



REQUEST FOR PROPOSALS

FOR

LEGAL SERVICES

Columbia Housing and Redevelopment Corporation
101 Penny Avenue
Columbia, Tennessee 38401
(931) 388-5203 - office (931) 380-8947 – fax
www.chrc-tn.org

TABLE OF CONTENTS

PART I – INTRODUCTION	PAGE
1.1 Definitions.....	3
1.2 Profile of Columbia Housing and Redevelopment Corporation.....	3
PART II – STATEMENT OF WORK	
2.1 Scope of Services.....	4
2.2 Firm Qualifications	6
PART III – SPECIAL CONDITIONS	
3.1 Contract Term	7
3.2 Standards of Conduct.....	8
3.3 Section 3 and Minority/Women Business Participation.....	8
PART IV – SUBMISSION REQUIREMENTS	
4.1 General Conditions.....	8
4.2 Proposal Requirements.....	9
PART V – PROPOSAL SELECTION	
5.1 Evaluation Factors.....	12
5.2 Submission Instructions	13
5.3 Timetable	13
PART VI – FORMS AND ATTACHMENTS	
Form HUD-5369-B: Instructions to Offerors Non-Construction	A
Form HUD-5369-C - Certifications and Representations of Offerors.....	B

PART I – INTRODUCTION

1.1 DEFINITIONS

For the purposes of this Request for Proposals, the following definitions shall apply:

The term "**CHRC**"; means the Columbia Housing and Redevelopment Corporation

The term "**RFP**" means this Request for Proposals.

The terms "**Offeror**"; "**Firm**"; "**Proposer**" means the company(s), firm(s) or individual(s) from whom proposals are requested.

The term "**HUD**" means the United States Department of Housing and Urban Development, a federal agency which partially funds and monitors operations of the Columbia Housing and Redevelopment Corporation and its limited partnerships. Nothing contained in this RFP or in the contract resulting from the selection process shall be construed to create any contractual relationship between the successful proposer and HUD.

1.2 PROFILE OF COLUMBIA HOUSING AND REDEVELOPMENT CORPORATION

The Columbia Housing Authority was incorporated in 1959 as a public housing CHRC under the laws of the State of Tennessee. The cognizant federal agency for all PHAs at that time was the United States Housing Authority (now HUD). In 2009, the name of the agency become Columbia Housing and Redevelopment Corporation (CHRC) to expand the mission of the affordable housing provider to include redevelopment initiatives.

The CHRC is governed by a Board of Commissioners, consisting of five (5) members, appointed by the Mayor and the Columbia City Council. The Chief Executive Officer also referred to as the Executive Director/CEO of CHRC is responsible for the organization's general operations. CHRC operates Advent Community Development Corporation, a 501c3 non-profit corporation that serves as an instrumentality to perform redevelopment and other activities.

CHRC must follow the laws, policies and regulations as set forth by the U.S. Federal Government, including the U.S. Department of Housing and Urban Development, applicable State of Tennessee and local government regulations. CHRC administers approximately 296 public housing units for families and citizens of the surrounding community.

CHRC enters into and executes contracts and other instruments that are necessary and convenient to the exercise of its powers. CHRC maintains contractual agreements with HUD to manage and operate its low rent public housing program, which are mainly funded by rental income and HUD subsidies and grants.

PART II – STATEMENT OF WORK

2.1 SCOPE OF SERVICES

CHRC requests proposals from qualified legal firms to provide services in all legal matters related to the corporation and the related limited partnerships it manages (Columbia LP, Columbia II LP, and Columbia III LP. Additionally, CHRC is looking for a firm with experience in the following areas of legal services: housing development and management; real property laws and codes, Tennessee employment law and contractual legal requirements of federal subsidy programs (i.e. HUD multifamily housing, LIHTC, RAD, and other federal programs). Legal services under the contract which shall be entered into by and between the CHRC and the successful respondent shall include, but not be limited to:

- 1) Attendance and guidance during any or all CHRC Board of Commissioners meetings (regular or special) and other meetings as requested, and supervision, as to legality of the official minutes of the CHRC.
- 2) Conferring with and advising the officers, employees, and members of the Board of Commissioners on legal matters and issues when requested.
- 3) Drafting and/or review of all legal documents, papers, contracts, agreements, certifications, resolutions, specifications, bonds, waivers, and such other legal drafting as may be required.
- 4) Consulting with the CHRC management on all matters of a legal nature.
- 5) Appearance for and representation of the CHRC, in court, in all litigated matters except as herein otherwise provided.
- 6) Performance of services necessary in the prosecution of contested eviction actions.
- 7) Instituting and bringing to conclusion in court of original jurisdiction, all actions for the recovery of possession of dwelling units or for the collection of rent.
- 8) Guidance to the CHRC and staff, as well as representation when necessary, regarding personnel actions, policies and procedures, including but not limited to employment compensation hearings, worker compensation claims, employment discrimination claims and equal employment hearings.
- 9) Guidance to the CHRC and staff regarding real estate procedures, as well as the completion of real estate transactions, including the review of utility easements.
- 10) Review of employee benefits contracts, including but not limited to pension plan documents, group annuity contracts, group medical insurance contracts, life insurance contracts and disability contracts.

- 11) Defense of the CHRC during litigation arising out of the course of operations of CHRC.
- 12) Consultation to other attorneys representing CHRC in litigation in which the liability insurance carrier has retained counsel to represent the corporation and, if needed, appear in said litigation on behalf of CHRC.
- 13) Review of Federal guidelines and regulations and advise CHRC and staff to the consequence as necessary.
- 14) Review all potential lease terminations and make recommendations as to appropriate actions, as well as draft notices of lease termination.
- 15) Representation of the CHRC on appeals of lower court decisions to the Federal or State Appellate Courts.
- 16) Review of requirements, obligations and procedures for complete and efficient processing of bankruptcy notices related to a) Employee matters (payroll) and b) Current or previous housing residents.
- 17) Approval of the legality of contracts and all payments thereunder.
- 18) Handling of all legal questions and matters arising under contracts of the CHRC and rendering legal opinions on all matters submitted by management.
- 19) Review and approval of all documents pertaining to temporary and permanent financing relating to all developments in the CHRC portfolio.
- 20) Reviewing, advising, and representing the CHRC in connection with disputes arising out of the bid process.
- 21) Reviewing, advising, and representing CHRC with regard to disputes arising out of contracts between the CHRC and its vendors.
- 22) Advising and representing the CHRC with regard to issues and claims arising out of construction contracts.
- 23) Advising and representing the CHRC with regard to issues involving the State of Tennessee Landlord Tenant Act and Labor Law.
- 24) All legal work necessary in connection with the preparation and adoption of the initial management program for each project, including the completion of all resolutions and forms necessary for a complete management program.
- 25) Preparation, modification and approval of the CHRC's leasing documentation.

- 26) Advice and assistance to CHRC in preparation for formal resident grievance hearings, including appearances at hearings if requested.
- 27) Review legal work in connection with acquisition and/or disposition of real property, including the examination of abstracts of title and the furnishing of a consolidated opinion of title in accordance with local regulations.
- 28) Advise and assist CHRC in any new programs such as but not limited to the establishment and operation of not-for-profit subsidiaries or other business entities.
- 29) Advise and assist the CHRC on matters subject to the US Federal Fair Housing Act of 1968 and Equal Housing Opportunity requirements.
- 30) Perform corporate legal matters for Advent Community Development Corporation, a 501c3 non-profit instrumentality of CHRC, Columbia LP, Columbia II LP, and Columbia III LP.
- 31) Other legal services as may be requested by the CHRC Board of Commissioners and/or Executive Director/CEO.

2.2 FIRM QUALIFICATIONS

The description of respondent's qualifications and experience shall evidence/demonstrate that respondent possesses the following:

- 1) A broad and practical knowledge of HUD rules, regulations, requirements, law and related procedures; knowledge of various housing programs of the U.S. Department of Housing and Urban Development (HUD) with particular emphasis on the Public and Indian Housing Programs; experience in implementing same.
- 2) Knowledge and work experience with administrative regulations and the law in matters relating to, but not limited to the following areas: Davis-Bacon Act, Lease and Grievance procedures, Affirmative Action regulations, Tennessee State Law, Maury County and City of Columbia laws which may impact affordable housing. Also, the ability to review legal requirements of specific grant programs and other laws/ regulations relating to non-discrimination based on ADA requirements in federally assisted programs with emphasis on Section 504 of the Rehabilitation Act of 1973 and the Architectural Barriers Act of 1968).
- 3) Strong analytical and interpretive skills, as well as verbal and written communication expertise, particularly with regard to housing and urban development matters; and experience in applying same.
- 4) Ability to provide legal services involving housing development and management; financing involving advance, permanent and temporary notes; litigation, real property laws and codes; human services arbitrations and federal subsidy programs.

- 5) Skills, capabilities, capacity and work experience of a demonstrated level that would assure completion of the scope of work in a timely and satisfactory manner.
- 6) All necessary and/or required licenses, registrations, and certifications.
- 7) Certification that the law firm/individual is not debarred and has all necessary and/or required insurance coverage in effect.
- 8) Five (5) or more years of experience representing a housing CHRC or its relative equivalent.

PART III – SPECIAL CONDITIONS

3.1 CONTRACT TERM

The successful Offeror shall be expected to execute a standard professional service contract with CHRC. The term of the contract shall be effective when executed by CHRC and shall continue for five (5) years (specific dates to be identified in contract negotiations), unless sooner terminated in accordance with the contract. Contract negotiations and renewals will be discussed upon the interview with selected candidates.

The contract with the selected legal firm will be for five (5) years and include a ninety (90) day term extension at the existing billing rates after contract expiration (if convenient to CHRC). This extension may be necessary if the current legal firm is not selected for the next legal services contract.

3.2 STANDARDS OF CONDUCT

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

3.3 SECTION 3 AND MINORITY/WOMEN BUSINESS PARTICIPATION

The firm awarded the contract agrees to use its best efforts to subcontract and employ Section 3 and minority business enterprises and/or women business enterprises, certified as such or recognized by CHRC as such. CHRC is an equal opportunity employer and requires all of its contractors to comply with policies and regulations concerning equal employment opportunity.

PART IV – SUBMISSION REQUIREMENTS

4.1 GENERAL CONDITIONS

The RFP will be available at the Administrative Office of the CHRC, 101 Penny Avenue, Columbia, Tennessee and available on the CHRC website <http://www.chrc-tn.org>. All addenda and responses to written questions will be published on the CHRC website or available in hard copy if requested. It is the respondents' responsibility to check the AHA website for addenda changes and written question responses.

All proposals must conform to the requirements outlined herein. CHRC reserves the option to require or to request additional information from selected candidates. There may be subsequent instructions, if any, issued to the selected candidates.

The successful Offeror will be expected to execute a standard professional service contract with CHRC based on the proposal submitted and the requirements of this RFP and any future addenda thereto.

Any amendment or addenda may be issued prior to the opening of proposals for the purpose of changing or clarifying the intent of this RFP. All amendments or addenda shall be binding in the same way as if originally written in this RFP.

The Offeror shall identify any conflicts of interest which may arise if the Offeror serves as CHRC's counsel and shall describe how it proposes to avoid such conflicts. The contract will require the Offeror to notify CHRC immediately of any potential conflicts of interest and to undertake immediate action to eliminate the source of the potential conflict. CHRC will reserve the right to make the Offeror aware of situations which may present a conflict of interest and require the Offeror to promptly remedy the situation to the satisfaction of CHRC.

Offerors shall be responsible for informing themselves with respect to all conditions, which might in any way affect the cost or performance of any of the work. Failure to do so shall be at the sole risk of the Offeror and no relief shall be given by CHRC for errors or omissions by the Offeror.

An authorized representative of the Offeror must sign proposals.

This RFP does not represent a commitment or offer by CHRC to enter into a contract, or other agreement with proposer. The proposal and any information made a part of the proposal will become a part of CHRC's official files without any obligation on CHRC's part to return it to the individual proposer. This RFP and the selected firm's proposal will, by reference, become a part of any formal agreement between the firm and CHRC resulting from this solicitation.

CHRC reserves the right to waive any irregularities or formalities in any or all proposals. Failure to furnish all the information requested may disqualify a proposer.

The U.S. Department of HUD, the US Government Accounting Office, the State of Tennessee, CHRC, any duly authorized representatives of each, shall have access to, and the right to examine any and all pertinent books, records, documents, invoices, papers, and the like, of the firm, which shall relate to the performance of the services provided.

The Offeror shall not collude in any manner or engage in any practices with any other proposer(s), which may restrict or eliminate competition. Violations of this instruction will cause the proposal to be rejected. This prohibition is not intended to preclude joint ventures or subcontracts.

4.2 PROPOSAL REQUIREMENTS

The following is a description of the minimum information which must be supplied in your proposal. You may give supplementary facts or other materials that you consider may be of assistance in the evaluation.

A. Executive Summary

Provide a brief summary of your firm's approach to the work associated with the requested services, demonstrate an understanding of the scope of services required, and approaches to be utilized in performing these services, specifically related to the rules, regulations associated with public housing authorities.

B. Experience

Describe how long the Attorney or Law Firm has been in business and current structure. Please provide any other names under which the firm has done business and the dates it operated under each name and the locations at which it operated under each name. Describe the experience of the Offeror conducting comparable services during the most recent five-year period similar in scope to the services required by CHRC. Provide a list of companies or governmental agencies or organizations to which your firm is currently providing services. If this does not include at least three entities, then provide the names of the entities for which similar services have been provided.

For each client entity include:

- The term (beginning and ending dates) of your contract agreement(s)
- A brief description of the scope of work
- The name and contact information of the individual that administered your contract(s)
- Explain the roles performed by the proposer for the client entity.

C. Qualifications

Provide the qualifications and experience the firm has in providing services outlined in Section 2.1 Scope of Services, including Board certifications held. Describe Offeror’s experience with affordable housing legal issues including applicable local municipality, State of Tennessee and Federal multifamily and LIHTC housing regulations. List all key members of the firm who will be committed to this contract. Indicate the level of effort and function of each member of the firm toward the execution of this contract. Prepare an organizational structure to show how the key members will be involved. Include resumes for these individuals.

D. Schedule of Performance/Timeliness/Deliverables

Each proposal should include a description of how the firm intends to assume responsibility of existing legal matters and how soon the firm would be in a position to provide services. The description should also include the firm’s availability and proposed length of timeframe for delivery of all future services outlined in Section 2.1 (i.e., court appearances, board meetings, etc.).

E. Affirmative Action Plans

Explain method and procedures that your firm will use to achieve meaningful Section 3, Minority and Women Business participation in the contract.

F. Cost

Provide hourly billing rates for services. Provide the structure of rates for partners, associates, paralegals, couriers, etc. Selected proposer must be capable of tracking and billing (invoicing) all work hours and materials (if reimbursable) by specific program or funding source as required by CHRC. Any proposer not capable or willing to comply with this requirement will be considered non-responsive. Preferred formatting will be agreed upon during contract negotiations.

All costs related to this contract will be governed by federal regulations and HUD Handbook No. 7460.8 REV 2.

G. Exclusions

Costs as described in the following section shall be underwritten by the CHRC subject to the approval process described herein in addition to amounts bid on the basis of this specification:

- 1) All reasonable and necessary expenses paid out or incurred on behalf of the CHRC in the provision of required services as described such as court costs, witness fees, recording fees, etc., but not including the Attorney’s office or overhead expenses.
- 2) All reasonable and necessary expenses for traveling and subsistence in connection with the performance of the duties of said Attorney, outside the area within which the CHRC is authorized by law to operate. Such compensation shall be limited to the amount allowed in accordance with the terms of the CHRC Travel Policy current at the time the expense is incurred.

- 3) Fees and costs for litigation which, in the agreed opinion of both the CHRC and the Attorney, are extraordinary or lengthy and beyond the scope of Section 2.1 of this RFP. In each case, the Attorney shall notify the CHRC in writing and the matter will be reviewed for an appropriate hourly rate to cover the special or extraordinary litigation which CHRC from time to time may request of the Attorney. This litigation shall be beyond the scope of Section 2.1 of this RFP.

G. Insurance

The successful Offeror shall provide CHRC with evidence of all appropriate and applicable insurance coverage carried by the firm, including policy coverage periods. Offerors shall furnish CHRC with certificates of insurance, showing that the following insurance is in force and will insure all operations under this RFP.

- **Professional Liability Insurance** – The successful Offeror shall maintain a policy of professional liability insurance in the amount of at least \$2,000,000 per occurrence.
- **Workers' Compensation** in accordance with the State of Tennessee rules and regulations
- **General Liability Insurance** with a single limit for bodily injury of \$1,000,000 per occurrence and property damage limit of no less than \$1,000,000 per occurrence.
- **Automobile liability** on owned and non-owned motor vehicles used on the site(s) or in connection herewith for a combined single limit of bodily injury and property damage of not less than \$1,000,000 per occurrence.

All insurance shall be carried with companies that are financially responsible and admitted to do business in the State of Tennessee. Offeror shall not permit the insurance policies required to lapse during the period for which the Agreement is in effect. All certificates of insurance shall provide that no coverage may be cancelled or non-renewed by the insurance company until at least thirty (30) days prior written notice.

PART V – PROPOSAL SELECTION

5.1 EVALUATION FACTORS

Selection of a successful Offeror will be the sole discretion of CHRC. An evaluation committee will be established to review Offeror responses to this RFP. Proposals will be evaluated using the following evaluation criteria. Offerors will be selected based on the highest cumulative score, as provided below. The CHRC, however, reserves the right to reject any and all proposals and to waive any informality in proposals received for any reason whatsoever.

EVALUATION CRITERIA	Maximum Points
1. Offeror’s compliance with all specifications and/or other requirements contained in this RFP (excluding cost).	25
2. <i>Labor and Employment Matters</i> Relevant experience and qualifications with TN state and federal statutes and regulations regarding labor and employment matters relating to public agency law. Relevant experience and qualifications in alternative dispute resolution regarding employment matters.	25
3. <i>Affordable Housing Development and Acquisitions</i> Relevant experience and qualifications with affordable/public housing legal issues including applicable State of Tennessee and Federal regulations affecting public housing authorities, including Internal Revenue Code Section 42 and State Tax-Exempt Bond regulations.	25
4. <i>General Counsel and Litigation</i> Relevant experience and qualifications with Federal affordable/public housing and pertinent legal issues including evictions, TN Landlord Tenant Act, personnel related matters, and applicable State of Tennessee and local laws	25
TOTAL POINTS	100

During proposal evaluation, CHRC reserves the right to call for supplementary information from Offerors and to meet with all or any one of them to clarify points of uncertainty or ambiguity.

If selected, candidates will be requested to attend an interview to discuss the proposed scope of work, including availability of equipment and staffing, accounting and payment procedures, schedules, qualification of subcontractors proposed for portions of the work, and such other items as are directly related to the proposal prior to being awarded the contract.

Interviews and negotiations may be conducted with contractors who have a reasonable chance of being selected for award. After evaluation of the proposal revisions, if any, the contract will be awarded to the responsible firm whose qualifications, price and other factors considered are advantageous to CHRC.

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

**Representations, Certifications,
and Other Statements of Bidders**
Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

Table of Contents

Clause	Page
1. Certificate of Independent Price Determination	1
2. Contingent Fee Representation and Agreement	1
3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	1
4. Organizational Conflicts of Interest Certification	2
5. Bidder's Certification of Eligibility	2
6. Minimum Bid Acceptance Period	2
7. Small, Minority, Women-Owned Business Concern Representation	2
8. Indian-Owned Economic Enterprise and Indian Organization Representation	2
9. Certification of Eligibility Under the Davis-Bacon Act	3
10. Certification of Nonsegregated Facilities	3
11. Clean Air and Water Certification	3
12. Previous Participation Certificate	3
13. Bidder's Signature	3

1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

_____ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

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

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

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

[] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [] is, [] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

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

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

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

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

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

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

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

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

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

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

(c) [] is, [] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- [] Black Americans
- [] Asian Pacific Americans
- [] Hispanic Americans
- [] Asian Indian Americans
- [] Native Americans
- [] Hasidic Jewish Americans

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [] is, [] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [] is, [] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

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

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

The bidder certifies that:

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

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

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

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

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

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

13. Bidder's Signature

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

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

- (d) 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.

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.

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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