

REQUEST FOR PROPOSALS

DEVELOPMENT PARTNERS OF AFFORDABLE MULTI-FAMILY HOUSING



.....

**JEFFERSON COUNTY
HOUSING AUTHORITY**

.....

3700 INDUSTRIAL PARKWAY
BIRMINGHAM, ALBAMA 35217
SUMMER 2019

Request for Proposals

Development Partners of Affordable Multi-Family Housing

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Request for Proposals

Development Partners of Affordable Multi-Family Housing

1. BACKGROUND

Jefferson County Housing Authority (“JCHA” or the “Authority”) is governed by the Alabama County Housing Authorities Law, codified in Title 24 of the Code of Alabama (1975). The Authority is a unit of government and its functions are essential governmental functions. It operates and manages its affordable housing developments to provide decent, safe, sanitary and affordable housing to low-income families, veterans, the elderly, and the disabled, and implements various programs designed and funded by the U.S. Department of Housing and Urban Development (“HUD”). The Authority is a Public Housing Authority (“PHA”) that administers Public Housing, HUD’s Section 8 Housing Choice Voucher (“HCV”) and Veterans Affairs Supportive Housing (“VASH”) Programs. JCHA’s revenue is derived from federal funds, administrative fees, development grants, and rental income.

JCHA enters into and executes contracts and other instruments that are necessary and convenient to the exercise of its powers.

The property of JCHA is used for essential public and governmental purposes. The Authority and its property are exempt from all taxes, including sales tax on all its purchases of supplies and services.

The JCHA is affiliated with the JCHA Housing and Development Corporation, an Alabama 501(c)(3) non-profit entity that serves as an instrumentality of the JCHA and currently owns a total of 299 units of housing.

The JCHA HDC is available to partner with JCHA and Developer.

2. REQUEST

JCHA, as part of its mission to provide safe, decent sanitary and affordable housing for low-income persons and families, seeks proposals from qualified for-profit or non-profit housing developers with extensive experience in developing or the acquisition/rehabilitation of affordable multi-family housing located in Jefferson County, Alabama and outside the city limits of Birmingham, Alabama, to construct affordable housing using various public and/or private financing and/or desirous of selling the General Partnership interest in and rehabilitating an existing 9% Low-Income Housing Tax Credit Development. If applicable to the development proposal, the

selected developer(s) will apply for a Low- Income Housing Tax Credit (LIHTC) allocation from the Alabama Housing Finance Authority (AHFA), apply for multifamily housing revenue bond financing from the JCHA or be desirous of selling the General Partnership (GP) interest in an existing 9% LIHTC Development. Projects sites are to be proposed by the Respondents but must be located outside of the city limits of Birmingham but within Jefferson County in high opportunity areas and non-impacted census tracts as defined by the Department of Housing and Urban Development and the AHFA. Developers must provide evidence of political and community support. Title to one or more selected sites will be acquired by the JCHA or an entity controlled by the JCHA. In the event that the Project contains deep targeted units and/or the developer is willing to target additional units in an existing transaction, the JCHA/Developer will pursue funding from other government agencies to assist in the development or acquisition of the GP Interest of the project.

JCHA will consider most favorably Offerors who clearly demonstrate knowledge of the Federal, State or local laws, affordable housing and the low-income housing tax credit program. The Offeror must have demonstrated experience in the interaction of housing authorities with lenders/investors, HUD/AHFA, HUD/AHFA regulations and requirements related to the financial accounting and audit services for affordable housing developments. All submittals must conform to requirements outlined herein. JCHA intends to serve as Co-Developer for all projects. All activities, endeavors, initiatives, and actions undertaken as a result of an award of this RFP are hereinafter understood and incorporated by reference, to be in partnership with the JCHA, its entities, instrumentalities and/or affiliates, and is subject to JCHA final prior approval.

If a contract is awarded, it will be awarded to the responsible Offeror whose qualifications, fees, terms/conditions and other factors are deemed most advantageous to the JCHA. Additional requirements or restrictions imposed by lender, investor, AHFA, HUD and other governmental entities will also be considered in rendering a decision.

3. PROPOSAL SUBMISSION TIME and PLACE

An original and three (3) copies (a total of four) of the complete submission package must be received by the JCHA, Attn: Ken Vaughan, 3:00 CST on August 27, 2019, Jefferson County Housing Authority, 3700 Industrial Parkway, Birmingham, Alabama 35217 with envelope appropriately marked with **“RFP for Development Partners of Affordable Multi-Family Housing”**. The submission package must be signed by an officer of the Respondent who is legally authorized to enter into a contractual relationship in the name of the Respondent. Proposals submitted electronically must also be signed by an officer of the Respondent who is legally authorized to enter into a contractual relationship in the name of the Respondent. In addition the electronic proposals must be transmitted via email to Ken Vaughan at kvaughan@jcha.com and received by 3:00 p.m. on August 27, 2019.

JCHA reserves the right to accept or reject any or all proposals, and to waive any informalities or irregularities.

4. **SCOPE FOR THE DEVELOPMENT OF AFFORDABLE MULTI-FAMILY HOUSING**

The JCHA's goal in issuing this RFP is to provide additional affordable rental housing options for low-income persons and families in Jefferson County, Alabama.

A.) Project Description

The JCHA is looking for one or more affordable housing projects located outside of the Birmingham city limits but within Jefferson County, which require assistance in financing and/or one or more existing projects where the Developer is desirous of selling the GP Interest. To maximize the competitiveness of a proposal, the development should maximize the targeting of tenants in the 30% - 50% Area Median Income Range (deep targeted units).

B.) The Proposed Initiatives

1. **New Construction Projects:** This initiative is being undertaken by the JCHA to provide additional affordable housing options for families in Jefferson County, Alabama. The initiative has the following core elements:
 - a) *New Housing.* New multi-family units will be constructed which respect the development patterns and scale of the surrounding community to provide a housing resource for low-income residents in Jefferson County (outside the city limits of Birmingham, Alabama).
 - b) *Acceptable Site.* The JCHA must approve the location and condition of the proposed site, i.e. High Opportunity Area and Non-Impacted Census tracts. The selected developer(s) will be required to provide a Phase I Environmental Assessment to the JCHA for projects proposing new construction, and the JCHA's selection of any new construction project is subject to an acceptable Phase I.
 - c) *Ownership Structure* Fee title to the land will be taken in the name of the JCHA or a related tax- exempt entity, and the land will be leased back to the development partnership under a long-term ground lease (99 years). At the equity and construction loan closing, the development partnership will pay the JCHA or its related tax-exempt entity an up-front lease payment that will be used to acquire title to the land. A JCHA controlled entity will serve as the sole general partner of the development partnership. Development of the project will be turn-key, with the developer providing a fixed-price construction contract with a general contractor who will be identified in the developer's response to this RFP.
 - d) *Financing Sources.* This initiative will be financed from a combination that

may include tax- exempt bond proceeds, Community Development Block Grant (CDBG), Community Development Block Grant Disaster Recovery Funds (CDBG-DR), Low-Income Housing Tax Credits, and private resources. The selected developer is responsible for seeking all private funds needed for the project, and such funding must be identified in the response to this RFP. Proposals must identify and justify the amount of JCHA resources that are needed for the proposed project.

2. **Acquisition of the General Partnership Interest:** This initiative is being undertaken by the JCHA to acquire additional affordable housing options for families in Jefferson County, Alabama. The initiative has the following core elements:
 - a. *Existing Housing.* Existing multi-family project must respect the development patterns and scale of the surrounding community to provide a housing resource for low-income residents in Jefferson County (outside the City Limits of Birmingham, Alabama).
 - b. *Acceptable Site.* The JCHA must approve the location and condition of the proposed site, i.e. High Opportunity Area and Non-Impacted Census tracts as defined by HUD and AHFA.
 - c. *Ownership Structure.* Fee title to the land will be taken in the name of the JCHA or a related tax exempt entity, and the land will be leased back to the development partnership under a long-term ground lease (99 years). At the equity and construction loan closing, the development partnership will pay the JCHA or its related tax-exempt entity an up-front ground lease payment. An JCHA controlled entity will serve as the sole general partner of the development partnership.
 - d. *Financing Sources.* This initiative will be financed from a combination of funds from JCHA, other public resources, and private resources. The selected developer is responsible for seeking all private funds needed for the project, and such funding must be identified in the response to this RFP. Proposals must identify and justify the amount of JCHA resources that are needed for the proposed project.

C.) JCHA's Role

The JCHA will assume one or more of the following roles in the development of the selected project(s):

1. *Lender/Grantor.* JCHA and/or other funds may be made available for use by the developer for the development of the project. Only new construction developments, i.e. where construction documents are 50+% complete and/or

existing developments will be considered.

2. *Asset Manager.* The JCHA will monitor and enforce the terms of the Agreements.
3. *Supportive Services and Economic Development Program Provider.* The JCHA will monitor the supportive services and economic development programs.
4. *Landlord.* The JCHA or its related entity will be the owner of the fee title to the land and will lease the land to the development partnership on a 99-year ground lease. Upon termination or expiration of the ground lease, the improvements located thereon will belong to the Landlord.
5. *Development Partner.* The JCHA will receive a share of the developer fee and cash flow in consideration of its contributions to the development of the project. The specific fee structure will be negotiated; however, the JCHA does not intend to have significant involvement in the day-to-day development activities.

D.) Developer's Role

The responsibilities of the selected developer(s) will include, but are not limited to, the following:

1. Undertake predevelopment activities;
2. Develop architectural plans and construction documents and specifications consistent with HUD guidelines, and obtain local approvals and permits;
3. Develop and manage an implementation schedule;
4. Obtain additional leveraged funds from private, non-governmental sources;
5. Develop a project budget;
6. Coordinate all development activities, including reporting and budget requirements, with JCHA;
7. Determine a general management structure and prepare a management plan for the property. If a property manager has not been selected by the developer at the time the proposal is submitted, then the developer shall subsequently recommend a property manager, subject to approval by the JCHA;
8. Provide all necessary financial guarantees and assurances to the lenders and tax credit investors;

9. Develop and implement a "Section 3" resident employment program;
10. If the developer has already entered into a construction contract, then a copy of that contract and a resume and at least three (3) references for the general contractor shall be submitted with the proposal. If a general contractor has not already been selected by the developer at the time of the submission of the proposal, then the developer shall subsequently solicit construction bids and enter into a contract for construction, subject to JCHA approval of the general contractor and the terms of the construction contract. If the contractor is affiliated with the developer, a third-party cost estimate will be required prior to closing to confirm the reasonableness of the construction costs;
11. Oversee construction and ensure completion in a timely manner;
12. If the developer has already entered into commitment letters with lender(s), tax credit investor(s) or a tax credit syndicator, then such commitment letters shall be provided in the proposal. If the developer shall subsequently obtain commitments from one or more lenders, and tax credit investors or a tax credit syndicator, for financing the project, such commitments to be on forms and with parties reasonably acceptable to the JCHA;
13. The Developer will obtain at least three proposals from Tax Credit Investors and JCHA, and the Developer will jointly select the Investor.
14. Provide all required guarantees to the tax credit investor and lender and deliver units consistent with LIHTC regulations if applicable.

A Development and/or the GP Interest Purchase Agreement governing the responsibilities of the parties will also be negotiated.

E.) JCHA Financial Resources

The JCHA may provide the following types of financial resources to facilitate the development or acquisition of the selected project(s):

1. *CDBG/CDBG-DR/HOME Funds.* Funds may be made available from the JCHA via partnerships with other government agencies to be used to offset the production and operation of the housing units. Funds can be either in the form of a grant or a loan.
2. *Other Financial Resources.* The Developer is expected to cause the project to qualify for and/or remain qualified for Low Income Housing Tax Credits. Additional private resources needed to complete the project will be the responsibility of the developer.

F.) **Income Structure and Use Restrictions**

The JCHA seeks to provide housing to serve a mix of market rate households, including the low and very low income. Respondents may target occupancy to low-income households with incomes from 0% to 100% of area median income (and subject to any income restrictions associated with other funding sources).

G.) **Project Design Review**

The JCHA and the Developer will enter into a Development and or GP Interest Purchase Agreement that will set forth the parameters of the transaction. For new construction projects Respondents must submit with the proposal construction documents and specifications for the intended project that are at least 50+% complete. The JCHA will review all design and construction documents and specifications. All changes to design and construction documents and specifications will be subject to the JCHA's written approval.

H.) **Legal and Ownership Structure**

The JCHA shall have the right to negotiate and approve the agreement of limited partnership and/or amended and restated limited partnership agreement prior to execution by the general partner and the tax credit investor limited partner.

5. **SELECTION PROCESS**

A.) **Development Team**

The development team must be capable of handling the development, sale transaction and ongoing oversight of the project. The following will be viewed as favorable by the selection committee:

1. Previous experience developing affordable housing of 100 units or more;
2. Previous experience involving layered financing including, but not limited to, Low-Income Housing Tax Credits, CDBG Funds, etc.;
3. Financial capacity to complete the project, including providing all necessary guarantees;
4. Administrative capacity to complete the project;
5. Successful experience in completing prior LIHTC projects in Alabama through the AHFA's issuance of IRS Form 8609s for the project; and
6. The management entity that is proposed, if any, must have previous experience with managing LIHTC projects 100 units or more.

7. The development is located in a high opportunity, non-impacted census tracts, etc.

The developer partner can be headed by a non-profit community-based developer or a for-profit developer or be a joint venture. The new project construction developer's team should include (1) an experienced developer of multi-family housing (or developer consultant providing technical assistance in building or strengthening the capacity of the developer); (2) a licensed general contractor with demonstrated financial capability; (3) a registered architect with LIHTC multi-family residential design experience, and (4) a management agent with experience managing multi-family rental complexes. The developer may perform any of these functions, if qualified. The JCHA reserves the right to accept or reject individual members of the development team. To the extent that any of the indicated members of the development team are not identified in the proposal, the JCHA reserves the right to require that the developer complies with HUD procurement regulations in connection with the subsequent identification of such team members.

B.) **Proposal Requirements**

The Developer, i.e. the Respondent, is required to submit the following information, although the JCHA reserves the right to request additional information upon review of initial submissions:

1. **Structure of the Team**

All entities that comprise the team are to be identified, indicating their specialization(s) and specific contribution to the team. Respondents are encouraged to include on the team specialists for all components of the program including design, construction, financing, and management services. The form of relationship between participants should be designed to meet the needs of the team and the program; however, the team leader should be clearly identified. Ultimately, the identified team leader will be held responsible for the performance of all members of the team. If the team members are unrelated parties; the team leader should enter into individual agreements with each member to assure performance, and copies of such agreements shall be provided in the proposal. Respondents must submit an organization chart showing all of the individuals that will be assigned to this program. Also, resumes of the key individuals are to be included with a detailed description of the responsibilities that they will be required to perform. The JCHA is interested in assessing the capacity and capability of teams and their ability to respond to the demands of this initiative. Additionally, the JCHA will assess the capability of the project manager, the lead individuals in each discipline, and the team.

2. **Experience of Team Members**

Descriptions of relevant experience should be provided for each member of the team. Additionally, any previous collaboration among some or all members of the team should be noted. Successful experience in the development and operation of

similar projects to the one proposed for this RFP will be favored. Likewise, experience in housing development efforts with resident and community participation will be favored.

3. References

Respondents must submit at least 5 references for the team leader and 3 references for each of the other major team participants.

4. Financial Statement

Current financial statements of the developer and the team leader (if other than the developer) of the proposing team must be submitted. These statements should demonstrate the financial capacity of the developer, or the entity that would most likely be responsible for executing all applicable guarantees. Financial statements may be submitted in a separate, sealed envelope (one copy only) marked "Financial Statements - Confidential."

5. Project Design, Operation, and Location

In a narrative and diagrammatic presentation, Respondents should provide a detailed description of the proposed project(s) including tenant amenities and any other relevant information. The JCHA is requesting that the team submit architectural designs and construction documents and specifications that are at least 50+% complete. A legal description and street address of the proposed project site must also be included.

It is recognized that the selected developer is responsible for the financial success of the development, its operation and the developer is expected to propose accordingly. The JCHA is interested in facilitating the development of and/or acquisition of a successful rental housing project. Thus, design concepts are expected to respond to the need to produce an economically viable product. A construction budget must also be provided.

6. Financing Plan

Respondents must submit a "Sources and Uses of Funds" and a general "Development and Operating Proforma" that presents the primary elements of the development and operating costs, as well as the necessary operating projections for the development. It is understood that these are estimates. For the estimate, the Respondent should assume that the development will be exempt from ad valorem taxes after the JCHA-related entity becomes the general partner. As noted earlier, the development(s) and operation(s) are subject to Davis Bacon wages, Section 3 and M/WBE requirements. The selected Respondent will be expected to refine the

financing plan as the development plan, including design and construction budget, is finalized.

The narrative of the financing plan should clearly identify the number and income mix of units to be included in the project and the amount of the JCHA resources that are needed, as well as the amount of Low-Income Housing Tax Credits committed to the project and other private resources.

The financing plan should include a proforma and a reasonably detailed 15-year spreadsheet showing operating budgets in balance for the duration. The development proforma should show all sources and uses of development funds and reasonably detailed explanation for development costs. The 15-year spreadsheet should show rents or other payments for each distinct type of housing unit. It should also break operating expenses into typical, separate categories. Trending assumptions should be clearly stated and documented. A “year one” operating budget must be included.

7. Proposed Ownership Structure

The JCHA and the selected Respondent will negotiate the specifics of the ownership structure after selection. JCHA or a related entity will serve as the general partner of the development partnership. It is anticipated that when the JCHA related entity is admitted to the development partnership as the general partner, an ad valorem tax exemption should apply due to JCHA's ownership of the fee title to the land coupled with control of the development partnership. If the Respondent is comprised of more than one legal entity, the Respondent must identify the various legal entities to be involved in the ownership of the improvements and the nature of their involvement. With respect to the development entity and/or the management agent, a precise description of any joint venture arrangements, including respective equity and decision-making interests shall be provided.

8. Proposed Fee Structure

Respondents should submit a proposed fee structure as appropriate, including a proposed split of the developer fee and cash flow with the JCHA, based upon the JCHA's role as set out above. The proposed fees should include the amount and timing of payment(s).

9. Property Management Plan

The JCHA is deeply committed to excellent professional property management for the proposed project over the long term. The Respondent should identify an existing firm to carry out the property management of the development that has an excellent reputation and experience in the management of multi-family rental housing. The JCHA reserves the right to approve or disapprove the proposed management entity

and to request additional managers. Please describe the persons who will manage the properties and supply a detailed resume of the firm which will be responsible for property management. Also, submit a written management plan.

10. Development Schedule

Respondents shall submit a Development and/or Acquisition Schedule that addresses the requisite activities for the transaction and provides a timeline for the process, indicating key assumptions and milestones.

11. Community Participation

Respondent should discuss how it would envision giving the community input as the new construction development concept is finalized. Please provide a description of efforts that will be made to keep the community informed during the new construction development process and during the ongoing operation of the project.

12. Required Certifications and Affidavits

Respondents must complete and submit the following forms, all of which are included herein.

Exhibit A: Affidavit

Exhibit B: Certifications and Representations of Offerors for Non-Construction Contracts (Form HUD 5369-C)

C.) Evaluation Process and Selection Criteria

Proposals will be evaluated by a JCHA selection committee. The selection committee will be advised by consultants and attorneys already retained by the JCHA. The selection committee will present its recommendations to the JCHA Board of Commissioners who will make the final selection. Proposals will be evaluated using the Developer Evaluation Criteria outlined below. After the initial scoring of proposals, those deemed by the committee to be within the competitive range may, at the JCHA's option, may be asked for a telephone or personal interview to clarify issues and, if necessary, following the interview, to submit "best and final" offers.

After the interviews and the receipt of any best and final offers, each of those Respondents will be reevaluated and rescored. The JCHA reserves the right to conduct negotiations with more than one of the Respondents (finalist). Selection of a proposal does not constitute JCHA's approval of a design. One or more Respondents with the highest overall scores, whose proposals are most advantageous to the JCHA considering price, technical and other factors, as specified in this RFP, will be selected as development partner(s) of choice.

The JCHA reserves the right to accept or reject individual members of each proposed development team or assemble a separate team from members of different teams.

The JCHA reserves the right to accept or reject in part, or reject all proposals and to re-solicit new proposals. The JCHA may also reject any proposals that are incomplete or non-responsive and any proposals that are submitted after the deadline.

Developer Evaluation Criteria

In evaluating the submitted proposals the following criteria will be considered:

- | | |
|-----------|--|
| 20 Points | <i>Experience and Qualifications.</i> The experience, qualifications, and financial capability of the development team as partially evidenced by the timely and successful completion of similar projects involving multi-family rental housing developments, tax-exempt Bond proceeds, CDBG, CDBG-DR Funds and Low Income Housing Tax Credits. Reference checks will provide affirmation of the Respondent's competence with respect to the development and management of such projects. |
| 20 Points | <i>Feasibility.</i> The feasibility of the proposal as evidenced by an achievable financial structure and a reasonable series of development and operating cost assumptions with an emphasis on containment of per unit total development costs. Feasibility is also measured by the degree to which a project is ready to start construction in the case of new construction. |
| 15 Points | <i>Leveraging of JCHA Funds.</i> Preference will be given to projects that minimize the amount of JCHA funds required on a per unit basis and maximize the leveraging of additional resources. |
| 25 Points | <i>Development Concept and Plan.</i> The degree to which the plans meet the criteria set forth in the AHFA Qualified Allocation Plan enhancing the likelihood of receiving a Tax Credit allocation if applicable to the project proposal. Familiarity with neighborhood conditions, community participation processes is important, location in non-impacted census tracts and high opportunity areas as defined by HUD and AHFA. The attractiveness of the site location will be considered under this criteria. |
| 15 Points | <i>Fee Structuring and Timing.</i> The reasonableness of the fees and timing of receipt of such fees for the various team members will be evaluated. |

5 Points **Section 3 Participation.** Section 3 Plan and the Respondent's experience in developing and implementing Section 3 plans will be considered.

Total Possible Points – 100

Bonus Points: 15 total points possible

Proposals may receive an additional 5 bonus points for sites zoned to one or more Public Elementary School(s) rated "B" or higher by the most recent annual school rankings published by Children at Risk (www.childrenatrisk.org).

Proposals may receive an additional 5 bonus points for sites zoned to one or more Public Middle School(s) rated "B" or higher by the most recent annual school rankings published by Children at Risk (www.childrenatrisk.org).

Proposals may receive an additional 5 bonus points for sites zoned to one or more Public High School(s) rated "B" or higher by the most recent annual school rankings published by Children at Risk (www.childrenatrisk.org).

6. SUBMISSION PROCESS & CONDITIONS

A.) Submission Package

An original and three (3) copies (a total of four) of the complete submission package must be received by the JCHA, Attn: Ken Vaughan, 3:00 CST on August 27, 2019, Jefferson County Housing Authority, 3700 Industrial Parkway, Birmingham, Alabama 35217 with envelope appropriately marked with "RFP for Development Partners of Affordable Multi-Family Housing". The submission package must be signed by an officer of the Respondent who is legally authorized to enter into a contractual relationship in the name of the Respondent. Proposals submitted electronically must also be signed by an officer of the Respondent who is legally authorized to enter into a contractual relationship in the name of the Respondent. In addition the electronic proposals must be transmitted via email to Ken Vaughan at kvaughan@jcha.com and received by 3:00 p.m. on August 27, 2019.

B.) Withdrawals

Proposals may not be withdrawn for ninety (90) days from the submission deadline date.

C.) Mistakes in Proposals

If a mistake in a proposal is suspected or alleged, the proposal may be corrected or withdrawn during any negotiations that are held. If negotiations are not held, or if best and final offers have been received, the Respondent may be permitted to correct a mistake in its proposal

and the intended correct offer may be considered based on the conditions that follow:

1. The mistake and the intended correct offer are clearly evident on the face of the proposal.
2. The Respondent submits written evidence that clearly and convincingly demonstrates both the existing offer and such correction would not be contrary to the fair and equal treatment of other Respondents.

Mistakes after award shall not be corrected unless the JCHA's Counsel makes a written determination that it would be disadvantageous to the JCHA not to allow the mistake to be corrected. The approval or disapproval of requests of this nature shall be in writing by the JCHA's Counsel.

D.) Incurred Costs in Preparing Proposals

Respondent will be responsible for all costs incurred in preparing a response to this RFP. All material and documents submitted by prospective development teams will become the property of the JCHA and will not be returned. Any developer selected for further negotiations, as well as a Developer ultimately selected to enter into a contractual agreement with the JCHA, will be responsible for all costs incurred by it during negotiations.

E.) Contract/Award

A contract shall be awarded in accordance with the terms and conditions of this RFP to the one or more Respondent(s) whose proposal(s) are most advantageous to the JCHA considering price, technical and other factors as specified in this RFP. The JCHA reserves the right to negotiate and award any element of this RFP, to reject any or all proposals or to waive any minor irregularities or technicalities in proposals received as the best interest of the JCHA may require.

7. CONFIDENTIALITY OF PROPOSALS

There will be no public opening of proposals. All proposals and information concerning same shall remain confidential until all negotiations are completed, and the Notice of Award is issued. Offerors are hereby notified that all proposals received by JCHA shall be included as part of the official contract file. Therefore, any part of the proposals that is not considered confidential, privileged or proprietary under any applicable Federal, State or local law shall be available for public inspection upon completion of the procurement process. Any material submitted by the Offeror that is to be considered as confidential must be clearly marked as such; however, the applicable provisions of Federal, State and local laws shall govern the confidentiality of proposals despite anything contrary to this provision stated in the proposal.

8. AVAILABILITY OF RECORDS

The U. S. Department of Housing and Urban Development, the U.S. Government Accounting Office, the Jefferson County Housing Authority, and 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(s) office or firm, which shall relate to the performance of the services to be provided.

Attachment A

Affidavit

AFFIDAVIT

Non-Collusion

This proposal is genuine and not a collusive or sham proposal; neither the bidder nor any of its agents, representatives, employees has in any way colluded, conspired, connived or agreed, directly, with any other bidder, firm, or person, to submit a collusive or sham proposal or to refrain from bidding, or has in any manner, directly or indirectly, sought, by unlawful agreement or connivance with any other bidder, firm or person to fix the bid price in that proposal, or to fix overhead, profit or cost element of said price, or that of any personal interest in the proposed contract; and that all statements in said proposal or bid are true.

AND

Debarred, suspended

The bidder hereby certified that neither the firm nor the bidder have been debarred, suspended, or otherwise prohibited from professional practice by any Federal state, or local agency.

AND

Conflict of Interest

The Bidder represents that no person who currently exercises any function or responsibility in connection with the Housing Authority has any direct or indirect personal financial interest in the proposed contract.

AND

E-Verify

I hereby attest that this business does not knowingly employ, hire for employment, or continue to employ an unauthorized alien. Further, I attest that this business is enrolled in the E-Verify program, and it is used in the hiring process to assure that candidates may be legally employed in the United States.

AND

Non-Discrimination Policy

This business does not discriminate in their hiring practices on the basis of race, color, creed, sex, religion, disability, handicap, or national origin.

AND

Acknowledgment

I hereby acknowledge that I have received HUD Form 5370-C and HUD Form 5369-B, and have read and understand those documents.

Company: _____

Signature and Title: _____

Date: _____

State of Alabama, _____ County

On this _____ day of _____, 2019, before me, the undersigned notary public personally appeared _____, known to be to be the person whose name is subscribed to this instrument and acknowledged that he/she executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

NOTARY PUBLIC

COMMISSION EXPIRES

Attachment B

Instructions To Offerors HUD 5369-B

**Certifications and Representations of Offerors
HUD 5369-C**

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

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

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

Certifications and Representations of Offerors Non-Construction Contract

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

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

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

1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

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

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

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

(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offers certifies that—

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

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

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

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

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

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offers's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offers's organization);

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

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

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

4. Organizational Conflicts of Interest Certification

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

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

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

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

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

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

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

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

Attachment C

General Conditions for Non-Construction Contracts HUD 5370-C

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.

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

General Conditions for Non-Construction Contracts

Section II – (With 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-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

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

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

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

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

3. Records

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

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

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

8. Non-Federal Prevailing Wage Rates

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