein;
- D.** To conduct all investigations and background checks necessary for adequate evaluation.

4.0 COST INCURRED IN RESPONDING

4.1 All costs directly or indirectly related to preparation of a response to the Request For Qualifications or any oral presentation required to

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supplement and/or clarify the submittal which may be required by MDHA shall be the sole responsibility of and shall be borne by Offeror(s).

- 4.2** Each firm by submitting its proposal waives any claim for liability against MDHA as to loss, injury and costs or expenses, which may be incurred as a consequence of its response to this document.

5.0 INQUIRIES

- 5.1** Questions submitted in writing on Offeror's letterhead and properly signed will be accepted until **November 20, 2009 at 4:00 P.M.** Responses to written inquiries will be mailed or faxed to Offerors. Direct all questions to:

Harold Haynes, Director of Construction
Metropolitan Development and Housing Agency
712 South Sixth Street
Nashville, TN 37206
FAX: (615) 252-6733

5.2 PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will be held **November 17, 2009 at 2:00 P.M.** in the MDHA Cafeteria, located at 701 South Sixth Street, Nashville, Tennessee 37206.

6.0 SUBMISSION DEADLINE

The proposal submission deadline is **December 3, 2009** no later than **4:00 P.M.** to the MDHA Construction Department Office, located at 712 South Sixth Street Nashville, Tennessee 37206.

7.0 REJECTION

- 7.1** MDHA reserves the right to reject any and all submittals and/or to waive any informality in the solicitation process or parts thereof and to re-solicit.
- 7.2** MDHA does not guarantee that a contract will be awarded as a result of this Request for Qualifications.

8.0 CONTRACT COMPLIANCE STATEMENT

- 8.1** The proposer shall state his/her compliance with all applicable rules and regulations of Federal, State and Local governing entities and that they are not excluded from Federal procurement programs. Proposer must state his compliance with terms of this Request for Qualifications (see attachments).
- 8.2** The proposer must demonstrate that the proposal meets **all** applicable rules, regulations, zoning, permitting, registration and licensing requirements, whether Local, State or Federal. It is the responsibility of the potential Consultant to determine the applicability of any rule, regulation or other requirement.

9.0 TERMS AND CONDITIONS

The following shall be essential terms and conditions of this agreement:

- A. TERMINATION.** The MDHA shall have the right to terminate the Agreement at any time.

In the event the Consultant fails to comply with any provision of this Agreement, or if the progress or quality of the work is unsatisfactory, the MDHA may serve written notice upon the Consultant and if the Consultant fails within a period of ten (10) days thereafter to correct failure, MDHA may terminate the Agreement upon written notice to the Consultant. Upon such termination, the Consultant shall immediately cease its performance of the Agreement and shall deliver to MDHA all completed or partially completed work. MDHA shall determine and pay to the Consultant the amount due for such satisfactory work.

MDHA reserves the right to terminate this Agreement for its convenience or in the event it shall abandon or indefinitely postpone the program. Such termination shall be accomplished by written notice delivered to the Consultant. Upon receipt of notice, the Consultant shall immediately cease work and deliver to MDHA all completed or partially completed work. Payment to the Consultant shall be made for work performed prior to receipt of the termination notice, together with the Consultant's cost for closing down its work, and the Consultant shall have no claim for loss of anticipated profits or any additional compensation.

- B. BREACH OF AGREEMENT.** If the Consultant fails to fulfill its obligations under this Agreement in a timely and proper manner or if it shall violate any of the terms of this Agreement, MDHA shall have the right to immediately terminate such contract and withhold payments in excess of fair compensation for work completed. The term "breach of agreement" specifically includes, but is not limited to, failure to comply with any applicable Federal, State or Local laws or regulations.

Notwithstanding the above, the Consultant shall not be relieved of liability to MDHA for damages sustained by virtue of any breach by the Consultant.

- C. MODIFICATION OF AGREEMENT.** Such Agreement may be modified only by written amendment executed by all parties.
- D. PARTNERSHIPS/JOINT VENTURES.** Such Agreement shall not in any way be construed or intended to create a partnership or joint venture between the parties or among any of the parties. None of the parties of such Agreement shall hold itself out in a manner contrary to the terms of this. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this.

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- E. WAIVER.** No waiver of any provision of such Agreement shall affect the right of MDHA thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
- F. Employment.** The Consultant shall affirm that it does not subscribe to any personnel policy which permits or allows for discrimination in the employment, promotion, demotion, dismissal or laying off of any individual due to his/her race, creed, color, national origin, age or gender or physical handicap, and that it has not been convicted of violating Metropolitan Code of Laws, Section 2-1-112 through 2-1-114, within the immediate preceding six (6) month period.
- G. GRATUITIES AND KICKBACKS.**
- A. GRATUITIES.** It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore.
- B. KICKBACK.** It shall be a breach of ethical standards for any payment gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor of higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- H. INDEMNIFICATION.** The Consultant shall agree to indemnify and hold MDHA, its officers, agents and/or employees harmless from and against any and all lawsuits, damages and expenses, including court costs and attorney's fees, by reason of any claim and/or liability imposed, claimed and/or threatened against the MDHA, its officials, agents and/or employees for damages because of bodily injury, death and/or property damages arising out of or in consequence of the performance of services under this Agreement to the extent that such bodily injuries, death and/or property damages are attributable to the negligence of the Consultant and/or the Consultant's servants, agents and/or employees.
- I. ASSIGNMENT-CONSENT REQUIRED.** The provisions of such Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Such Agreement nor any of the rights and obligations of the Contractor hereunder shall not be assigned, subcontracted or transferred in whole or in part without the prior written

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consent of MDHA. Any such assignment transfer or subcontract shall not release the Consultant from its obligation hereunder. Any approved assignee shall assume each and every obligation of the Consultant hereunder and MDHA may contract with or reimburse any such assignee without waiving any of its rights against the Consultant.

- J. ENTIRE AGREEMENT.** Such Agreement shall set forth the entire Agreement between the parties with respect to the subject matter hereof, and shall govern the respective duties and obligations of the parties until and unless a more formal Agreement is entered into between the parties.
- K. FORCE MAJEURE.** No party to such Agreement shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by any act of God, force majeure, storm, fire, casualty, civil disturbance, riot, war, national emergency, act of Government, act of public enemy or other cause of similar nature beyond its control.

10.0 MISCELLANEOUS PROVISIONS

The Consultant and MDHA mutually agree as follows:

- A. OWNERSHIP OF DOCUMENTS.** Tracings, plans, specifications and maps prepared or obtained under the terms of this Agreement shall be delivered to and become the property of MDHA. Basic design notes and sketches, charts, computations, all original drawings and other data prepared or obtained under this Agreement shall be made available, upon request, to MDHA without restriction or limitation on their use.
- B. REUSE OF DOCUMENTS.** All documents furnished by the Consultant pursuant to this Agreement are instruments of his/her services with respect to the Project.
- C. PROGRESS.** The Consultant shall prepare progress schedules for the work and shall submit monthly progress reports based on such schedules to the MDHA.
- D. PERSONNEL.** The Consultant represents that he/she has or will secure at his/her own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with MDHA.

All services required hereunder will be performed by the Contractor or under his/her supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform services.

- E. CLAIMS AND DISPUTES PERTAINING TO SALARY RATES.** Claims and disputes pertaining to salary rates or to classifications of architects, draftsmen,

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technical engineers and technicians performing work under this Agreement shall be promptly reported in writing by the Consultant to MDHA for the latter decision which shall be final.

- F. INTEREST OF OTHER LOCAL PUBLIC OFFICIALS.** No member of the governing body of the locality in which the area of the Project is situated and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of the Project to which this Agreement pertains shall have any personal interest, direct or indirect, in their Agreement.
- G. CONSULTANT'S ENDORSEMENT.** The Consultant's endorsement shall be placed on the final report cost estimates; also other data and documents furnished by the Consultant to the MDHA.
- H. CONTROL.** All work by the Consultant is to be performed in a manner satisfactory to MDHA and in accordance with established customs practices and procedures and in conformance with MDHA modernization, energy conservation, and cost effectiveness standards. The decision of MDHA is to control in all questions regarding the work covered hereunder. The Consultant is to periodically request sufficient conferences to insure that the Consultant is doing the work in a satisfactory manner and that all locations and work are made in accordance with the wishes of the MDHA.
- I. ACCESS TO RECORDS.** The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance of work under this Agreement in accordance with accepted professional practice and appropriate accounting procedures and practices. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and formally established audit regulations, procedures and guidelines of the reviewing or audit agency.

11.0 INSURANCE

Without limiting its liability hereunder, the Consultant shall maintain books, records, documents and other evidence directly pertinent to performance of work under this Agreement in accordance with accepted professional practice and appropriate accounting procedures and practices. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and formally established audit regulations, procedures and guidelines of the reviewing or audit agency.

- A. WORKER'S COMPENSATION INSURANCE.** Providing coverage in compliance with the laws of the state in which any part of the work is to be performed, and Employer's Liability Coverage in the minimum amount of \$100,000 for each occurrence.

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- B. COMPREHENSIVE GENERAL LIABILITY INSURANCE.** Bodily injury and property damage combined single limit in the minimum amount of \$1,000,000 for each occurrence, \$1,000,000 aggregates.
- C. AUTOMOBILE LIABILITY INSURANCE.** Bodily injury and property damage combined single limit in the minimum amount of \$1,000,000 for each occurrence, \$1,000,000 aggregates.
- D. CONSULTANT'S PROFESSIONAL LIABILITY INSURANCE.** Bodily injury and property damage combined single limit in the minimum amount of \$1,000,000 each occurrence, \$1,000,000 aggregate. The Comprehensive General Liability Insurance referred to in this Section, paragraph (B) above, shall include broad form Contractual Liability Coverage for the liability assumed by the Consultant in SECTION 10, TERMS AND CONDITIONS. Paragraph H (Indemnification).
- E. Lead-Based Paint and Asbestos Abatement Insurance.** Minimum amount of \$1,000,000. Either the Architect and Engineering firm contracted with must possess this insurance and list MDHA as additional insured, or a licensed and insured subconsultant listed on the proposed team to the Architect and Engineering firm can provide this insurance, but must list the Architect firm and MDHA as additional insured.
- F. Errors and Omissions Insurance**
- G. The Consultant's Certificate shall include:**
1. The name and address of Certificate Holder as The Metropolitan Development and Housing Agency of Nashville and Davidson County, 701 South Sixth Street, Nashville, TN 37206.
 2. The Contractual Insurance coverage is on a Blanket Broad Form basis unless specifically indicated.
 3. The company or/companies, upon request, agree to deliver within fifteen (15) days a certified copy of any and/or all of the policies of insurance to MDHA.
 4. If one (1) or more Umbrella Excess policies is used, there will be no gap between the limits of the primary policies and the deductible features of the Umbrella Excess policies.
 5. Coverage under the primary policies have no deductible features. If there are deductible features or the insured has adopted a funded self-insurance program, they are fully explained on an attached sheet that becomes a part of this Certificate.
 6. The coverage provided shall not be canceled, reduced in coverage or allowed to lapse until the MDHA receives at least thirty (30) day advance

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written notice of same. Said written notice must be delivered to the MDHA at the address of the Certificate Holder above or the secondary Certificate Holder, if one is listed on the Certificate of Insurance.

12.0 LICENSING AND BUSINESS REQUIREMENTS

The Offeror is responsible to comply with all licensing requirements and associated business regulations whether Local, State or Federal. It is the responsibility of the potential project manager to determine the applicability of any rule, regulation or other requirement.

13.0 EQUAL EMPLOYMENT OPPORTUNITY

The Architect shall affirm that it does not subscribe to any personnel policy which permits or allows for discrimination in the employment promotion, demotion, dismissal or laying off of any individual due to his/her race, creed, color, national origin, age or gender or physical handicap, and that it has not been convicted of violating Metropolitan Code of Laws, Section 2-1-112 through 2-1-114, within the immediate preceding six (6) month period.

14.0 MINORITY, WOMEN AND SMALL BUSINESS ENTERPRISE REQUIREMENTS

Consistent with Presidential Executive Orders 11625, 12138, and 12432, the proposer shall make efforts to ensure that minority, women and small business enterprises businesses are utilized when possible. Efforts to achieve minority, women and small business participation shall include, but shall not be limited to:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- D. Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- E. Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

15.0 HUD SECTION 3, 24 CFR PART 135

To the greatest extent feasible, efforts shall be made to provide opportunities for employment and training for lower income residents within the project area, and to award subcontracts for work in connection with the project to business concerns which are located, or owned in substantial part, by persons residing in the area of the project, as described in HUD Regulations 24 CFR 135.

16.0 TITLE VI

The Metropolitan Development and Housing Agency prohibits discrimination in all of its programs and activities on the basis of race, color or national origin. The agency will comply with all statutes and regulations of Title VI of the Civil Rights Act of 1964. No person should be excluded from participation in or be denied the benefit of or be subjected to discrimination under any program or service provided by or affiliated with MDHA on the basis of non-merit reasons. To file a complaint of discrimination, write or call Harold Haynes, MDHA Director of Construction, 712 South Sixth Street, Nashville, TN 37206, phone (615) 252-8494.

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ATTACHMENTS

- A. _____
COMPANY INFORMATION
- B. _____
CLIENT REFERENCE
- C. _____
FAIR EMPLOYMENT PRACTICE STATEMENT
- D. _____
CONTINGENT FEES STATEMENT
- E. _____
FORM OF NON-COLLUSIVE AFFIDAVIT
- F. _____
*CERTIFICATION FOR CONTRACTS, GRANTS, LOAN AND COOPERATIVE
AGREEMENT*
- G. _____
DIVERSITY BUSINESS ENTERPRISE PROGRAM
- H. _____
HUD SECTION 3 PROGRAM
-

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ATTACHMENT A

COMPANY INFORMATION

Name of Organization

Business Address

Phone Number

Email Address

Name of Principal Owners
(leave blank if publicly owned)

Number of Years in Business

**Location of office which
would service MDHA**

Attach any additional information regarding your firm's background, which would be useful in assessing your proposal.

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ATTACHMENT B

CLIENT REFERENCES

Please provide on a separate sheet of paper labeled Attachment B, Client References, five (5) references. Information should include:

Customer Name, Address

Nature of Service Provided

Contact Person

Phone Number

Provide information on clients for whom similar service has been provided.

ATTACHMENT C

AFFIDAVIT

COUNTY OF _____

Any further Affiant sayeth not.

Type/Print Name

Sworn to and subscribed before me on this day of

My Commission Expires: _____

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ATTACHMENT D

CONTINGENT FEES STATEMENT

State of _____)

County of _____)

In accordance with the Metropolitan Development and Housing Agency's policy, it is a breach of ethical standards for a person to be retained, or to upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After being first duly sworn according to law, the undersigned (affiant) states that he/she is the _____, of

_____ (Offeror) and that the Offeror has not retained anyone in violation of the foregoing.

And further Affiant sayeth not.

By: _____
Title: _____

Sworn to and subscribed before me on this _____ day of _____, 2009

Notary Public

My Commission Expires: _____

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ATTACHMENT E

FORM OF NON-COLLUSIVE AFFIDAVIT

State of _____

County of _____

_____, being first duly sworn, deposes and says
that:

(1) He/She is _____ of _____, the
Vendor that has submitted the attached Proposal:

(2) He/She is fully informed respecting the preparation and contents of the attached Proposal and
of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and not collusive or sham; that said vendor has not colluded,
conspired, connived or agreed, directly or indirectly, with any bidder or person to put in a sham
bid or to refrain from bidding and has not, in communications or conference, with any person,
agreed to fix any overhead, profit or cost element of said bid price, or that of any other bidder, or
to secure any advantage against the Metropolitan Development and Housing Agency or any
person interested in the proposed contract; and that all statements in said proposal of bid are true;
and;

(4) Any professional fees arrived at during negotiations must be fair and proper and are not to be
tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the
Professional or any of its agents, representatives, owners, employees or parties in interest,
including this affidavit.

(Signed) _____

Title

Sworn to and subscribed before me on this _____ day of _____, 2009

Notary Public

My Commission Expires: _____

**REQUEST FOR QUALIFICATIONS
A/E INDEFINITE DELIVERY CONTRACT PROGRAM**

ATTACHMENT F

**CERTIFICATION FOR CONTRACTS, GRANTS, LOAN AND COOPERATIVE
AGREEMENT**

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons, 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

Executed this _____ day of _____, 2009

By: _____
(Signature of Authorized Official)

(Signature of Authorized Official)

Sworn to and subscribed before me on this _____ day of _____, 2009.

Notary Public

My Commission Expires: _____

ATTACHMENT G

1. MDHA DIVERSITY BUSINESS ENTERPRISE PROGRAM

The Metropolitan Development and Housing Agency (MDHA) has established a Diversity Business Enterprise (DBE) Program to enhance the participation of minority, women and small business enterprise firms in the Agency's contracting and purchasing activities. The DBE Program is being implemented to increase utilization of minority, women and small businesses and to provide these businesses greater economic opportunity. MDHA's Construction Department is responsible for the Diversity Business Program Administration.

In support of this program, we require architectural/engineering firms, contractors and their subcontractors and other lower-tier subcontractors, vendors and suppliers, who do business with Metropolitan Development and Housing Agency to adopt similar policies. Businesses bidding or proposing on procurements are required to comply with the provisions of the DBE Program. MDHA prohibits discrimination against any person, business or organization in pursuit of its' procurement opportunities on the basis of race, color, sex, religion, disability or national origin. MDHA will conduct its contracting and purchasing programs so as to prevent any discrimination and to resolve all allegations of discrimination.

2. Diversity Business Enterprise Policy

It is the policy of MDHA to assist minority, women and small business enterprise firms in their aspirations of viability and growth, which support a more stable economic community. To this extent, we join with community agencies and organizations that support these businesses to create greater opportunities for these entrepreneurs in the attainment of mutually beneficial social and economic objectives. Minority, women and small business enterprise firms will be given the maximum practicable opportunity, consistent with efficient performance, to compete for and participate in contracts, subcontracts, purchase orders and other procurement activities.

3. Definitions For Determining Minority, Women And Small-Owned Firms. The guidelines for determining minority, women and small-owned firms are defined as follows:

"MINORITY" means a person who is a citizen or lawful permanent resident of the United States and who is:

- Black (a person having origins in any of the black racial groups of Africa);
- Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
- Asian American (a person having origins in any of the original peoples of the Far East. Southeast
- Asia, the Indian subcontinent, or the Pacific Islands); or
- American Indian and Alaskan Native (a person having origins in any of the original peoples of North America).

"MINORITY BUSINESS ENTERPRISE" shall mean a minority business:

A continuing, independent, for profit business which performs a commercially useful function, and is at least 51 percent owned and controlled by one or more minority individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned and controlled by one or more minorities. Whose management and daily business operations are controlled by one or more of minority individuals. "Control" as used in the above clause, means exercising the power to make policy decision. "Operate," as used in the above clause, means being actively involved in the day-to-day management of the business.

"WOMEN BUSINESS ENTERPRISE" shall mean women business:

A continuing, independent, for profit business which performs a commercially useful function, and which is at least 51 percent owned and controlled by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned and controlled by one or more women. Whose management and daily business operations are controlled by one or more of such individuals. "Control" as used in the above clause, means exercising the power to make policy decision. "Operate," as used in the above clause, means being actively involved in the day-to-day management of the business.

SMALL BUSINESS ENTERPRISE AS DEFINED IN SECTION 4.44.010 OF THE METROPOLITAN CODE OF LAWS;

A Small Business satisfies all of the following criteria:

- (a) A United States business which is independently owned and operated, and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.
- (b) Either has no more than the following number of employees or has no more than the following annual sales volume for the applicable industry; and

INDUSTRY	ANNUAL SALES VOLUME	MAXIMUM NUMBER OF EMPLOYEES*
Agriculture, Forestry, Fishing	\$500,000	9
Architectural/Design/Engineering	\$2,000,000	30
Construction	\$2,000,000	30
Educational	\$1,000,000	9
Finance, Insurance, Real Estate	\$1,000,000	9
Information Systems/Technology	\$2,000,000	30
Manufacturing	\$2,000,000	99
Marketing/Communications/Public Relations	\$2,000,000	30
Medical/Healthcare	\$2,000,000	30
Mining	\$1,000,000	49
Retail Trade	\$750,000	9
Service Industry	\$500,000	9
Transportation, Commerce and Utilities	\$1,000,000	9
Wholesale Trade	\$1,000,000	19

- (c) Meets the following additional criteria:
 - 1. Has demonstrated capability to perform independently a substantial portion of the contract they seek, or a substantial portion of the subcontract for which they are proposed by a bidder or offeror, as specified by the Purchasing Agent;
 - 2. Not share or jointly use office space, production, marketing and sales, business support systems, personnel, or equipment with any business not classified by Metro as a small business (i.e., a large business);
 - 3. Has existed as a legal business entity for a minimum of one year (twelve months of continuous business enterprise), performing independently and satisfactorily and achieving a minimum of \$35,000.00 sales income (collected sales dollars not simply booked sales);

4. Not to be owned, controlled, or directed by individuals or groups of individuals who own, control or direct a large business involved in the same category of work as the business for which small business status is sought;
5. If a supplier, be an authorized regular distributor with normal wholesale agreements for the Product or products to be supplied; and
6. If a construction contractor, be licensed as required by the state to perform the work for which it has submitted a bid or has been proposed by a prime as a subcontractor.

*NOTE: Employee means a person (or persons) employed on a full-time (or full-time equivalent), a permanent basis. Full-time equivalent includes employees who work 30 hours per week or more. Full-time equivalent also includes the aggregate of employees who work less than 30 hours a week, where the work hours of such employees add up to at least 40 hour work week. The totality of the circumstances, including factors relevant for tax purposes, will determine whether persons are employees of a concern. Temporary employees, independent contractors or leased employees are not employees for these purposes. The owner(s) are excluded from this classification.

Minority, women and small-owned firms are required to provide proof of their eligibility in accordance with these guidelines.

4. Utilization of Diversity Business Enterprise Firms

In order to provide minority, women and small businesses equal opportunity to participate in MDHA's procurements, A/E's and contractors bidding or proposing on Agency procurements are required to solicit the services of minority, women and small business firms. A/E's, and contractors who are awarded contracts, or purchase orders, along with their subcontractors, and other lower-tier subcontractors must commit to utilize Diversity Business Enterprise firms as part of their contractual obligation.

a. Diversity Business Enterprise Program Compliance Forms

To be considered a responsive bidder or proposer, Diversity Business Enterprise forms 2001, 2002, and 2003 must be completed in its entirety and submitted with the bid/or proposal.

5. MDHA Diversity Business Goal

A goal of 20% Diversity Business Participation has been established for this project. Contractors will submit with their bid DBE Form 2001 indicating efforts to utilize DBE contractors, DBE Form 2002 if joint venturing with a DBE business and DBE Form 2003 showing commitment to meet established goal and indicating type of work and dollar amount for each DBE business.

6. Program Questions/Information

Questions regarding the DBE Program and requests for information should be directed to: Metropolitan Development and Housing Agency's Diversity Business Coordinator, Ron Chenault, 712 South Sixth Street, Nashville, Tennessee 37206, (615) 252-8498 or rchenaul@nashville-mdha.org.

7. MDHA DBE Directory

To assist Contractors in obtaining the DBE goal for this project, Contractors are encouraged to visit the MDHA Website at www.nashville-mdha.org/dbe.php. Contractors can download the MDHA Vendor Database at this website to make contact with DBE firms. For more information regarding the MDHA DBE program, Contractors are invited to contact Ron Chenault at (615) 252-8498 or by email rchenaul@nashville-mdha.org.

FORM 2001

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS ENTERPRISE EQUAL OPPORTUNITY SOLICITATION CERTIFICATION

COMPANY NAME:		ADDRESS/TELEPHONE:				
PROJECT NAME:		DATE FORM SUBMITTED:				
IMPORTANT - THIS FORM MUST BE COMPLETELY FILLED OUT AND SUBMITTED WITH BID OR PROPOSAL <i>Please list the name(s) of Minority (M) Women (W) and Small (S) Business Enterprise Firms contacted, and their responses to the above procurement package. If additional space is required, this form may be duplicated.</i>						
Name/Address	Type of Business M/W/S	Type of Work/Service(s) Solicited	Indicate How Businesses Were Contacted (i.e. letter, phone, fax)	Response to Solicitation (i.e. interested, not interested, no response)	Company Representative	Telephone/Fax Number
It is hereby certified that the following Diversity Business Enterprise firms were contacted and offered an opportunity to bid or propose on the above procurement. We further certify that the above statements are a true account of Diversity Business Enterprise firm's response to our solicitation.						
Company Representative (Name/Title/Signature)						Date

**METROPOLITAN DEVELOPMENT AND HOUSING AGENCY
DIVERSITY BUSINESS ENTERPRISE PROGRAM JOINT VENTURE AGREEMENT
IMPORTANT - THIS DOCUMENT MUST BE SUBMITTED WITH BID OR PROPOSAL**

Revision 1, November 1, 2002

FORM 2003

**METROPOLITAN DEVELOPMENT AND HOUSING AGENCY
DIVERSITY BUSINESS ENTERPRISE (DBE) PROPOSED UTILIZATION PLAN
IMPORTANT - THIS DOCUMENT MUST BE SUBMITTED WITH THE BID OR PROPOSAL**

COMPANY NAME:					COMPLETE ADDRESS AND PHONE NUMBER:				
PROJECT NAME:					DATE FORM SUBMITTED:				
The above named company proposes to use the services of the following listed DBE firms. This form may be duplicated if additional space is needed.									
DBE NAME/ADDRESS/TELEPHONE	(Please Indicate Status)			Certifying Agency	Type of Work	DBE DOLLARS	DBE %		
	MBE	WBE	SBE						
MBE Dollars/Percentage:	\$								
WBE Dollars/Percentage:	\$								
SBE Dollars/Percentage:	\$								
Total DBE Dollars/Percentage									
Signature/Title:									
Date:									

FORM 2004

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY STATEMENT OF INTENT TO UTILIZE DIVERSITY BUSINESS ENTERPRISE FIRMS THIS FORM MUST BE COMPLETED AND SUBMITTED TO CONTRACT COMPLIANCE OFFICER PRIOR TO CONTRACT AWARD

COMPANY NAME:		COMPLETE ADDRESS/TELEPHONE:			
PROJECT NAME:		DATE FORM SUBMITTED:			
(Name of DBE Subcontractor or Supplier)		agrees to perform work on the above project as (check one):			
(Name of DBE Subcontractor or Supplier)		will enter into a formal agreement for the work with _____ A/E or Contractor			
conditioned upon the company executing a contract with the MDHA. _____ A/E or Contractor		will submit to MDHA proof of			
any purchase orders awarded and/or subcontract agreements entered into with the above named DBE Subcontractor/Supplier as documentation of utilization of DBE firms.					
ITEM NUMBER	DESCRIPTION OF WORK	SUBCONTRACT/ PURCHASE ORDER PRICE	% OF TOTAL CONTRACT PRICE	START DATE	COMPLETION DATE
CONTRACTOR REPRESENTATIVE SIGNATURE, TITLE & DATE					
DIVERSITY BUSINESS ENTERPRISE FIRM REPRESENTATIVE SIGNATURE, TITLE & DATE					

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY CHANGES TO THE DIVERSITY BUSINESS ENTERPRISE UTILIZATION PLAN

Revision 1, November 1, 2002

METROPOLITAN DEVELOPMENT HOUSING AGENCY
DIVERSITY BUSINESS ENTERPRISE MONTHLY UTILIZATION REPORT
RECORD OF PAYMENTS TO DIVERSITY BUSINESS ENTERPRISE FIRMS

Revision 1, November 1, 2002

ATTACHMENT H
HUD SECTION 3
BIDDER CERTIFICATION AND COMPLIANCE AGREEMENT

The bidder represents and certifies as part of its bid/offer the following:

| | Is a Section 3 Business concern in accordance with HUD Act of 1968 (12 U.S.C.1701u) (Section 3) Part 135. A Section 3 Business concern means a business concern:

1. That is 51% or more owned by Section 3 Residents(s); or
2. Whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 residents, or within the last three years of the date of first employment with the business concern were Section 3 residents; or
3. That provides evidence of a commitment to subcontract in excess of 25% of the dollar value of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs 1 or 2 herein.

| | Is Not a Section 3 Business concern but who has and will continue to seek compliance with Section 3 by certifying the following efforts to be undertaken:

1. By contacting business assistance agencies, minority contractors associations and community organizations to inform them of the contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids for a portion of the work.
2. By advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas of the applicable developments(s) owned and managed by the Housing Authority.
3. By providing written notice to all known Section 3 business concern of contracting opportunities. This notice should be in sufficient time to allow the Section 3 business concerns to respond to bid invitations.
4. By following up with Section 3 business concerns that have expressed interest in the contracting opportunities.
5. By coordinating meetings at which Section 3 business concerns could be informed of specific elements of the work for which subcontract bids are being sought.
6. By conducting workshops on contracting procedures and specific contacting opportunities in a timely manner so that Section 3 concerns can take advantage of contracting opportunities.
7. By advising Section 3 business concerns as to where they may seek assistance to overcome barriers such as inability to obtain bonding, financing, insurance, etc.
8. Where appropriate, by breaking out contract work into economically feasible units to facilitate participation by Section 3 businesses.
9. By developing and utilizing a list of eligible Section 3 business concerns.
10. By actively supporting and undertaking joint ventures with Section 3 businesses.
11. By establishing training programs, which are consistent with the requirements of the Department of Labor, specifically for Section 3 residents in the building trades.
12. By advertising employment and training positions to dwelling units occupied by Category 1 and 2 residents.
13. By contacting resident councils and other resident organizations in the affected housing development to request assistance in notifying residents of the training and employment positions to be filled.
14. By arranging interviews and conducting interviews on the job site.
15. By undertaking such continued job training efforts as may be necessary to ensure the continued employment of Section 3 residents previously hire for employment opportunities.

Signature: _____ Title: _____

Sworn to and subscribed before me on this _____ day of _____, 2009

Notary Public

My Commission Expires: _____

HUD SECTION 3 WORKSHEET
Businesses Claiming Status as a Section 3 Business
(Do not complete this form if you are not claiming Section 3 Business Status)

NAME OF BUSINESS: _____

ADDRESS OF BUSINESS: _____

TELEPHONE NUMBER/FAX NUMBER/E-MAIL ADDRESS: _____

1. **Type of Business:** ☐ Corporation ☐ Partnership
 ☐ Sole Proprietorship ☐ Joint Venture
2. Attached the following documentation as evidence for claiming status as a Section 3 resident-owned Enterprise:
☐ Copy of resident lease ☐ Copy of evidence of participation in a public assistance program
☐ Other Evidence
3. **For the business entity as applicable:**
☐ Copy of Articles of Incorporation ☐ Certificate of Good Standing
☐ Assumed Business Name Certificate ☐ Partner ship Agreement
☐ List of owners/stockholders and % of each ☐ Corporation Annual Report
☐ Organization chart with names and titles brief functional statement
☐ Latest Board minutes appointing officers ☐ Additional documentation
4. For business claiming Section 3 status by subcontracting 25 percent of the dollar awarded to qualified Section 3 business:
☐ List of subcontracted Section 3 business with corresponding certifications and sub contract amount
5. For business claiming Section 3 status, claiming at least 30 percent of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:
☐ List of all current full time employees ☐ List of all employees claiming Section 3 status
☐ PHA/IHA Residential lease (less than 3 years from day of employment)
☐ Other evidence of Section 3

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- ☐ Current financial statement ☐ List of owned equipment
☐ Statement ability to comply with public policy
☐ List of all contracts for the past two years

Authorizing Name and Signature

Subscribed and sworn to before me this _____ day of _____, _____

Notary Public
My Commission Expires: _____

SECTION 3 BUSINESS CONCERN AFFIDAVIT
For
Businesses Claiming Status as a Section 3 Business
(Do not complete this form if you are not claiming Section 3 Business Status)

The undersigned being first duly sworn, on oath, represents, warrants, certifies, deposes and says, under penalty of law, as follows:

I. BASIC INFORMATION

The following information is true and correct:

1. Name of Company: _____
2. Address: _____

3. Type of business (corporation, partnership, sole proprietorship, joint venture):

4. Project Name/Contract Number:

II. TYPE OF SECTION 3 BUSINESS CONCERN

For purposes of this section, please refer to the attached instructions for the meanings of the terms "Section 3 Business Concern," and "Section 3 Business Concern with Category-Preference" and "HUD Youthbuild Program".

1. Is the Company a Section 3 Business Concern?
☐ Yes ☐ No If "yes," please go on to question #2. If "no," please go directly to Part III on the following page.
2. Is the Company a Section 3 Business Concern -With Category Preference?
☐ Yes ☐ No What category? _____
3. Has the Company been selected to carry out any HUD Youthbuild Program?
☐ Yes ☐ No

III. VERIFICATION

The Company hereby agrees to provide, upon request, documents verifying the information provided above.

Under penalty of perjury, I certify that I am the _____(Title)
Of the Company, that I am authorized by the Company to execute this affidavit on its behalf, that I have personal knowledge of the certifications made in this affidavit and that the same are true.

Name (signature) _____

Name (printed) _____

State of _____ County of _____

Subscribed and sworn to before me this _____ day of _____, _____

Notary Public

My Commission Expires: _____

SECTION 3 RESIDENT AFFIDAVIT AND WORKSHEET
(Do not complete this form if you are not claiming status as a Section 3 Resident)

Are any of your employees listed as Section 3 Residents on your certified payrolls?
() Yes () No. If yes, please complete the following information

1. NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

2. A resident of public housing: () Yes () No

3. The total number of individuals in my family (including all family members currently living in my household, including myself) is _____.

4. Last year, the annual income from all sources for my family is listed on the table below:

Family Size	Income from all sources
1	\$
2	\$
3	\$
4	\$
5	\$
6	\$
7	\$
8	\$

If the total number of individuals is over seven, please state the annual income for your family during last year. \$ _____

5. I understand that the information above may require verification. I agree to provide documents verifying this information and authorize my employer to release information required by the housing authority to verify my status as a "Section 3 Resident".

Signature and Date of Applicant

Subscribed and sworn to before me this _____ day of _____, _____

Notary Public

My Commission Expires: _____

2009-2010 HUD 80% Median Family Income Limits

1 person	2 person	3 person	4 person	5 person	6 person	7 person	8 person
\$36,350	\$41,500	\$46,700	\$51,900	\$56,050	\$60,200	\$64,350	68,500

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:]

Certifications and Representations of Offerors Non-Construction Contract

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

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

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

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

(c) ☐ is, ☐ is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|---|---|
| ☐ Black Americans | ☐ Asian Pacific Americans |
| ☐ Hispanic Americans | ☐ Asian Indian Americans |
| ☐ Native Americans | ☐ Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offers certifies that—

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

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

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

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

(1) Is the person in the bidder/offers'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/offers's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offers's organization);

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

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

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

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

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

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

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

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

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

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

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 3/31/2010)

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

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

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

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

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

proposal submitted before final payment of the contract.

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

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