



**HOUSING AUTHORITY**  
CITY OF BROWNSVILLE

# **Request for Proposals No. 20-003**

**Green Physical Needs Assessment  
(GPNA) and Energy Audit**

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# HACB RFP No. 20-003: Green Physical Needs Assessment (GPNA) and Energy Audit

## INTRODUCTION

The Housing Authority of the City of Brownsville (HACB) is a unit of government and its functions are essential government functions. The property of HACB is used for essential public and government purposes, and is exempt from all taxes, including sales tax on all its purchases of supplies and services.

HACB enters into and executes contracts and other instruments that are necessary and convenient to the exercise of its powers. The HACB herein is requesting proposals from qualified, licensed and insured entities to provide Green Physical Needs Assessment (GPNA) and Energy Audit services to the HACB and its affiliated entities. All request for proposals submitted in response to this solicitation must conform to all of the requirements and specifications outline within this document and any designated attachments in its entirety.

All public housing agencies are required to conduct a Green Physical Needs Assessment and Energy Audit using the HUD GPNA Tool. On February 20, 2013, HUD changed its' projection of the publication of the final rule affecting GPNAs and Energy Audits. HUD recommends these agencies start as soon as possible.

Additionally, the GPNA must contain detailed data from a current energy audit which meets the standards of the new rule e.g. conducted by certified energy auditor, expected useful life, projected savings by physical components, categorized ECMs into payback periods and more.

The Housing Authority of the City of Brownsville will accept competitive sealed proposals from a qualified firm to conduct a Green Physical Needs Assessment and Energy Audits for its 382 conventional public housing units located at 7 developments/sites. The Green Physical Needs Assessment will be conducted in accordance with U.S. Department of Housing and Urban Development (HUD) required criteria per Notice PIH 2010-46, Green Physical Needs Assessment Tool (GPNA) User Guide, and The Public Housing and Modernization Standards Handbook 7485.2. The Energy Audit will be conducted in accordance with 24 CFR Part 905, and energy codes.

This Request for Proposals (RFP) contains submission requirements, scope of services, period of services, terms and conditions and other pertinent information for submitting a proper and responsive proposal. Prospective proposers desiring any explanation or interpretation of the solicitation must request it in writing by no later than Thursday, July 30, 2020. The request must be addressed to Ms. Korina Amador, Procurement Manager at [kamador@hacb.us](mailto:kamador@hacb.us). Any information given to a prospective proposer about this solicitation will be furnished to all other prospective proposers as a written amendment to the solicitation.

All responses to the RFP must be enclosed in a sealed envelope and labeled as follows with the specific information:

RFP HACB 20-003 Green Physical Needs Assessment GPNA and Energy Audit, Due Date and Time: Thursday, August 6, 2020 by 4:00 p.m. C.S.T. The RFP response must be addressed to:

**The Housing Authority of the City of Brownsville**  
**Korina Amador, Procurement Manager**  
**2606 Boca Chica Blvd.**  
**Brownsville, TX 78521**

Late submissions will not be accepted. Submission will be held in confidence until the evaluation.

Submissions will be evaluated on the criteria stated in the RFP. After evaluation of the responses, the Contract will be awarded to the proposer representing the "Best Value" to HACB. The resulting Contract may be funded through Section 3 covered assistance and as such will be subject to Section 3, 24 CFR Part 135.

**RFP HACB No. 20-003**  
**Green Physical Needs Assessment (GPNA) and Energy Audits**

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**RFP HACB No. 20-003**  
**Green Physical Needs Assessment (GPNA) and Energy Audits**

**I. Introduction and Background**

The Housing Authority of the City of Brownsville will accept competitive sealed proposals from a qualified firm to conduct a Green Physical Needs Assessment GPNA and Energy Audit for its 382 public housing units and other facilities as listed in Attachment A. The Green Physical Needs Assessment will be conducted in accordance with U.S. Department of Housing and Urban Development (HUD) required criteria per Notice PIH 2010-46, the GPNA User Guide, and The Public Housing and Modernization Standards Handbook 7485.2. The Energy Audits will be conducted in accordance with 24 CFR Part 905, and energy codes.

**Note:** See Attachment A - Development Breakdown Report for data needed to plan and cost the Green Physical Needs Assessment and Energy Audits.

**II. Project Objective**

The purpose of this solicitation is to select a qualified firm to perform a Green Physical Needs Assessment (GPNA) and Energy Audits. The GPNA and Energy Audits will consist of a physical inspection of a sampling of all identified properties listed in Appendix A. The selected Contractor will provide a full range of services including evaluating the existing conditions of the housing stock including a random selection of units, common areas, offices, and program areas. The assessment will identify energy conservation measures and the cost savings that result from implementing the measures, and thereby reduce operating costs.

All identified physical improvements will meet or exceed the HUD mandatory standards, and those established by local health, safety, and building codes.

At a minimum, the goal of the GPNA is to identify and provide a description of all physical improvements that will be required to bring the property back to a level comparable with "as built", to the degree reasonably possible based on available components and building age. The effort should provide the Agency with the information necessary to ensure long term physical viability and in a manner suitable for planning and budgeting purposes. Data shall be in a format suitable for HUD reporting requirements.

### III. Scope of Services

#### The GPNA will consist of the Contractor providing the following services:

- a. Updating a general assessment of the physical needs and costs for improvements of each low-rent housing project, community, administrative, and maintenance buildings and grounds as specified in HUD Notice PIH 2010-46, and Public Housing Modernization Standards Handbook 7485.2.
- b. Perform interviews as needed with knowledgeable Agency staff as to the existing documents, plans, building histories, maintenance records, REAC scores, etc. of each property.
- c. Identify all development components that will be part of the assessment.
- d. Establish a sampling methodology per property. The sample should also include at least 1 of each apartment size in each building type. Units must be distributed so that a variety of conditions will be evaluated (top floor units, corner units, areas where weathering occurs, etc.). Within each development, a sampling of ten percent (10%) of dwelling units, twenty percent (20%) of dwelling buildings, 100% of non-dwelling structures, and 100% of the sites. Within the unit sampling, a minimum of 50% of Section 504 designated units will be inspected.
- e. Establish a methodology that will sample common lobby areas and corridors.
- f. Establish a plan to inspect 100% of site, all systems, paving and grading, building exteriors/ envelope, finishes, program areas, offices, basements, utilities, laundry facilities, warehouse(s), multi-purpose building(s), mechanical areas, sprinklers, emergency systems, security, crawl spaces, etc. Please note if individual units have individual HVAC, basements, etc, then these will be part of the 10% sample, except in cases where there may be a typical component which should be assessed individually.
- g. Perform walk-through inspections of each development and other Agency properties to ascertain the condition of the property; immediate critical and non-critical needs; code compliance; expected repair, replacement, and major maintenance needs; and total estimated cost to complete such items. The assessor will record the data on the HUD Green PNA approved data collection forms for site, building exterior, building systems, unit, and common areas.
- h. As part of the assessment, each individual component will receive an estimate of Expected Useful Life (EUL).
- i. As part of the assessment, each individual component will be provided with a replacement cost on an individual component and for a total of those components. (Ex: per window and per window times all similar windows).

- a. Identify work items needed and costs for implementation to make selected units accessible and usable by the handicapped as required by Section 504 of the Rehabilitation Act of 1973. This will include costs to retrofit a specific number of dwelling units to meet Section 504 requirements for persons with disabilities. Each area that is designated as part of Section 504 or American with Disabilities Act (ADA) requirements will be inspected to assure the components are functioning per their purpose. Note: A regulatory compliance review is not required for these units or areas, just a functionality and EUL assessment.
- b. Identify energy conservation measures and review energy audit reports to incorporate energy audit recommendations into Green Physical Needs Assessment.
- c. The assessment is of observable components and destructive testing is not anticipated and would only occur with prior Agency approval.
- d. Any deficiencies that are identified and which could have an impact on health and safety will be brought to the attention of the Agency immediately.
- e. The Contractor will develop a Comprehensive Costing Library. Professional/certified cost estimating utilizing RSMeans is preferred. Building a comprehensive cost and EUL component library is vital to using the HUD Green PNA Tool. The comprehensive cost and EUL component library must contain descriptions and reference information.
- f. The Contractor will detail quantity and cost estimates to accomplish each work item, a total for each project, and a grand total to accomplish all needed physical improvements. General work category (e.g. Kitchens, Bedrooms, etc.) costing without specific work item costing is unacceptable. Contractor shall show a line item prioritization as recommended by HUD. All data will be entered into the HUD GPNA tool. All data fields in the GPNA tool must be collected and inputted by Contractor into GPNA tool. Missing or incomplete data is unacceptable.

## Report Preparation

Upon completion of the inspections, the Contractor will provide a report to the Agency in narrative and spreadsheet forms that meets HUD and Agency requirements and will be in both paper and electronic format per HUD requirements. The draft report will contain the Green Physical Needs Assessment results including Energy Conservation Measures (ECM) from energy audits, and will be submitted to the Agency for review and comments. The report shall include the following topics.

- Any repair items that represent an immediate threat to health and safety.
- Any Section 504 work items, energy conservation measures, and any environmental hazard (asbestos/lead based paint) items.
- Separate HUD Form 52828, Green Physical Needs Assessment for each asset management property/ development assessed. Attach to each report color photographs and a detailed narrative describing the property's exterior and interior physical elements and condition, including architectural and structural components and mechanical systems.
- Executive Summary.
- The contractor will prepare the final report using input provided by the Housing Authority.

## Energy Audits

Objectives of the audits are to identify energy conservation measures (ECM); determine costs to implement each ECM and the cost savings that result from implementing the measures. Additionally, the audit should identify any compliance, health, or safety issues related to energy improvements. Each development will require a non-investment grade energy audit conducted and a report. The energy audits will include the following:

A. **Data Collection** Sources of information for identifying Energy Conservation Measures (ECMs), as a minimum, shall include the following:

- Prior energy audit reports (if available) and physical needs assessments (if available).
- Energy consumption and cost information from gas, electric, and oil supplier, water and sewer consumption, for Agency paid utilities as well as, tenant held accounts, if available. At least one (1) year of energy bills, but three (3) years is preferred, to be reviewed.
- Architectural, mechanical, and electrical drawings and specifications for housing developments, administrative offices, and other buildings.
- Documentation on Agency's modernization program (Capital Funds).
- Walk-through inspections of reasonable samples of each type of dwelling units in each housing development. Sample will be 10% of all residential units in all developments. However, all sites and building and units types must be surveyed by a certified HERS Rater, state certified energy auditor, or other professional approved by HUD.

- The energy walk through survey must include Core Energy Conservation Measures (ECM) which has a proven track record at reducing energy and water consumption. The Core ECMs include items related to building envelopes (e.g. insulation); heating, cooling and other mechanical systems; water conservations; power, lighting systems, and controls (e.g. CFL); and appliances (e.g. ENERGY STAR). Advanced ECMs which include advance, experimental, or difficult improvement items such as fuel conversion, conservation technologies (energy management systems), energy-generating technologies and renewable energy systems (solar, geothermal) may be considered. Advanced ECM recommendations must be cost-effective per HUD requirements.
- The Contractor will conduct blower door/duct leakage testing on a sample Dwelling Unit at each development in order to determine air sealing requirements. The tester must be HERS Energy Rater certified or equivalent. Equipment must be calibrated within 12 months of blower door test. Evidence of calibrated equipment may be requested.
- Conduct carbon monoxide and gas leak detection on all units inspected which have natural gas appliances/equipment.
- May conduct thermal imaging tests on problem areas which are not accessible with visual inspection.
- Results of the walk-through inspections will be used to record qualitative information on form HUD-9614 and/or other enhanced Energy Survey forms. Contractor must provide data to complete said forms or a set of completed forms.
- Conduct interviews of selected property, maintenance and modernization personnel and residents to determine problem areas and concerns.

## **B. Data Analysis**

The contractor shall provide:

- For each of the ECMs identified above, document information on energy audit data collection forms and calculate savings and payback period. At minimum, ECMs must be categorized into pay back periods of 5 years or less, 5 to 10 years, and greater than 10 years.
- Recommendations on ECMs to be implemented and prioritized.
- Preparation of summary listing of all EC Ms identified for each of the housing developments.

## **C. Report Preparation**

The contractor shall:

- Prepare draft report on energy audit results and submit to the Housing Agency for review and comments. Report shall include the following topics: Audit objectives and methodology.
- Narrative on overall results and recommendations of audit, description of EC Ms, recommended priority for implementation, and summary of testing conducted on units.
- Energy Audit Summary of Results for each housing development. This summary will include the following:
  1. Title of ECM
  2. Applicability to Development
  3. Detail Cost Estimates
  4. Expected Useful Life (EUL)
  5. Annual Savings in Consumption and Dollars
  6. Payback Period by years or categories
  7. Recommendations
  8. Energy data collection forms
  9. Cost/benefit worksheets utilizing HUD guidelines showing savings for each recommended ECM and payback period. Prepare final report using input from the Housing Agency.

#### IV. Deliverable and Schedule

##### Deliverables:

1. Hard copy and 1 electronic copy shall be submitted by the Contractor in a "flash or thumb drive" or compact disk (CD) of the Draft Report of the Green Physical Needs Assessment Results and Energy Audits.
2. Hard copy and 1 electronic copy shall be submitted by the Contractor in a "flash or thumb drive" or compact disk (CD) of the Final Report of the Green Physical Needs Assessment Results and Energy Audits.
3. The Contractor will provide the Agency with a copy of the HUD's Green Physical Needs Assessment Tool (GPNA) with all the Agency's PIC Data, GPNA Inspections, Comprehensive Cost Library, Replacement Needs, Refurbishment Needs, Sustainability Needs, Accessibility Needs, and Marketability Needs installed, if necessary.

##### Schedule:

1. The Draft Report of Physical Needs Assessment and Energy Audits Results are to be received by this Agency no later than ninety (90) days from date of Notice to Proceed.
2. The Final Report of Physical Needs Assessment and Energy Audit Results are to be received by this Agency no later than one hundred twenty (120) days from the date of Notice to Proceed.
3. All reports are to be sent to:

The Housing Authority of the City of Brownsville  
Korina Amador, Procurement Manager  
[kamador@hacb.us](mailto:kamador@hacb.us)  
2606 Boca Chica Blvd.  
Brownsville, Texas 78521

#### V. Submission Requirements and Pricing

Interested proposers must respond with a technical and price proposal with:

1. Detailed description of how proposed services as stated in this RFP will be provided.
2. Listing of the deliverables the Housing Authority will receive.
3. Proposals demonstrating an understanding of the required services of this solicitation, meeting HUD policies, guidelines, and procedures governing the administration of a Public Housing Agency related to services being proposed, and references.
4. Provide written evidence of the firm's ability to perform the services.
5. Summary profiles of the firm's principals, staff, and associates, including any required certifications.
6. Fixed Price to provide all the proposed services.

RFP HACB No. 20-003 Green Physical Needs Assessment GPNA and Energy Audit, Due Date and Time: Thursday, August 6, 2020, by 4:00 p.m. C.S.T. The RFP response must be addressed to:

The Housing Authority of the City of Brownsville  
Korina Amador, Procurement Manager  
2606 Boca Chica Blvd.  
Brownsville, Texas 78521

## **RFP Clauses**

1. Subject to Other Documents. The contract is subject to the terms and conditions of the State of Texas, as they exist at the time the agreement is signed. Additionally, the contract is subject to terms and conditions in Form HUD 5369-C.
2. Binding Effect. The contract shall be binding upon and shall inure to the benefit of the successors and the assigns of the Housing Authority, and to the heirs and personal representatives of the consultant.
3. Conflict of Interest. The selected Contractor warrants that it presently has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services under this contract.
4. Award of Contract. The award shall be made to the responsible party whose proposal is most advantageous to the Housing Agency, taking into consideration the evaluation factors set forth in this request for proposals.
5. Envelopes/Cover Page. Proposal envelope and/or email cover page shall be clearly marked to indicate that a proposal is enclosed. Please identify at lower left-hand corner of envelope or top of the email cover page "Green Physical Needs Assessment Proposal and Energy Audit."
6. The contractor warrants adhering to civil rights, equal opportunity, fair housing, and Section 3 regulations.
7. Responsibility. It shall be the responsibility of the firm to see that the Housing Agency receives their proposal by the date and time set for the opening of the proposals. Proposals received after the time stated shall not be considered.
8. Rejection of Proposals. The Housing Agency reserves the right to accept or reject any or all proposals that are determined to be non-responsive.

## **VI. Eligibility to Submit Proposal**

In order to be considered eligible to submit a proposal, each organization, individual, or firm must submit written evidence with its proposal, demonstrating that it fulfills the following eligibility criteria:

1. The proposer has a minimum of one-year experience working for or contracting with a housing agency(ies) and/or related housing or government agencies. Must have experience in conducting physical needs assessments, energy audit/utilities studies, multi-family building code inspections, the Capital Fund Program, and/or other public housing programs.
2. The proposer and staff utilized in this engagement must have at least five years of experience with inspections of building systems including systems, roofs, structural components, living spaces, plumbing, electrical, HVAC, building envelope, emergency systems, elevators, community and program spaces, offices, and grounds and other amenities; demonstrated track record of other contracts or similar services; minimum five year experience with cost estimating; knowledge of applicable local and state building codes and ordinances; and knowledge of Section 504 and American with Disabilities Act.

3. Energy Auditor must hold a current, valid certification from our state energy audit certifying agency or a nationally recognized energy audit certification provider e.g. HERS Energy Rater.
4. Proposer must provide a minimum of 2 references with telephone numbers of housing agencies or multi-family properties where similar work was performed.
5. Proposer must provide a certification statement that the firm is not debarred, suspended, or otherwise prohibited from professional practice by any federal, state, or local agency.

## **VII. Evaluation Factors for Award of Contract**

In addition to eligibility criteria and other requirements addressed in this RFP, each of the following factors should be addressed, as they will be considered when determining the contract award:

1. Verifiable and successful experience in performing Green Physical Needs Assessments and Energy Audits with blower door (air infiltration) testing for public housing agencies. (20 points maximum)
2. Approach and experience in conducting green physical needs assessment and energy audits. (20 points maximum)
3. Staff. Description of organization's staff and experience in HUD capital improvement programs, and facility inspections, cost estimating, green, physical needs assessments and energy audit projects, and copies of required certifications. (20 points maximum)
4. Timing. Proposers shall describe start and schedule of activities to be performed. (15 points maximum)
5. Total Responsiveness to RFP (10 points maximum)
6. All proposers must carry the following insurance policies: required workmen's compensation, general liability, and professional liability of no less than \$1 million and non-owners auto insurance. Please provide evidence of insurance. (5 points maximum)
7. Fixed Price. Total Price of services to be provided shall be described. Include hourly rates by positions, total labor and travel expenses.(5 points maximum)
8. Minority business enterprise, Section 3 business concern, and/or women owned business. (5 points maximum)

**VIII. MATERIALS**

The Contractor will provide all assessment and other related materials and equipment and/or software necessary for the execution of this contract.

**IX. PAYMENT OF CONTRACTOR FEES**

Contractor's invoices shall be processed and payment made to the contractor in accordance with the policy and procedure of the Agency.

**X. AWARD OF CONTRACT**

It is anticipated that a committee will evaluate the proposals that are received. All proposals will be evaluated on eligibility criteria and factors for awards previously stated above.

**XI. ATTACHMENTS**

- A. Development Breakdown Report.
- B. Form HUD-5369-B, Instructions to Offerors-Non-Construction.
- C. Form HUD-5369-C, Certifications and Representations of Offerors-Non-Construction Contract.



# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The HA may

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

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

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

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

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

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

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

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

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

[Describe bid or proposal preparation instructions here:]

# General Conditions for Non-Construction Contracts

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

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

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/31/2017)

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

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

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

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

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

#### 3. Termination for Convenience and Default

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

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

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

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

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

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

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

#### 6. Energy Efficiency

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

#### 7. Disputes

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

#### 8. Contract Termination; Debarment

#### 9. Assignment of Contract

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

#### 10. Certificate and Release

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

#### 11. Organizational Conflicts of Interest

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

#### 12. Inspection and Acceptance

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

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

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

### 13. Interest of Members of Congress

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

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

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

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

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

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## 16. Equal Employment Opportunity

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

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

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

## 17. Dissemination or Disclosure of Information

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

## 18. Contractor's Status

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

## 19. Other Contractors

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

## 20. Liens

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

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

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

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

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

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

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