



# Request for Proposals

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## Independent Public Audit Services

**FOR THE FISCAL YEARS ENDING:**

**DECEMBER 31, 2024**

**DECEMBER 31, 2025**

**DECEMBER 31, 2026 (MCHA Option)**

**DECEMBER 31, 2027 (MCHA Option)**

**DECEMBER 31, 2028 (MCHA Option)**

Montgomery County Housing Authority  
Executive/Finance Offices  
Cherry Court  
104 West Main Street, Ste 1  
Norristown, PA 19401

January 20, 2025

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## 1. INTRODUCTION

### INDEPENDENT PUBLIC AUDIT SERVICES

The Montgomery County Housing Authority (MCHA), headquartered in Norristown, PA is requesting Proposals from Certified Public Accountants to perform the annual audits for the MCHA.

The procurement of the services hereunder shall be by competitive proposals and evaluated based on the point system detailed on page 8 and the MCHA will award the contract to the firm whose proposal the MCHA deems to be in the best interests of the MCHA. Price shall be considered, but not the sole determinant as to the award. The MCHA reserves the right to reject any proposal that does not conform to the requirements of this RFP, to waive defects in any proposal submitted, to request additional information from any firm submitting a proposal, to negotiate with one or more firms prior to selection of a firm, and to reject all proposals if the MCHA determines that doing so is in the best interests of the MCHA.

Each proposal shall include sufficient information to evaluate the proposal against the attached evaluation factors. It is critical that the responding firms demonstrate a thorough and complete understanding of Housing Authority accounting and auditing and the requirements associated with the U.S. Department of Housing and Urban Development (HUD) programs and systems.

Each proposal shall be signed by an official authorized to bind the auditor and shall contain a statement to the effect that the proposal is a firm offer for a period of time of not less than 120 days from the date proposals are due.

The MCHA is a public housing authority which is authorized under state law and funded by the U.S. Department of Housing and Urban Development (HUD). **All MCHA data is highly sensitive and must be kept secure and strictly confidential. The selected Proposer(s) may be subject to a Confidentiality Agreement.**

## 2. GENERAL INSTRUCTIONS

### A. Proposal Submission

Proposers responding to this RFP shall submit their proposal via email only to: Rossaine Ricketts, [rossaine.ricketts@montcoha.org](mailto:rossaine.ricketts@montcoha.org) **no later than 2:00p.m. (local time) on February 10, 2025.**

#### **Proposers shall submit their Proposal as follows:**

Please submit (1) one email which includes separate PDFs, each labeled with the Proposer's company name, as follows:

- A. Qualification Statement
- B. Proposal: Independent Public Audit Services
- C. Fee Proposal
- D. Required Forms

Proposals that do not conform to these requirements may be rejected. The MCHA shall not accept, or review Proposals received after the designated submission deadline. The MCHA, at its sole discretion, reserves the right to re-designate the submission deadline upon reasonable notice to all RFP recipients. The MCHA reserves the right to reject any and all proposals if it determines it to be in the best interest of the MCHA to do so.

## **B. Inquiries and Modifications**

Proposers may submit any questions, clarifications, or requests for further information. The inquiries will be accepted in writing **until 2:00 p.m. (local time) on February 3, 2025** and should be submitted via email only to Rossaine Ricketts at [rossaine.ricketts@montcoha.org](mailto:rossaine.ricketts@montcoha.org). Proposers must promptly notify the MCHA of any ambiguity, inconsistency, or error they may discover upon examination of this RFP and all documents attached and/or referenced hereto. Further, Proposers must notify the MCHA of any term(s) in any document attached to this RFP to which the Proposer has an objection or that it is unwilling to execute. Requested modifications to any term or to any attachment to the RFP not submitted via email on or before this date will not be reviewed or considered by the MCHA unless the MCHA, in its sole and absolute discretion and judgment, determines any such changes are minor in nature and not prejudicial to fair competition.

Responses to inquiries and modifications to the terms of this RFP or any attachment thereto, if acceptable to the MCHA, will be posted on the MCHA website.

## **3. SCOPE OF MCHA AUDIT**

### **A. MCHA Statistics:**

#### **1. Programs:**

- a. Low-Rent Public Housing- 550 units with five complexes, 3 AMPs under project-based requirements of REAC.
- b. Housing Choice Voucher Programs - 3,025 authorized units.
  1. Homeownership.
  2. Family Unification.
  3. Portability.
  4. Veterans Affairs Supported Housing (VASH)
  5. Emergency Housing (EHV)
- c. Housing Choice Voucher Program - Moderate Rehab - 40 authorized units.
- d. Housing Choice Voucher Program - Mainstream Program - 141 authorized units.
- e. Housing Choice Voucher Program - Foster Youth Initiative - 10 authorized units
- f. Family Self Sufficiency Program (FSS).
- g. Resident Opportunity and Supportive Services (ROSS).
- h. Capital Fund Program related to Public Housing.
- i. PHFA and other related County program funds administered.
- j. Cherry Court Operations - Main Office Building Business Activities.
- k. Central Office Cost Center (COCC)
- l. Low Income Housing Tax Credit (LIHTC)

### **B. Accounting Control System:**

1. We follow Generally Accepted Accounting Principles (GAAP).
2. The MCHA is responsible for establishing and maintaining, and have established and maintained, effective internal control over compliance requirements applicable to federal programs that provides reasonable assurance that we are managing our federal awards in compliance with laws, regulations, and the provisions of contracts and grant agreements that could have a material effect on our federal programs. We believe the internal control system is adequate and functions as intended.
3. Utilize MRI/Tenmast Software for accounting and other program controls.
4. Use of Automatic Data Processing (ADP) for payroll.

#### 4. AUDIT SERVICES REQUIRED

The selected Proposer shall perform or have experience with the following services in accordance with all requirements of this RFP.

##### A. OMB A-133 Single Audit and Generally Accepted Government Auditing Standards Requirements.

1. The Authority requires a financial compliance audit of the basic financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) for governmental entities, as prescribed by the Government Auditing Standards Board (GASB). The Audit will be performed in accordance with generally accepted auditing standards and the standards applicable to financial and compliance audits contained in “Government Auditing Standards”, issued by the Comptroller General of the United States; Single Audit Amendments of 1996; the provisions of Office of Management and Budget Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”; OMB Circular A-133 Compliance Supplement, March 2000; and the provisions of the U.S. Department of Housing and Urban Development’s Handbooks 7476.1 and 2000.04 as applicable, and all other HUD directives issued. The reporting package and Data Collection Form must be filed with the Single Audit Clearinghouse.

##### B. Preparation of Report and Submission to REAC/Federal Clearinghouse

1. The MCHA possesses the capacity to prepare its own financial statements in accordance with GAAP, however, for convenience the MCHA requires that the financial statements be prepared by the Auditor for review and approval by MCHA.
2. Auditor shall assist in draft preparation of the Management’s Discussion and Analysis (MD&A) and audit the MCHA completed MD&A.
3. The MCHA also requires that the auditor upload the audit package to HUD/Federal Clearinghouse and perform the attestation. The MCHA will review and approve the uploaded data before final submission.

##### C. Contents of the Audit Report

1. The report will contain at a minimum the following schedules:
  - a. **Independent Auditor’s Report on Basic Financial Statements;**
  - b. **Supplemental Information Management’s Discussion and Analysis (MD&A).**
  - c. **Basic Financial Statements**
    1. Statement of Net Assets.
    2. Statement of Revenues, Expenses and Changes in Net Assets.
    3. Statement of Cash Flows.
    4. Notes to Basic Financial Statements.
  - d. **Supplemental Information**
    1. Combining Schedule of Net Assets;
    2. Combining Schedule of Revenues, Expenses and Changes in Net Assets.
    3. Financial Data Schedule (FDS) Electronic Submission Schedule.
    4. Certification of Actual Capital Fund Program Costs and Advances.
    5. Schedule and Reconciliation of Actual Capital Fund Program Costs and Advances.
  - e. **Single Audit Section**
    1. Schedule of Findings and Questioned Costs.
    2. Schedule of Expenditures for Federal Awards.
    3. Report on Internal Control Over Financial Reporting and on Compliance and Other Matters

Based on an Audit of Basic Financial Statements Performed in Accordance with *Government Auditing Standards*.

4. Report on Compliance with Requirements Applicable to Each Major Program and on Internal Control Over Compliance in Accordance with OMB Circular A-133.
2. HUD Section 8 Management Assessment Program (SEMAP) – HUD 52648 – SEMAP Certification in accordance with the SEMAP rules and related guidance, including the March 2000 OMB Circular A-133 compliance supplement.

#### **D. Fieldwork and Submission Dates**

1. The services of the Auditor shall commence upon written notification from the MCHA relating to the award of the contract.
2. Each year's audit shall be submitted within nine months of the end of the respective period.
  - a) The MCHA's Fiscal Year End (FYE) is December 31<sup>st</sup>.

### **5. OTHER REQUIREMENTS**

- A. Report copies will be remitted to federal agencies by the Auditor on behalf of the MCHA.
- B. Twelve Bound copies of the audit report, an unbound copy, and electronic version will be provided by the Auditor to the MCHA.
- C. The contract for services shall be prepared by the Auditor and will contain all federally required clauses and affirmations.
- D. If the need for other audit services arises concerning the fiscal year under audit, the MCHA expects to be able to negotiate with the selected auditor to obtain the additional services needed.

### **6. PROPOSAL REQUIREMENTS**

**Proposals that do not conform to these requirements may be rejected.**

#### **A. Qualifications**

To be eligible for contract award, the Proposer shall demonstrate the following qualifications and include the following information:

1. Identify the Proposer and its business form (proprietorship, partnership, corporation, etc.), as well as each individual who shall be assigned to provide the Services, including the team leader, if applicable.
  - a) Partner in charge (complete professional work histories shall be included detailing years of accounting experience and Housing Authority audit experience).
  - b) All personnel assigned to fieldwork (complete professional work histories shall be included detailing accounting experience and Housing Authority audit experience).
2. Provide information with respect to the Proposer's knowledge of and years of experience in each of the following areas. Be specific as to the knowledge and years of experience of the relevant individual(s) responsible for each area.
  - a) Experience working with a public housing authority or similar public or private organization.
  - b) Experience working on audits in Housing Authorities.
3. Copy of license or permit to practice in the Commonwealth of Pennsylvania.
4. Disclosure of the firm's current or past, actual or proposed disbarments by HUD.
5. The proposer shall supply the most recent 'Peer Review' report. Submissions missing this Peer Report shall be considered incomplete.
6. The proposer shall list all of the audits completed for Public Housing Authorities within the last five

years and the types of programs audited.

## **B. Firm's Audit Procedures**

Briefly state your general audit procedures and sequence of audit activities. Briefly describe how the firm keeps abreast of changing laws and regulations that impact the affordable housing industry in general and Housing Authorities in particular. Additionally, describe the firm's requirements for continuing professional education, including CPE directly related to government accounting and auditing.

## **C. Reliance upon the Authority Staff**

List documents, schedules, and reconciliations which you normally expect a PHA staff to prepare beyond usual financial records, account reconciliations and their source documents.

## **D. Fee Proposal**

To be eligible for contract award, the Proposers shall submit a Fee Proposal for performance of the Services as follows:

1. Provide an estimate of staff levels to be utilized, person-days expected at each level, and hourly rate.
2. Provide an estimate of all costs of travel, meals, lodging and other out-of-pocket expenses.
3. Provide an estimate of any other costs associated with the audit.

Provide a total lump-sum fee for each year's audit including the electronic submission of the audited version of the Authority's financial data schedule (FDS) to the Real Estate Assessment Center (REAC), as well as the attestation function, as required by HUD.

**The MCHA expressly acknowledges that contract award shall not solely be determined by the lowest Fee Proposal.**

## **E. References**

Respondents shall provide a list of current Housing Authority clients (and corresponding contact information) for which the firm provides audit services so that MCHA may check references.

The Proposer shall provide the following information for each client:

1. Agency Name.
2. Type of Organization.
3. Name and title of contact.
4. Address.
5. Telephone.
6. Email address.
7. Very brief description of services performed.
8. Commencement and completion dates of contract.
9. Dollar amount of contract.

The MCHA reserves the right to reject any proposals received solely on the basis of poor past performance as reported by the references or as otherwise known to the MCHA.

## **F. Required Forms**

In addition to all other submissions required by this RFP, the Proposer must complete and submit the following forms as part of their RFP submission. The documents are attached to this RFP as **Appendix A (Certification of Firms and Agreement)** and are self-explanatory.

## **7. PROPOSAL EVALUATION PROCESS**

Proposals shall be reviewed by a selection committee composed of MCHA staff appointed by the MCHA Executive Director or his designees (MCHA Selection Committee).

Evaluation of proposals shall be conducted by the MCHA Selection Committee pursuant to the following phases:

1. All eligible Proposals and attachments shall be reviewed in full.
2. References for all eligible Proposers shall be conducted and reviewed.
3. A "short list" will be compiled.
4. Proposers on the "short list" may be required to present themselves before the MCHA Selection Committee for interviews at a date and time selected by the Committee.
5. The Proposal that best serves the interests of the MCHA, with price and all evaluation factors considered, including proposed revisions, shall be recommended to the Executive Director. The Executive Director shall recommend the contract award be voted on by the MCHA Board of Directors.

## **8. PROPOSAL EVALUATION CRITERIA**

The contract award shall be conditioned on successful negotiation between the Proposer and the MCHA and is subject to the approval of the MCHA Executive Director and the MCHA Board of Directors. The MCHA expressly acknowledges that the contract may be awarded to a Proposer who do not submit the lowest Fee Proposal. The MCHA will use a weighted scale during the evaluation as per the below percentages totaling 100%.

### **A. Qualifications – 85%**

1. 25% - Demonstrated experience and competence of the Proposer's workforce to be employed under the contract with the capability and capacity to accomplish work within the required time period.
2. 25% - Demonstrated experience working with public housing authorities or similar public or private organizations.
3. 15% - Demonstrated familiarity with Housing Authority's Programs in specific and HUD rules and regulations in general.
4. 10% - Demonstrated familiarity with REAC electronic filings.
5. 10% - Meaningful participation of minority and women employees and contractors, including MBE/WBE/Section 3 owned businesses as part of Proposer's team.

### **B. Fee Proposal - 15%**

1. 15 % - Price described for each of the proposed years on a per year cost.

### **C. References**

As a part of the evaluation, the MCHA reserves the right to contact all references provided by the Proposer in order to verify the successful previous performance of substantially similar work on relevant projects of similar scope.



## 9. MBE/WBE PROVISIONS

It is the policy and practice of the MCHA to encourage the participation of minority-owned and women-owned businesses in the procurement of goods and services. The MCHA strongly encourages all Proposers to develop creative responses to this RFP that make use of joint ventures, partnerships, and other “team” approaches to the delivery of the Services. The MCHA places a high value on the Proposer's approach to maximizing the meaningful participation and utilization of minority- and women-owned businesses.

The Proposer's Qualification Statement should explain in detail how any proposed team approach, partnership and/or joint venture will be structured, the proposed work and fee distribution arrangements, and responding allocation of contract responsibilities.

The MCHA reserves the right to require documentation supporting a Proposer's claimed minority and/or women-owned business enterprise status. The MCHA will utilize the following definitions to determine claimed status:

- **Minority Business Enterprise (MBE):** A business organization that is owned or controlled 51% or more by one or more minority groups as defined by the State Diversity Office (SDO) and certified as such by SDO in the relevant service category.
- **Women-Owned Business Enterprise (WBE):** A business organization that is owned and controlled 51% or more by one or more women and certified as such by SDO in the relevant service category.
- **Joint Venture:** A joint or combined business agreement on a particular project between a SDO-certified MBE or WBE firm(s) and a non-SDO-certified firm in which the MBE and/or WBE portion of the combination is valued at least 25% or more of the contracted amount.

## 10. GENERAL CONDITIONS OF THE RFP

### A. RFP

**An electronic copy may be obtained at [www.montcoha.org](http://www.montcoha.org).**

### B. Acceptance of RFP and Contract Terms

Proposer's submission of a proposal in response to the RFP shall constitute acceptance by the Proposer of the terms and conditions of this RFP. In the event that a Proposal is accepted for Contract award, the Proposer agrees to accept the HUD Conditions of Non-Construction contracts, as shown in (Appendix C), including, and subject to the MCHA Supplementary terms and conditions (Appendix B). Any proposed changes to the contract must be included in the firm's proposal or they will not be considered.

### C. Contract Award

Subject to the rights reserved in this RFP, the MCHA shall give written notice to the selected Proposer (the Contractor) no later than one hundred twenty (120) days after the date designated for receipt of proposals; the parties may extend the time for acceptance by mutual agreement. Award of the contract is subject to the approval of the MCHA Board of Directors and shall be conditioned on the successful negotiation of revisions, if any, to the Proposal that are recommended as part of the evaluation of Proposals.

#### **D. Term**

The initial term of the Professional Service Contract (Contract) shall be two (2) years, with annual reviews and three (3) optional one-year renewal at the sole discretion of the MCHA.

#### **E. No Warranty**

Proposers shall examine the RFP, specifications, and instructions pertaining to the Services. Failure to do so shall be at the Proposer's own risk. It is assumed that the Proposer has made full investigation as to be fully informed as to the extent and character of the Services and of the requirements of the specifications. No warranty is made or implied as to the information contained in the RFP, specifications, and/or instructions.

#### **F. Expense of RFP Submission**

All expenses incurred in the preparation and submission to the MCHA of Proposals in response to this RFP shall be borne by the Proposer.

#### **G. MCHA Reservation of Rights**

The MCHA reserves the right to cancel this RFP, or to reject, in whole or in part, any and all Proposals received in response to this RFP, upon its determination that such cancellation or rejection is in the best interests of the MCHA. The MCHA further reserves that right to waive any minor informalities in any Proposals received if it be in the public interest to do so. The determination of the criteria and process whereby proposals are evaluated, the decision as to who shall receive a Contract award, or whether or not an award shall be made as a result of this RFP, shall be at the sole and absolute discretion of the MCHA.

A proposal may be corrected, modified, or withdrawn, provided that the correction, modification, or request for withdrawal is made by the Proposer in writing and is received at the place and prior to the date and time designated in the RFP for receipt of Proposals. After such date and time the Proposer may not change the Fee Proposal or any other provision of its Proposal in a manner prejudicial to the interests of the MCHA and/or fair completion.

The MCHA shall have the right, but not the obligation to waive minor informalities or allow the Proposer to correct them if it determines that doing so is in the best interests of the MCHA and provided that such waiver or correction does not adversely affect the competitive process.

#### **H. Insurance Requirements**

The Contractor must be willing and able to carry and maintain the required insurance as set forth in **Appendix B** (Supplemental Conditions).

**END of RFP**



## Appendix A

### **CERTIFICATIONS OF FIRMS SUBMITTING PROPOSALS**

I, \_\_\_\_\_, state that I am \_\_\_\_\_(TITLE) of \_\_\_\_\_(COMPANY) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the contents of the Company's proposal and based upon my personal knowledge, I state that the following representations are true and correct:

#### **1. Contingent Fee Representation and Agreement**

- a. The firm represents and certifies as part of its proposal that, except for full-time bona fide employees working solely for the firm, the firm:
  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 firm shall make an immediate and full written disclosure to the MCHA Contracting Officer.
- c. Any misrepresentation by the firm shall give the MCHA 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 firm represents and certifies as part of its proposal 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)

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

### 3. Certificate of Independent Price Determination

- a. The firm certifies that-

1. The prices in this proposal have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other proposal or competitor relating to (i) those prices, (ii) the intention to submit a proposal, or (iii) the methods or factors used to calculate the prices offered;
2. The prices in this proposal have not been and will not be knowingly disclosed by the firm, directly or indirectly, to any other firm or competitor before proposal 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 firm to induce any other concern to submit or not to submit a proposal for the purpose of restricting competition.

- b. Each signature on the proposal is considered to be a certification by the signatory that the signatory:

1. Is the person in the firms organization responsible for determining the prices being offered in this 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 firms' organization responsible for determining the prices offered in this proposal, and the title of his or her position in the firm'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 firm deletes or modifies subparagraph (a)2 above, the firm must furnish with its proposal a signed statement setting forth in detail the circumstances of the disclosure.

#### 4. Organizational Conflicts of Interest Certification

a. The firm 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 firm's organizational, financial, contractual or other interest are such that:

1. Award of the contract may result in an unfair competitive advantage.

2. The firm's objectivity in performing the contract work may be impaired; or

3. That the firm has disclosed all relevant information and requested the MCHA to make a determination with respect to this Contract.

b. The firm 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 MCHA which shall include a description of the action which the firm has taken or intends to eliminate or neutralize the conflict. The MCHA may, however, terminate the Contract for the convenience of MCHA if it would be in the best interest of MCHA.

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

- d. The firm 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 MCHA 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. 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."

## 6. Debarment

Neither the company, nor the president/owner of the company, nor any member of the company is now or has ever been placed on any, state, or federal debarment list as a result of work performed on county, state, or federal projects.

If this representation is not correct, then this statement must be stricken from the submitted form and a statement explaining the circumstances surrounding the debarment and the current status of the debarment must be attached to the proposal.

## 7. Non-Compliance/ Default

Neither the company, nor the president/owner of the company, nor any member of the company has ever had an incident of non-compliance or default in any public housing, mixed finance or HOPE VI transaction by the Respondent, its affiliates, or assigns. State whether HUD has debarred any individual or the firm.

If this representation is not correct, then this statement must be stricken from the submitted form and a statement explaining the circumstances surrounding the non-compliance or default and the current status of the non-compliance or default must be attached to the proposal.

## 8. Pending Legal Actions

There are no pending any legal actions (arbitration, mediation or other alternative dispute resolution) or litigation matters against the firm or person(s) to be assigned to this account involving provision of similar services, nor have there been any such legal actions or litigation matters against the firm(s) or person(s) to be assigned to this account with the last three (3) years.

If this representation is not correct, then this statement must be stricken from the submitted form and a statement explaining the circumstances surrounding the legal action and the status of the legal action must be attached to the proposal.

**9. Civil Rights**

The Company hereby certifies that it operates in full compliance with all applicable civil rights and non-discrimination statutes, executive orders, rules, and regulations.

I state that \_\_\_\_\_ (COMPANY) understands and acknowledges that the above representations are material and important and will be relied on the Montgomery County Housing Authority in awarding the contract(s) for which this Proposal and Certification are submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Montgomery County Housing Authority of the true facts relating to the submission of proposals for this contract.

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Name Typed)  
\_\_\_\_\_  
(Title)  
\_\_\_\_\_  
(Date)

SWORN TO AND SUBSCRIBED BEFORE ME

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

MY COMMISSION EXPIRES \_\_\_\_\_, 20\_\_\_\_

## **AGREEMENT**

And now this, \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the Montgomery County Housing Authority (the "MCHA"), 104 West Main Street, Suite 1, Norristown, PA 19041 and \_\_\_\_\_, (the "Contractor"), \_\_\_\_\_, intending to legally bound hereby agree as follows:

### **ARTICLE 1** **THE WORK**

1.1 The Contractor and the MCHA agree that the materials and equipment to be furnished and the work to be done by the Contractor are as follows:

1.2 The Agreement shall commence on \_\_\_\_\_ and end on \_\_\_\_\_.

1.3 The MCHA reserves the right to review performance and pricing on a continual basis.

### **ARTICLE 2** **FEES AND PAYMENT**

2.1. The fee for services shall be in accordance with –

2.2 Invoices shall be submitted \_\_\_\_\_ and will include the following:

2.3. The MCHA will pay any undisputed amounts in invoices within sixty (60) days of presentation and provide written notice of any disputed amounts and the basis for the dispute. The Contractor may assert a claim for such amounts in accordance with the General Conditions

### **ARTICLE 3** **HOLD HARMLESS**

3.1 Hold Harmless: The Contractor covenants and agrees and shall at all time defend, indemnify, protect and save harmless the MCHA, its employees, directors, officers and agents ("Indemnified Parties") from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges which the Indemnified Parties directly or indirectly suffer, sustain or are subjected to by reason or on account of the Contractor's entry upon, occupancy or use of the MCHA's property or the conduct thereon of any activities by the Contractor's officers, employees, agents or invitees, whether such loss or damage be suffered or sustained by the Indemnified Parties



directly or by other persons or corporations who may seek to hold the Indemnified Parties liable therefor.

**ARTICLE 4**  
**RIGHT TO CARRY OUT THE WORK/TERMINATION**

4.1 Should the Contractor become insolvent, or at any time, refuse or neglect to supply a sufficiency of properly skilled workers, or equipment and materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, the MCHA shall have the right, after 48 hours written notice to the Contractor, to provide any such labor, equipment, and materials and deduct the cost thereof, from any money then due or hereafter to become due to the Contractor under this Agreement.

4.2. Such refusal, neglect, or failure, as well as any other failure to comply with the terms of the Agreement or any violation of applicable state or federal law is sufficient grounds for termination of the Contractor upon 48 hours written notice. In the event of a termination for cause, the Contractor shall only be entitled to payment for work performed to the satisfaction of the MCHA as of the effective date of the termination, less any costs incurred by the MCHA in performing the work. The Contractor shall also be responsible for any expense to the MCHA of performing the services for the remainder of the term, to the extent that cost exceeds the remainder of the unpaid fee for that term.

4.3. The MCHA has the right to terminate this Agreement for convenience upon thirty (30) days written notice. Only sums due for work properly performed prior to the effective date of the termination shall be due and payable to the Contractor as a result of a termination for convenience. No payments shall be made for anticipated overhead and profit.

**ARTICLE 5**  
**LABOR**

1.1 The Contractor shall only employ individuals who are legally eligible to work in the Commonwealth of Pennsylvania under applicable state and federal laws.

1.2 In the event the Contractor employs independent contractors, as well as payroll labor, to discharge its obligations hereunder, the Contractor acknowledges and understands that it does so at its own risk and that federal, state and/or local agencies may dispute the independent contractor status and assess penalties, fines, and costs should there be a determination to reclassify such workers. In that event, the Contractor agrees that it will defend, indemnify and hold the Indemnified Parties harmless from any fines, costs, damages, penalties, attorneys' fees, and causes of action, including without limitation, personal injury or property damage, arising out of or relating in any way to such a determination.

**ARTICLE 6**  
**GENERAL PROVISIONS**

- 6.1. During the performance of this Agreement, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed without regard to their race, color, religion, sex, or national origin. The Contractor will comply with all provisions of executive Order No. 11246, Section 503 of the Rehabilitation Act of 1973, as Amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as Amended, (38 U.S.C. 4212) and their implementing regulations at 41 CFR Chapter 60.
- 6.2. This Agreement, together with the Request for Proposals, the Pricing Sheet (Ex. "A"), the HUD General Contract Conditions for Non-Construction 5370-C, the Supplemental Conditions, and the Certifications of Firms Submitting Proposals, constitute the entire Agreement between the MCHA and Contractor. There are no provisions, either oral or written, between the parties hereto, other than those contained herein. This Agreement supersedes any and all written representations, inducements or understandings of any kind or nature between the parties hereto, relating to the particular project involved herein. Any other exceptions, exclusions, clarifications, qualifications, etc., not so noted in this Agreement are null and void.
- 6.3 This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania and venue for any disputes arising hereunder shall be vested solely in the Court of Common Pleas of Montgomery County, Pennsylvania.

In witness whereof they have hereunder set their hands the day and date first above written:

Company Name

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

Montgomery County Housing Authority

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

## Appendix B

### Supplemental Conditions

#### 1. Contract Type / Assignment of Work

This contract is a term agreement for the performance of specific services on time and expense basis for a base period of two years with the MCHA having three one-year options . Award of this contract does not guarantee a minimum assignment of work or a minimum amount of fees.

#### 2. Reimbursable Expenses

MCHA will pay the contractor for the Reimbursable Expenses listed below. Reimbursable expenses will be paid in addition to the hourly rates paid for services and are for certain actual verifiable expenses incurred by the selected respondent in connection with providing services required by this contract.

- a. Long Distance Telephone and Telefax Costs
- b. Reproduction Costs
- c. Reasonable Overnight Travel Costs (when approved)

Reimbursable expenses for extensive reproduction and overnight travel must be preapproved in writing by MCHA prior to incurring the expense. Additional reimbursable expenses (other than those listed above) must be pre-approved, in writing, prior to incurring the expense.

#### 3. Rates/Overtime Hours

The rates for services agreed upon by the MCHA and the contractor shall control for the initial contract term and any renewal terms. MCHA will not pay annual rate adjustments or special rates for overtime hours or weekend or holiday hours worked.

#### 4. Invoicing

In addition to the billing requirements set forth in the form contract, monthly bills must indicate the following:

- a. The subject matter of the assignment, such as the name of the case or the type of consultation service requested.
- b. The contract number under which the assignment has been made.
- c. The bill or invoice number for each matter.
- d. The date of service performed.
- e. The name and hourly rate of the performed who performed the service (attorney or other staff member);
- f. A detailed description of each service performed.
- g. The amount of time on each service in no less than tenths of an hour;

- h. The amount due for each service performed.
- i. An itemization of all approved expenses incurred with copies of corresponding receipts;
- j. The total amount due for services performed by any other staff;
- k. The total amount due for expenses.

## 5. Insurance

The Contractor shall carry Commercial or Comprehensive General Liability Insurance, Professional Liability Insurance (for a period extending two years past the date of completion of the contract), and other insurances as are required by law, all in minimum amounts set forth below.

The Contractor shall furnish the MCHA certificates of insurance and they shall state that a thirty day notice of prior cancellation or change will be provided to the Owner. The insurance shall be primary and shall list the MCHA as an additional insured on all Commercial or Comprehensive General Liability policies.

<u>Insurance</u>	<u>Limits and Amounts</u>
General Liability	\$1,000,000
Professional Liability	\$1,000,000
Automobile Liability	\$1,000,000
Worker's Compensation	Statutory Limits
Errors & Omissions/ Professional Liability	\$1,000,000

## 6. Contractual Obligations

If the proposed services include the use of product or services of another company, such services shall be disclosed and the MCHA will hold the selected respondent responsible for the proposed services.

## 7. Personnel

In submitting their proposals respondents are representing that their personnel described in their proposals shall be available to perform the services described for the duration of the contract, barring illness, accident or other unforeseeable events of a similar nature, in which cases the respondent must be able to provide a qualified replacement. Such representation shall be valid for a minimum of 120 calendar days after the proposal due date and time. Furthermore, all personnel shall be considered to be, at all times, the sole employees of the respondent under its sole direction and not employees or agents of the MCHA.

## 8. Assignment

The selected respondent shall not enter into any subcontractors, retain consultants, or assign transfer, convey, sublet or other delegate its obligation under the contractor resulting from this RFP or any of its right title or interest therein or its power to execute such contract to any person, company, or corporation without prior written consent and approval of the MCHA.

## 9. Advertising

In submitting a proposal, the Contractor agrees not to use the relationship with MCHA as a part of any commercial advertising. MCHA does not permit firms to advertise or promote the existence of their relationship with the MCHA in the course of marketing effort unless the MCHA specifically agrees otherwise.

## 10. Media Relations

The MCHA does not authorize outside firms to make public comments on MCHA matters. All media inquiries shall be referred to the MCHA Executive Director.

## 11. Client Contact

The MCHA Comptroller shall serve as the Client Contact for all matters relating to this contract. All communications required with other MCHA departments will be coordinated through the Comptroller. The MCHA Executive Director will have the sole authority to retain services and to commit/ authorize agency positions.

**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/offerors 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/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

- (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/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror 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/offeror represents and certifies as part of its bid/offer that it:

- (a)  is,  is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b)  is,  is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c)  is,  is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

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

(Check the block applicable to you)

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

**3. Certificate of Independent Price Determination**

(a) The bidder/offeror 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/offeror 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/offeror, directly or indirectly, to any other bidder/offeror 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/offeror 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/offeror'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/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror'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.

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

**4. Organizational Conflicts of Interest Certification**

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

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

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

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

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

**5. Authorized Negotiators (RFPs only)**

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

**6. Conflict of Interest**

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

**7. Offeror's Signature**

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

\_\_\_\_\_  
Signature & Date:

\_\_\_\_\_  
Typed or Printed Name:

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



# General Conditions for Non-Construction Contracts

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

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

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/31/2027)

Public Reporting Burden for this collection of information is estimated to average one hour 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. HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 75. The form is required for non-construction contracts awarded by Public Housing Agencies (PHAs). The form is used by PHAs in solicitations to provide necessary contract clauses and allows PHAs to enforce their contracts. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, Office of Policy Development and Research, REE, Department of Housing and Urban Development, 451 7th St SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. 2577-0157. Do not send this completed form to either of these addressees. The information collected will not be held confidential.

**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 \$250,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$250,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$250,000 — use Sections I and II.**

### Section I - Clauses for All Non-Construction Contracts greater than \$250,000

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

proposal submitted before final payment of the contract.

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

#### 3. Termination for Convenience and Default

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

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

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



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

#### 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 111, 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
  - ( ) 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.

(v) The prohibition does not apply as follows:

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- (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.
- (i) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.
- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.
- (iii) Selling activities by independent sales representatives.
- (c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:
- (i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
- (ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.
- (e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.
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## 16. Equal Employment Opportunity

During the performance of this contract, the

Contractor/Seller agrees as follows:

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c) The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

## 17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Brail or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

#### **18. 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.

#### **19. 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.

#### **20. 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.

#### **21. Liens**

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

#### **22. 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 75, 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 75 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 prioritization requirements, and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04)..
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, 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 75. 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 75.
- (e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts
- (f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

#### **23. 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. 1/31/2027)

Public Reporting Burden for this collection of information is estimated to average one hour 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. HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 75. The form is required for maintenance contracts awarded by Public Housing Agencies (PHAs). The form is used by PHAs in solicitations to provide necessary contract clauses and allows PHAs to enforce their contracts. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, Office of Policy Development and Research, REE, Department of Housing and Urban Development, 451 7th St SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. 2577-0157. Do not send this completed form to either of these addressees. The information collected will not be held confidential.

**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 \$250,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$250,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$250,000 – 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

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
- (iii) A training/trainee program that has received prior approval by HUD.

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

**5. Disputes concerning labor standards**

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

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

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

**6. Contract Work Hours and Safety Standards Act**

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

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any



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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.