

Lucas Metropolitan Housing Authority

REQUEST FOR QUALIFICATIONS (RFQ)

No. Q18-001

Pool of Architectural & Engineering Contractors

Issue Date: December 21, 2018

Due Date: January 18, 2019 at 3:00 PM ET



Demetria M. Simpson, President & Chief Executive Officer

**REQUEST FOR QUALIFICATIONS (RFQ) No. RFQ18-001,
Pool of Architectural and Engineering Contractors**

RFQ Document

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INTRODUCTION

The Lucas Metropolitan Housing Authority (LMHA) (hereinafter, “the HA”) is a public entity that was formed in 1933 to provide federally subsidized housing and housing assistance to low-income families, within the City of Toledo and Lucas County. The HA is governed by a five-person board of commissioners and is subject to the requirements of Title 24 of the Code of Federal Regulations (hereinafter, “CFR”) and the HA’s procurement policy. The President and Chief Executive Officer controls the daily operations.

Currently, the HA owns and/or manages approximately 2,760 Public Housing and administers 4,391 federal housing choice vouchers rental assistance vouchers. The Housing Choice Voucher Program has achieved high performer status.

In keeping with its mandate to provide efficient and effective services, the HA is now soliciting proposals from qualified, licensed, and insured entities to provide the above noted services to the HA. All proposals submitted in response to this solicitation must conform to all the requirements and specifications outlined within this document and any designated attachments in its entirety.

RFQ INFORMATION AT A GLANCE

[Table No. 2]

LMHA CONTACT PERSON	Sherry Tobin, Procurement & Contract Manager 201 Belmont Ave Toledo, OH 43604 419-259-9446
HOW TO OBTAIN THE RFQ DOCUMENTS ON THE EPROCUREMENT MARKETPLACE	1. Access ha.economicengine.com (no “www”). 2. Click on the “Login” button in the upper left side. 3. Follow the listed directions. 4. If you have any problems in accessing or registering on the eProcurement Marketplace, please call customer support at (866)526-9266.
PRE-PROPOSAL CONFERENCE	Monday, January 7, 2019 at 4:00 pm ET Call in - 800-977-8002, participant code: 9950119#
QUESTION SUBMITTAL DEADLINE	Wednesday, January 9, 2019 by 12:00 PM ET to Craig Bartley at Cbartley@lucasmha.org
HOW TO FULLY RESPOND TO THIS RFQ BY SUBMITTING A PROPOSAL	As instructed within Section 3.0 of the RFQ document, submit 4 copies of your “hard copy” proposal to the HA Administrative Office. (1 original + 3 copies) An electronic copy is to be furnished upon request
PROPOSAL SUBMITAL RETURN & DEADLINE	Friday, January 18, 2019 at 3:00 PM ET 435 Nebraska Ave, Toledo, OH 43604

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- 1.0 THE HOUSING AUTHORITY'S RESERVATION OF RIGHTS.** The HA reserves the right to:
- 1.1 Right to Reject, Waive, or Terminate the RFQ.** Reject any or all proposals, to waive any informality in the RFQ process, or to terminate the RFQ process at any time, if deemed by the HA to be in its best interests.
 - 1.2 Right to Not Award.** Not to award a contract pursuant to this RFQ.
 - 1.3 Right to Terminate.** Terminate a contract awarded pursuant to this RFQ, at any time for its convenience upon 10 days written notice to the successful proposer(s).
 - 1.4 Right to Determine Time and Location.** Determine the days, hours, and locations that the successful proposer(s) shall provide the services called for in this RFQ.
 - 1.5 Right to Retain Proposals.** Retain all proposals submitted and not permit withdrawal for a period of 60 days subsequent to the deadline for receiving proposals without the written consent of the HA Contracting Officer (CO).
 - 1.6 Right to Negotiate.** Negotiate the fees proposed by the proposer entity.
 - 1.7 Right to Reject any Proposal.** Reject and not consider any proposal that does not meet the requirements of this RFQ, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.
 - 1.8 No Obligation to Compensate.** Have no obligation to compensate any proposer for any costs incurred in responding to this RFQ.
 - 1.9 Right to Prohibit.** At any time during the RFQ or contract process to prohibit any further participation by a proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein. By accessing the ha.economicengine.com eProcurement Marketplace (hereinafter, the "eProcurement Marketplace") and by downloading this document, each prospective proposer is thereby agreeing to abide by all terms and conditions listed within this document and within the eProcurement Marketplace, and further agrees that he/she will inform the CO in writing within 5 days of the discovery of any item listed herein or of any item that is issued thereafter by the HA that he/she feels needs to be addressed. Failure to abide by this time-frame shall relieve the HA, but not the prospective proposer, of any responsibility pertaining to such issue.
 - 1.10 Right to Reject - Obtaining Competitive Solicitation Documents.** The eProcurement Marketplace is the only official and appropriate venue to obtain the competitive solicitation documents (and any other information pertaining to the competitive solicitation such as addenda), other than from LMHA's Procurement Department. Accordingly, by submitting a response to this competitive solicitation the respondent thereby affirms that he/she obtained all information on the eProcurement Marketplace. Any other group such as a proposal depository that informs potential respondents of the availability of such competitive solicitations are hereby instructed to not distribute these documents to any such potential respondents, but to instruct the potential respondents to visit the eProcurement Marketplace to obtain the documents.

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2.0 SCOPE OF WORK/TECHNICAL SPECIFICATIONS. LMHA is seeking proposals from qualified Architectural and Engineering firms and/or individuals (“Offerors”) licensed in the State of Ohio to provide LMHA with various professional Architectural/Engineering (“A/E”) Services on a Task-Order basis:

2.1 General Requirements. LMHA is conducting this Request for Qualifications (RFQ) competitive solicitation process as allowed by and detailed within Section 6.14 of HUD Procurement Handbook 7460.8 REV 2, and in accordance with A/E services as designed by, and in accordance with the Model Form of Agreement Between Owner and Design Professional - HUD Form 51915 and the Contract Provisions Required by Federal Law or Owner Contract with the U.S. department of Housing and Urban Development Hud Form 51915A.

2.1.1 Forming a Pool of Contractors (hereinafter, a/k/a the “Pool”). The HA is first conducting this RFQ process to receive technical proposals from A/E contractors to qualify those firms to be placed in a Pool of Contractors eligible to provide A/E services to the HA. LMHA intends to award indefinite quantity A/E service contracts through this solicitation process. Each contract is anticipated to be for a base period of one year with an option for LMHA to extend, at its sole discretion, for up to four additional one-year terms. LMHA does not guarantee a minimum amount of services will be requested but does anticipate that the maximum amount of services request for a single year will not exceed \$120,000.00.

2.1.1.1 Potential Re-opening the RFQ. In the interest in maintaining a “healthy pool of available contractors,” the HA reserves the right to re-open the RFQ at any time during the ensuing period of time after the RFQ deadline and after the “Pool” has been formed.

2.1.1.1.1 This re-opening may especially occur if, for example, additional contractors contact the HA to inform the HA of their desire to compete to be placed in the Pool; or may occur if the contractors already in the Pool are not as competitive (both in participation and/or bided costs) as the HA desires. In any case, the HA will consider re-opening the Pool at least once per every 6 months.

2.1.1.1.2 If the HA does re-open the Pool, the contractors who have already been placed in the Pool are not required to again compete—such firms will just stay in the Pool.

2.1.1.1.3 The HA reserves the right to terminate any firm from the Pool for any reason that would, in the HA’s opinion, result in contract termination in any other condition.

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- 2.1.2 Categories of Work.** The major categories of work that may need to be provided generally include, but may not be limited to: Mechanical, Plumbing, Civil, Structural, Electrical, standard Architectural Services as well as Construction Administration.
- 2.1.3 Additional Work other than related to the A/E services identified within the immediate preceding Section 2.1.2 herein.** Additional services may include as necessary: Capital Planning; Needs Assessments; Site visits to the communities; Surveying and evaluating existing conditions; Providing cost estimates; Preparing sketches, drawings, and specifications; Reviewing and preparing schedules; identifying hazardous material and specifying abatement requirements; Preparing documentation associated with demolition of structures; Administration of construction contracts; Attending, conducting and documenting project meetings; Preparing reports; Review and approval of change orders; Review of construction work during construction and/or warranty phases; Assistance during construction close out; Section 504 and Uniform Federal Accessibility Standards reviews and designs; Environmental Reviews (ERR) in accordance with the requirements of 24 CFR Part 50 and Part 58; Other related services as needed.
- 2.1.4 Supporting Documents for the RFQ.** LMHA will be evaluating each Firm based on the proposal that is submitted in response to this RFQ. Section 4.1 has the evaluation factors that will be used to review proposals. In addition to the required documents that are described in Section 3, please include any additional supporting documents that may be used to give a fair profile of your firm's capabilities.
- 2.1.5 Clarification of Document Deliverables:** Unless otherwise specified, document deliverables in their final form for specific Task Orders or projects must be submitted in standard industry/government (or in some cases LMHA-specified) formats, bound with appropriate cover sheets, narratives, forms, graphics, exhibits, etc., satisfying the requirements of the task order, and suitable for circulation or submission to the public regulatory or governmental authorities, or other parties of interest. LMHA usually requires the submission of one set of document deliverables in electronic form, and a printed hard copy for the office.
- 2.1.6 Terms "Proposer," "Bidder," and "Contractor."** Herein and within any ensuing documents (e.g. ensuing bid; contract; etc.):
- 2.1.6.1** The term "Proposer" refers to a firm or individual that is taking part in this RFQ process.
- 2.1.6.2** The term "Bidder" refers to a firm or individual that has been deemed qualified and placed in the Pool and is taking part in the ensuing bid process referenced within the following 2.2 herein.

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2.1.6.3 The term “Contractor” typically refers to a firm or individual that receives an award as the result of a Task Order or from the bid process referenced within the following 2.2 herein. When utilized in certain contexts, the term “contractor” may also be a reference to the firms that are taking part in this RFQ process.

2.2 Bidding Requirements. This Section pertains to the “ensuing bids” that the HA will conduct with the contractors that are placed within the “Pool.” As a result of this RFQ and the evaluation that the HA will conduct after the submittal deadline, the HA will place qualified contractors into a Pool of Contractors eligible to bid on A/E work as it becomes available.

2.2.1 Quote for Each project. Once a project becomes available, the HA will deliver to each A/E firm in the Pool a scope of work to be completed. Any contractor in the Pool that wishes will be able to respond with a firm-fixed fee to complete the needed work. Projects may be directed to a Firm that specializes in a type of service; i.e. Electrical Design work may be directed to an electrical engineering firm; Civil work may be directed to a Civil Engineering firm. Negotiations will be held with the firm that is considered most reasonable and responsive, based on price and schedule.

2.2.2 Typically, No Additional Forms Required. Because the HA has included as a part of this RFQ a number of HUD-required forms and submittal paperwork, and because the bidder will have already submitted any such required paperwork as a part of the submittal to this RFQ, the bidder will not typically be required to submit any additional paperwork in response to the individual bids or quotes detailed within the immediate preceding Section 2.2.1 herein; typically, the bidder will only be required to submit his/her firm-fixed fee bid.

2.2.3 Sealed Bid for each Job / Bonding Requirements. Not Applicable for the A&E scope and bonding is not part of this scope.

2.3 Contractor Responsibilities (in alpha order). The following Sections 2.3.1 through 2.3.16 primarily pertain to the successful bidder’s or contractor’s responsibilities during any construction work assigned to a contractor by the HA.

2.3.1 Access for Emergency Vehicles. Not applicable for A&E services unless referred to in a scope for a project or Task Order.

2.3.2 Communication. The HA will assign an HA primary point of contact for the Contractor each time the HA solicits bids for work. All requests for changes or decisions shall be submitted in writing to the HA point of contact. The HA anticipates that it will typically make a decision in such matters within 3 work days of receipt, though such response time frame may be shorter or longer depending on the situation; accordingly, the Contractor shall be required to submit such written requests in as timely a manner as reasonably possible.

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- 2.3.3 Contractor's Disbarment.** As detailed within Chapter 10, Miscellaneous Requirements, of Handbook 7460.8 rev 2:
- 2.3.3.1** If the Contractor has been disbarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, such firm shall disclose the information to its offer, which may be sufficient ground for disqualification. If the selected firm fails to disclose that information and LMHA discovers it thereafter, then LMHA could terminate the contract.
- 2.3.4 Contractor's Financial Capacity.** As detailed within Chapter 10, Miscellaneous Requirements, of Handbook 7460.8 rev 2:
- 2.3.4.1** The Contractor must be financially viable, and able to provide the services being procured. Upon request, the Contractor will provide an audited financial statement, including the latest balance sheet, income statements, and cash flow statements. If the financial statement identifies a name other than the name of the organization whose financial statement is provided (e.g. parent-subsidiary), please provide an explanation of the relationship.
- 2.3.5 Contractor's Request for Payment.** As detailed within Chapter 9, Procurement and Contract Administration, of Handbook 7485.1:
- 2.3.5.1** The HA is responsible for making progress payments, if applicable. Typically, progress payments for acceptable work and materials delivered and stored on the site will be made at 30-day intervals.
- 2.3.5.2** Payment will be based on the percentage of work completed during a one-month period.
- 2.3.5.3** A 10% retainage may be held on each progress payment request. A separate payment request for the return of the retainage will be required at the completion of the work. NOTE: Retainage will not apply if the HA is making one payment only at the completion of work (meaning, if one payment only is made, retainage will not be necessary if all work has been fully completed to the satisfaction of the HA).
- 2.3.5.4 Request for Payment Forms.** The Contractor shall submit a request for payment for this project on the following forms, each as may be appropriate:
- 2.3.5.4.1** form HUD-51000 (1/2014), *Schedule of Amounts for Contract Payments*; For Use When Applicable.
- 2.3.5.4.2** form HUD-51001 (1/2014), *Periodic Estimate for Partial Payment*; For Use When Applicable.

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- 2.3.5.4.3 form HUD-51002 (1/2014), *Schedule of Change Orders*; For Use When Applicable.
 - 2.3.5.4.4 form HUD 51003 (1/2014), *Schedule of Materials Stored*; For Use When Applicable.
 - 2.3.5.4.5 form HUD-51004 (1/2014), *Summary of Materials Stored*; for Use When Applicable
 - 2.3.5.4.6 form HUD-5372(1/2014), *Construction Progress Schedule*; For Use When Applicable; and
 - 2.3.5.4.7 All relevant Subcontractors Weekly Certified Payrolls must accompany the payment request utilizing form HUD-WH-347 (Dec./2008). For Use When Applicable
 - 2.3.5.4.8 **Retainage.** The Request for Payment form must list and clearly identify the retainage in the amount of 10% as a deduction to the subtotal of charges on the Request for Payment.
- 2.3.5.5 **Review and Approval.** The HA will review each such Contractor request for payment and will approve the payment only if the following listed conditions are met. If the Contractor requests payment items which have not been completed in a satisfactory manner (“satisfactory,” as determined at the sole discretion of the HA), the HA shall hold payment for the unsatisfactory items, and pay the balance of the request (e.g. the undisputed portion). The HA shall ensure:
- 2.3.5.5.1 The request for payment is consistent with the HA-approved schedule of amounts for contract payments;
 - 2.3.5.5.2 As further detailed within the preceding Section 2.2.4.4.8 herein, the total of the request for payment does not include the amount to be retained by the HA under the contract (retention or retainage);
 - 2.3.5.5.3 The work covered by the request for payment has been performed in accordance with the construction documents;
 - 2.3.5.5.4 The Periodic Estimate for Partial Payment has been properly executed on all applicable supporting documentation submitted; and
 - 2.3.5.5.5 The Contractor has submitted all required reports such as payroll reports.

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- 2.3.6 “Or Equal” Specifications.** Herein, or within any specifications, or within a punch-list issued to obtain bids, whenever the HA has listed a specific brand name the words “or equal” shall automatically apply thereto. This term “or equal” means that the apparent successful bidder may propose to provide an alternate product as long as such proposed alternate product, in the opinion of the HA, meets the minimum specifications. As detailed within Section 9.3.B.3 of HUD Procurement Handbook 7460.8 REV 2, brand names are listed for “establishing design and quality standards” for the product identified. If a bidder wishes to provide a different product than the product the HA has identified, the HA will be pleased to respond to any specific written request from a bidder with a listing of the “essential characteristics” for any such product (the bidder may also, if he/she wishes, wait to see if the firm is the apparent successful bidder then submit such written request after the bid submittal deadline when the HA will evaluate such alternate products, if submitted).
- 2.3.7 Payroll Reports.** For Use When Applicable.
- 2.3.8 Permits.** The Contractor may be directed to obtain all required permits pertaining to any assigned work, and the cost will be part of a Task Order.
- 2.3.9 Required Licensing.** The Contractor(s) shall be in possession of any current appropriate licensing that may be required by the County of Lucas (and/or, if applicable, any city jurisdiction therein in which work will be performed) and/or the State of Ohio.
- 2.3.10 Retainage.** As may be further detailed herein, when such applies, retainage for this work shall be in the amount of 10%, which shall be applied to each payment until final payment, at which time all retainage held will be paid by the HA to the Contractor.
- 2.3.11 Safety.** It shall be the responsibility of the Contractor to ensure, at all times during the performance of the work that may be onsite, to the maximum extent feasible, to protect the safety of HA residents and staff, the Contractor’s staff, and subcontractors, and the public. This shall include, but not be limited to, compliance with all OSHA-related Federal and local laws, codes, and regulations.
- 2.3.12 Security during the Work.** Not applicable
- 2.3.13 Temporary Facilities.** Not applicable
- 2.3.14 Time of Completion.** The Contractor shall commence, and complete, work as specified within the Notice to Proceed form issued by the HA for any ensuing work assigned by the HA.
- 2.3.15 Tools/Equipment/Materials.** Not applicable.

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2.3.16 Weekends. Unless otherwise approved by the HA in writing, the Contractor shall not perform work on HA property during a holiday nor weekend days (Saturday or Sunday).

2.3.17 Work Standards. It is the responsibility of the Contractor to ensure that each worker provided by the Contractor shall be fully trained and qualified to provide any assigned work. Accordingly, all work provided shall be guaranteed by the Contractor to be performed in a workmanlike manner and in accordance with all applicable laws, codes, and/or regulations, including those issued by, but not limited to the City of Toledo, Lucas County, and/or the State of Ohio.

2.4 Current/Previous Contractor(s). We currently have a number of firms in our “Pool.” The purpose of this RFQ is to, in conformance with HUD requirements, expand the “Pool” by having more firms available to quote our work or offer additional services.

3.0 PROPOSAL FORMAT.

3.1 Tabbed Proposal Submittal. The HA intends to retain the Contractor(s) pursuant to a “Best Value” basis, not a “Low Bid” basis (“Best Value,” in that the HA will, as detailed within the following Section 4.0, consider factors other than just cost in making the award decision). Therefore, so that the HA can properly evaluate the offers received, all proposals submitted in response to this RFQ must be formatted in accordance with the sequence noted within the table below. Each category must be separated by numbered index dividers (which number extends so that each tab can be located without opening the proposal) and labeled with the corresponding tab reference also noted below. None of the proposed services may conflict with any requirement the HA has published herein or has issued by addendum.

[Table No. 3]

RFQ Section	Tab No.	Description
3.1.1	1	Cover Letter. The Cover letter shall include the company’s name, address, telephone number, email contact and bear the signature of the authorized representative of the Firm. Insert Attachment A Form of Bid after the Cover Letter.
3.1.2	2	Form HUD-5369-C (8/93), <i>Certifications and Representations of Offerors, Non-Construction Contract.</i> This Form is attached hereto as Attachment B to this RFQ document. This 2-page Form must be fully completed, executed where provided thereon and submitted under this tab as a part of the proposal submittal.
3.1.2		Form HUD-5369-B (8/93), <i>Instructions to Offerors Non-Construction.</i> This Form is attached hereto as Attachment B to this RFQ document.
3.1.3	3	Profile of Firm Form. The Profile of Firm Form is attached hereto as Attachment C to this RFQ document. This 3-page Form must be fully completed, executed and submitted under this tab as a part of the proposal submittal. Note that 3 references are to be identified and placed in this Tab 6.

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3.1.4	4	<p>Proposed Services. The proposer shall place under this tab documentation further explaining the proposer’s services and showing how the proposer intends to fulfill the requirements of the preceding Section 2.0 herein, including, but not limited to: <u>[PLEASE NOTE: The HA anticipates that the information submitted under this Tab may total 4-8 pages or less.]</u></p>
3.1.4.1		<p>As detailed within Section 4.1, Evaluation Factor No. 1, herein, the proposer’s DEMONSTRATED UNDERSTANDING of the HA’s REQUIREMENTS, and evidence that the A/E is currently registered in OHIO and carries Errors and Omissions insurance.</p>
3.1.4.2		<p>As detailed within Section 4.1, Evaluation Factor No. 2, herein, the OVERALL QUALITY, ORGANIZATION and PROFESSIONAL APPEARANCE of the proposal.</p>
3.1.4.3		<p>As detailed within Section 4.1, Evaluation Factor No. 3, herein, the proposer’s TECHNICAL CAPABILITIES (in terms of personnel and staff through resumes and projects) and knowledge of local codes and Federal building alteration requirements (including the ability to provide the services detailed herein). Any subcontractors shall be identified.</p>
3.1.4.4		<p>As detailed within Section 4.1, Evaluation Factor No. 4, herein, the proposer’s DEMONSTRATED EXPERIENCE in performing similar work and the proposer’s DEMONSTRATED SUCCESSFUL PAST PERFORMANCE (including meeting costs, schedules, and performance requirements) of contract work substantially similar to that required by this solicitation as verified by reference checks or the information submitted within the proposal. NOTE: The HA will place particular emphasis on the proposer’s above described EXPERIENCE and PAST PERFORMANCE with related-work with public housing agencies.</p>
3.1.4.5		<p>If appropriate, how staff are retained, screened, trained, and monitored.</p>
3.1.4.6		<p>If applicable, the proposed quality assurance program.</p>
3.1.4.7		<p>Once an Offeror is awarded a contract, the Contractor shall return a fully completed form HUD-2530 (02/2013), <i>Previous Participation Certification</i>, Attachment H, attached hereto.</p>
3.1.5	5	<p>Managerial Capacity/Financial Viability/Staffing Plan. The proposer entity must submit under this tab a concise description of its managerial and financial capacity to deliver the proposed services, including brief professional resumes for the persons identified within areas (5) and (6) of Attachment C, <i>Profile of Firm Form</i>. Such information shall include the proposer’s qualifications to provide the services; a description of the background and current organization of the firm (including a current organizational chart).</p>

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3.1.6	6	Client Information. (references) The proposer shall submit a listing of 3 former or current clients, including Public Housing Authorities, for whom the proposer has performed similar or like services to those being proposed herein. The listing shall, at a minimum, include:
3.1.6.1		The client's name;
3.1.6.2		The client's contact name;
3.1.6.3		The client's telephone number and e-mail address;
3.1.6.4		A brief narrative description and scope of the service(s) and the dates the services were/are provided.
3.1.7	7	Equal Employment Opportunity/Supplier Diversity. The proposer must submit under this tab a copy of its Equal Opportunity Employment Policy and a complete description of the positive steps it will take to ensure compliance, to the greatest extent feasible, with the regulations detailed within the following Section 3.6 herein pertaining to supplier diversity (e.g. small, minority-, and women-owned businesses).
3.1.8	8	Subcontractor/Joint Venture Information (Optional Item). The proposer shall identify hereunder whether or not he/she intends to use any subcontractors for this job, if awarded, and/or if the proposal is a joint venture with another firm. Please remember that all information required from the proposer under the proceeding tabs must also be included for any major subcontractors (10% or more) or from any joint venture.
3.1.9	9	Section 3 Business Preference Documentation (Optional Item). For any proposer claiming a Section 3 Business Preference, he/she shall under this tab include the fully completed and executed Section 3 Business Preference Certification Form attached hereto as Attachment D and any documentation required by that form.
3.1.10	10	Other Information (Optional Item). The proposer may include hereunder any other general information that the proposer believes is appropriate to assist the HA in its evaluation.
3.1.11		Optional Tabs. If no information is to be placed under any of the above noted tabs (especially the "Optional" tabs), please place there under a statement such as "NO INFORMATION IS BEING PLACED UNDER THIS TAB" or "THIS TAB LEFT INTENTIONALLY BLANK." <u>DO NOT</u> eliminate any of the tabs.
3.1.12		Proposal Submittal Binding Method. It is preferable and recommended that the proposer bind the proposal submittals in such a manner that the HA can, if needed, remove the binding (i.e. "spiral-type" etc.) or remove the pages from the cover (i.e. 3-ring binder; etc.) to make copies, then conveniently return the proposal submittal to its original condition.

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- 3.2 Fees.** No fees shall be proposed, discussed, or considered, either verbally or in writing, during this RFQ competitive solicitation process. The HA will, as detailed within the preceding Section 2.2 herein, conduct bids with the firms in the Pool each time the HA has need of work to be performed.
- 3.3 Additional Information pertaining to the Ensuing Bids referenced within the preceding Section 2.2 herein.** NOTE: Again, the information in this Section does not pertain to this RFQ but to the Ensuing Bids that the HA will conduct with the contractors placed in the Pool of Contractors.
- 3.3.1 Submit a Realistic Cost for the Pricing Items.** When there is Work to be bid, the Contractor will be contacted with a scope. The amount of time required and the process will depend on the complexity of the project.
- 3.3.1.1 No Post-Bid Deadline Corrections Allowed.** The HA WILL NOT, after each bid submittal deadline, negotiate an increase to any unit costs or fees proposed prior to the submittal deadline; accordingly, bidders are strongly cautioned to submit a realistic price for the Pricing Items identified within the preceding Table No. 4 herein.
- 3.3.1.2 No Negotiation of Proposed Fees after the Submittal Deadline.** The HA WILL NOT, after the submittal deadline, negotiate an increase to the firm-fixed fee proposed prior to the submittal deadline.
- 3.3.1.3 Review the Entry of Proposed Fees. Applicable when projects are entered for bidding on the eProcurement Marketplace.** The HA strongly recommends that each bidder, after entry of these proposed fees within the eProcurement Marketplace, print the receipt provided and review the entry to ensure that the bidder has entered the proposed fee correctly and as the bidder intended to meet the requirements herein (the eProcurement Marketplace will allow the bidder to immediately re-enter the Marketplace at any time prior to the posted deadline to correct any such entry). The bidder will NOT be able to correct this entry after the posted deadline has expired, which means that the HA will utilize such entry, correct or incorrect, to make a determination as to the apparent low bidder.
- 3.3.1.4 Change Orders (a/k/a Modifications).** Basically, the HA does NOT anticipate awarding any change orders during Task Order work. If, prior to the bid submittal deadline, any bidder notices anything problems with the specifications issued (typically, a punch list), then it is that bidders responsibility to inform the HA of such in writing prior to the bid submittal deadline. Failure on the part of the bidder to comply with this requirement may cause the bidder to perform such work at no additional charge to the HA. Pursuant to HUD requirements, change orders are for “unforeseen conditions” only. This means that the HA will

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strictly evaluate any change order requests and will hold the Contractor to a very strict standard. Accordingly, bidders are cautioned to not bid a low firm-fixed fee, expecting to “make up the short fall” through a change order. Change orders are reserved for unforeseen circumstances.

3.3.1.5 No Deposits/No Retainer. The HA will NOT pay any deposits or retainer fees as a result of award of the ensuing contract (such is not allowed per relevant HUD regulation). This means that the HA will pay each successful bidder for actual work provided only.

3.3.2 Overtime. If pre-approved or ordered by the HA, pursuant to the Contract Work Hours and Safety Standards Act, overtime shall be not less than time and one half for hours worked in excess of 40 hours per week. Accordingly, the HA will pay a rate of 1.5 of the listed hourly rates herein for any work the HA requires the successful proposer to work in excess of the noted “40 hours per week” standard; however:

3.3.2.1 The HA shall NOT be responsible to pay the successful proposer for any work that the successful proposer CHOOSES to work during non-regular-time hours; meaning, if the necessity for the work “after hours” is due to the Contractor’s lack of staffing or if such work is to support any of the work the HA expects that such work will be provided during normal work hours. The exception to this shall be if a “non-normal” action by the HA or an “Act of God” causes the Contractor to work “after hours” to solve the problem, then the aforementioned over-time rule shall apply. All such overtime work must be pre-approved in writing by the HA.

3.3.2.2 HA Normal Work Hours. The HA’s normal work hours are Monday-Friday (excluding official holidays), 8:30 AM to 5:00 PM.

3.4 Travel Time and Re-imburements. The HA will not reimburse the Contractor for travel to and from Toledo, or to a jobsite within Lucas County, Monroe County, Wood County or any other jurisdiction where a project may be situated.

3.5 Proposal Submission. All “hard-copy” proposals must be submitted and time-stamped received in the designated HA office by no later than the submittal deadline stated herein (or within any ensuing addendum). A total of 1 original signature copy (marked “ORIGINAL”) and 3 exact copies (each of the 4 separate proposal submittals shall have a cover and extending tabs) of the “hard copy” proposal submittal, shall be placed unfolded in a sealed package and addressed to:

**Lucas Metropolitan Housing Authority
435 Nebraska Ave
Toledo, OH 43604
Attention: Sherry Tobin
By 3:00 PM ET on January 18, 2019**

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Please note that an electronic copy of the proposal may be requested after the solicitation has closed.

3.5.1 The package exterior must clearly denote the above noted RFQ number and must have the proposer’s name and return address. Proposals received after the published deadline will not be accepted.

3.5.2 **Submission Conditions.** DO NOT FOLD OR MAKE ANY ADDITIONAL MARKS, NOTATIONS, OR REQUIREMENTS ON THE DOCUMENTS TO BE SUBMITTED! Proposers are not allowed to change any requirements or forms contained herein, either by making or entering onto these documents or the documents submitted any revisions or additions; and if any such additional marks, notations or requirements are entered on any of the documents that are submitted to the HA by the proposer, such may invalidate that proposal. If, after accepting such a proposal, the HA decides that any such entry has not changed the intent of the proposal that the HA intended to receive, the HA may accept the proposal and the proposal shall be considered by the HA as if those additional marks, notations, or requirements were not entered on such. By accessing the eProcurement Marketplace, registering and downloading these documents, each prospective proposer that does so is thereby agreeing to confirm all notices that the HA delivers to him/her as instructed, and by submitting a proposal, the proposer is thereby agreeing to abide by all terms and conditions published herein and by addendum pertaining to this RFQ.

3.5.3 **Submission Responsibilities.** It shall be the responsibility of each proposer to be aware of and to abide by all dates, times, conditions, requirements, and specifications set forth within all applicable documents issued by the HA, including the RFQ document, the documents listed within the following Section 3.8, and any addenda and required attachments submitted by the proposer. By completing, signing, and submitting the completed documents, the proposer is stating his/her agreement to comply with all conditions and requirements set forth within those documents. Written notice from the proposer not authorized in writing by the CO to exclude any of the HA requirements contained within the documents may cause that proposer to not be considered for award.

3.6 **Proposer’s Responsibilities – Contact with the HA.** It is the responsibility of the proposer to address all communication and correspondence pertaining to this RFQ process to the Procurement Manager only. Proposers must not make inquiry or communicate with any other HA staff member or official (including members of the Board of Commissioners) pertaining to this RFQ. Failure to abide by this requirement may be cause for the HA to not consider a proposal submittal received from any proposer who may not have abided by this directive.

3.6.1 **Addenda.** All questions and requests for information must be addressed in writing to the Procurement Manager. The Procurement Manager will respond to all such inquiries in writing by addendum to all prospective

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proposers (i.e. firms or individuals that have obtained the RFQ Documents). During the RFQ solicitation process, the Procurement Manager will NOT conduct any *ex parte* (a substantive conversation—"substantive" meaning, when decisions pertaining to the RFQ are made—between the HA and a prospective proposer when other prospective proposers are not present) conversations that may give one prospective proposer an advantage over other prospective proposers. This does not mean that prospective proposers may not call the Procurement Manager—it simply means that, other than making replies to direct the prospective proposer where his/her answer has already been issued within the solicitation documents, the Procurement Manager may not respond to the prospective proposer's inquiries but will direct him/her to submit such inquiry in writing so that the Procurement Manager may more fairly respond to all prospective proposers in writing by addendum.

3.7 Proposer's Responsibilities – Equal Employment Opportunity and Supplier Diversity. Both the Contractor and the HA have, pursuant to HUD regulation, certain responsibilities pertaining to the hiring and retention of personnel and subcontractors.

3.7.1 Within 2 CFR §200.321 it states:

3.7.1.1 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

3.7.1.2 (a) The Non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

3.7.1.3 (2) Affirmative steps must include:

3.7.1.3.1 (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

3.7.1.3.2 (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

3.7.1.3.3 (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

3.7.1.3.4 (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

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3.7.1.3.5 (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development HA of the Department of Commerce; and

3.7.1.3.6 (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

3.7.3 Within our HA Procurement Policy it states that our HA will:

3.7.3.1 Assistance to Small and Other Business, Required Efforts:

3.7.3.1.1 Including such firms, when qualified, on solicitation mailing lists;

3.7.3.1.2 Encouraging their participation through direct solicitation of proposals or proposals whenever they are potential sources;

3.7.3.1.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;

3.7.3.1.4 Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;

3.7.3.1.5 Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;

3.7.3.1.6 Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR Part 135 (so-called Section 3 businesses); and

3.7.3.1.7 Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.

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3.7.4 Requirements. Accordingly, please see Section 3.1.7 within Table No. 4 herein which details the information pertaining to this issue that the proposer must submit in response to this proposal showing compliance, to the greatest extent feasible, with these regulations.

3.8 Pre-proposal Conference. The scheduled Pre-proposal Conference Call identified within Table No. 2 on Page 3 of this RFQ Document is, pursuant to pertinent HUD regulation, not mandatory. Many prospective proposers have previously responded to an RFQ with a multi-tabbed submittal and feel comfortable in doing so without attending the pre-conference call. Typically, such conferences last 1/2 hour or less, though such is not guaranteed. The purpose of this conference call is to assist prospective proposers in having a full understanding of the RFQ documents so that he/she feels confident in submitting an appropriate proposal; therefore, at this conference the HA will conduct an overview of the RFP documents, including the attachments. Prospective proposers may also ask questions, though the Procurement Manager may require that some such questions are delivered in writing prior to a response be given in return in writing.

3.9 Recap of Attachments. It is the responsibility of each proposer to verify that he/she has downloaded the following attachments pertaining to this RFQ, which are hereby by reference included as a part of this RFQ:

[Table No. 4]

RFQ Section	Document No.	Attachment	Description
3.9.1	1.0		This RFQ Document
3.9.2	2.0	A	Form of Bid
3.9.3	3.0	B	Form HUD-5369-C (8/93), <i>Certifications and Representations of Offerors, Non-Construction Contract</i>
3.9.3.1	3.1	B-1	form HUD-5369-B (11/92), Instructions to Offerors Non-Construction (<i>for reference only</i>)
3.9.4	4.0	C	Profile of Firm Form tab 3
3.9.5	5.0	D	Section 3 Form Submittal Form tab 9
3.9.5.1	5.1	D-1	Section 3 Explanation
3.9.7	7.0	F	<i>Supplemental Instructions To Proposers & Contractors (SIPC) reference only</i>
3.9.8	8.0	G	Sample Contract Form HUD-51915 (please note that this contract and the listed appendices are being given as a sample only—the HA reserves the right to revise any clause herein and/or to include within the ensuing contract any additional clauses that the HA feels it is in its best interests to do so) <i>reference only</i>
3.8.8.1	8.1	G-1	Sample Contract Appendix No. 1: form HUD-5370-C (01/2014), <i>General Conditions</i>

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			<i>for Non-Construction Contracts Section I (With or without Maintenance Work)</i>
3.9.8.5	8.5	G-5	Sample Contract Appendix No. 5: Form HUD-4010 (06/2009), Federal Labor Standards Provisions <i>reference only</i>
3.9.8.6	8.6	G-6	*Sample Contract Appendix No. 6: form HUD 50071 Certification of Payments to Influence Federal Transactions - return page 1 if not lobbying. Return page 2 if you are lobbying, place under tab 10.
3.9.8.8	8.8	G-8	*Sample Contract Appendix No. 8: form HUD-92010 (3/2006), Equal Employment Opportunity Certification, tab 7.
3.9.9	9.0	H	*Sample form HUD-2530 (02/2013), <i>Previous Participation Certification. Return upon request</i>
3.9.12	*By submitting a proposal each successful proposer placed in the aforementioned "Pool" hereby agrees to complete and submit those forms as required. Also, in the case of any discrepancy of any terms and conditions listed within these forms and any other forms herein, the HA reserves the right to determine when such term or condition shall apply. By submitting a proposal in response to this RFQ, the proposer thereby agrees to abide by these requirements.		

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4.0 PROPOSAL EVALUATION.

4.1 Evaluation Factors. The following factors will be utilized by the HA to evaluate each proposal submittal received; award of points for each listed factor will be based upon the documentation that the proposer submits within his/her proposal submittal and on-line (specifically, the pricing submitted on-line):

[Table No. 5]

(1) No.	(2) Max Point Value	(3) Factor Type	(4) Factor Description
1	15 points	Subjective (Technical)	The proposer's DEMONSTRATED UNDERSTANDING of the HA'S REQUIREMENT , and evidence that the A/E is currently registered in the State of Ohio and carries Errors and Omissions insurance.
2	10 points	Subjective (Technical)	The OVERALL QUALITY, ORGANIZATION, and PROFESSIONAL APPEARANCE of the proposal submitted, based upon the opinion of the evaluators.
3	25 points	Subjective (Technical)	The proposer's TECHNICAL CAPABILITIES , indicated by profiles of the principal's and staffs' professional and technical competence / experience. Demonstrated knowledge of local building codes and Federal building alterations requirements.
4	50 points	Subjective (Technical)	The proposer's DEMONSTRATED EXPERIENCE in performing similar work and the proposer's DEMONSTRATED SUCCESSFUL PAST PERFORMANCE (including meeting costs, schedules, and performance requirements) of contract work substantially similar to that required by this solicitation as verified by reference checks or the information submitted within the proposal.
	100 points		Total Points (other than preference points)
*NOTE: Points will be awarded for each Subjective Factor by each of the appointed evaluation committee members based on his/her opinion after a thorough review of the information submitted by each proposer within his/her proposal.			

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4.1.1 **Preference Evaluation Factor.** The following factors will be utilized by the CO to evaluate each proposal submittal received:

[Table No. 5a]

No.	Max Point Value	Factor Type	Factor Description
6		Objective	SECTION 3 BUSINESS PREFERENCE PARTICIPATION. A firm may qualify for Section 3 status as detailed within Attachments D and D-1 (NOTE: A max of 15 points awarded).
6a	15 points		Priority I, Category 1a. Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3-covered assistance is expended.
6b	13 points		Priority II, Category 1b. Business concerns whose workforce includes 30 percent of residents of the housing development for which the Section 3-covered assistance is expended, or within three (3) years of the date of first employment with the business concern, were residents of the Section 3-covered housing development.
6c	11 points		Priority III, Category 2a. Business concerns that are 51 percent or more owned by residents of any other housing development or developments.
6d	9 points		Priority IV, Category 2b. Business concerns whose workforce includes 30 percent of residents of any other public housing development or developments, or within three (3) years of the date of first employment with the business concern, were "Section 3" residents of any other public housing development.
6e	7 points		Priority V, Category 3. Business concerns participating in HUD Youth-build programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended.
6f	5 points		Priority VI, Category 4a. Business concerns that are 51 percent or more owned by Section 3 residents in the metropolitan area, or whose permanent, full-time workforce includes no less than 30 percent of Section 3 residents in the metropolitan area, or within three (3) years of the date of employment with the business concern, were Section 3 residents in the metropolitan area.
6g	3 points		Priority VII, Category 4b. Business concerns that subcontract in excess of 25 percent of the total amount of subcontracts to Section 3 business concerns.
6h	15 points		Maximum Available Preference Points (Additional)
	115 points		Total Possible Points

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4.2 Evaluation Method.

4.2.1 Initial Evaluation for Responsiveness. Each proposal received will first be evaluated for responsiveness (i.e. meets the minimum of the requirements).

4.2.2 Evaluation Packet. An evaluation packet will be prepared for each evaluator, including the following documents:

4.2.2.1 Instructions to Evaluators;

4.2.2.2 Proposal Tabulation Form;

4.2.2.3 Written Narrative Form for each proposer;

4.2.2.4 Recap of each proposer's responsiveness;

4.2.2.5 Copy of all pertinent RFQ documents.

4.2.3 Evaluation Committee. The HA anticipates that it will select a minimum of a three-person committee to evaluate each of the responsive "hard copy" proposals submitted in response to this RFQ. PLEASE NOTE: No proposer shall be informed at any time during or after the RFQ process as to the identity of any evaluation committee member. If, by chance, a proposer does become aware of the identity of such person(s), he/she SHALL NOT make any attempt to contact or discuss with such person anything related to this RFQ. As detailed within Section 3.5 of this document, the designated CO (Procurement Manager) is the only person at the HA that the proposers shall contact pertaining to this RFQ. Failure to abide by this requirement may (and most likely will) cause such proposer(s) to be eliminated from consideration for award.

4.2.4 Evaluation. The CO will evaluate and award points pertaining to Evaluation Factor No. 6 (the "Objective" Factor). The appointed evaluation committee, independent of the CO or any other person at the HA, shall evaluate the responsive proposals submitted and award points pertaining to Evaluation Factors No. 1, 2, 3, and 4 (the "Subjective" Factors). Upon final completion of the proposal evaluation process, the evaluation committee will forward the completed evaluations to the CO.

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4.2.4.1 Points Awarded Range. Pertaining to the Subjective Factors, please note the following range of points awarded (points pertaining to this RFQ are shaded—please also see the Evaluation Factors detailed within the preceding Section 4.1):

[Table No. 6]

Classification*	Points Awarded Range					
	Rating	%	10	20	50	100**
Acceptable	Excellent	95%/+	10	19-20	48-50	95-100
Acceptable	Very Good	90%/+	9	18	45-47	90-94
Potentially Acceptable	Good	80%/+	8	16-17	40-44	80-89
Potentially Acceptable	Average	70%/+	7	14-15	35-39	70-79
Unacceptable	Poor	<70%	0-6	0-13	0-34	0-69
*Pursuant to Section 7.2.N.3 of HUD Procurement Handbook 7460.8 REV 2.						
**Total available points to be awarded, including cost points, minus preference points.						

4.2.5 Potential "Competitive Range" or "Best and Finals" Negotiations. The HA reserves the right to, as detailed within Section 7.2.N through Section 7.2.R of HUD Procurement Handbook 7460.8 REV 2, conduct a "Best and Finals" Negotiation, which may include oral interviews, with all firms deemed to be in the competitive range. Any firm deemed not to be in the competitive range shall be notified of such in writing by the HA in as timely a manner as possible, but in any case within no longer than 10 days after the beginning of such negotiations with the firms deemed to be in the competitive range.

4.2.6 Determination of Top-ranked Proposer. Typically, the subjective points awarded by the evaluation committee will be combined with the objective points awarded by the Procurement Manager to determine the final rankings, which is typically forwarded by the Procurement Manager for approval. If the evaluation was performed to the satisfaction of the Executive Staff, the final rankings may be forwarded to the Housing Authority Board of Commissioners (BOC) at a scheduled meeting for approval, depending on the amount of the award. Contract negotiations may, at the HA's option, be conducted prior to or after the BOC approval.

4.2.6.1 Minimum Evaluation Results. To be considered to receive an award a proposer must receive a total calculated average of at least 70 points (of the 115 total possible points detailed within Section 4.1 herein).

4.2.6.2 Ties. In the case of a tie in points awarded, the award shall be decided as detailed within Section 6.12.C of HUD Procurement Handbook 7460.8 REV 2, by "drawing lots or other random means of selection."

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- 4.2.7 Notice of Results of Evaluation.** If an award is completed, all proposers will receive by e-mail a Notice of Results of Evaluation. Such notice shall inform all proposers of:
- 4.2.7.1** Which proposer received the award;
 - 4.2.7.2** Where each proposer placed in the process as a result of the evaluation of the proposals received;
 - 4.2.7.3** The cost or financial offers received from each proposer;
 - 4.2.7.4** Each proposer's right to a debriefing and to protest.
- 4.2.8 Restrictions.** All persons having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a proposer entity will be excluded from participation on the HA evaluation committee. Similarly, all persons having ownership interest in and/or contract with a proposer entity will be excluded from participation on the HA evaluation committee.

5.0 CONTRACT AWARD.

- 5.1 Contract Award Procedure.** If a contract is awarded pursuant to this RFQ, the following detailed procedures will be followed:
- 5.1.1** By completing, executing and submitting a proposal, the "proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFQ as issued by the HA, either in hard copy or on the Marketplace" including the contract clauses already attached as Attachments G and G-1, G-5, G-6 and G-8, each attached hereto. Accordingly, the HA has no responsibility to conduct after the submittal deadline any negotiations pertaining to the contract clauses already published.
- 5.2 Contract Conditions.** The following provisions are considered mandatory conditions of any contract award made by the HA pursuant to this RFQ:
- 5.2.1 Contract Form.** The HA will not execute a contract on the Contractor's form—contracts will only be executed on the HA form (please see Sample Contract, Attachments G and G-1 through G-18 each attached hereto), and by submitting a proposal the Contractor agrees to do so (please note that the HA reserves the right to amend this form as the HA deems necessary). However, the HA will during the RFQ process (prior to the posted question deadline) consider any contract clauses that the proposer wishes to include therein and submits in writing a request for the HA to do so; but the failure of the HA to include such clauses does not give the Contractor the right to refuse to execute the HA's contract form. It is the responsibility of each prospective proposer to notify the HA, in writing, prior to submitting a proposal, of any contract clause that he/she is not willing to include in the

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final executed contract and abide by. The HA will consider and respond to such written correspondence, and if the prospective proposer is not willing to abide by the HA's response (decision), then that prospective proposer shall be deemed ineligible to submit a proposal.

5.2.1.1 Mandatory HUD Forms. Please note that the HA has no legal right or ability to (and will not) at any time negotiate any clauses contained within ANY of the HUD forms included as a part of this RFQ, or any subsequent projects (QSP or IFB).

5.2.2 Assignment of Personnel. The HA shall retain the right to demand and receive a change in personnel assigned to the work if the HA believes that such change is in the best interest of the HA and the completion of the contracted work.

5.2.3 Unauthorized Sub-contracting Prohibited. The successful proposers shall not assign any right, nor delegate any duty for the work proposed pursuant to this RFQ (including, but not limited to, selling or transferring the contract) without the prior written consent of the CO. Any purported assignment of interest or delegation of duty, without the prior written consent of the CO shall be void and may result in the cancellation of the contract with the HA, or may result in the full or partial forfeiture of funds paid to the Contractor as a result of the proposed contract; either as determined by the CO.

5.2.4 Termination: The Authority will only give one verbal notification to the contractor to cure deficiencies. A second notification to the contractor for deficiencies will be in writing and will clearly state that, if required, a third notification will result in termination.

5.3 Contract Period. The HA anticipates that it will initially award a contract for the period of 1 year with the option, at the HA's discretion, of 4 additional one-year option periods, for a total maximum contract period of 5 years.

5.4 Licensing and Insurance Requirements. Prior to award (but not as a part of the proposal submission) the *Contractor* will be required to provide:

5.4.1 Workers Compensation Insurance. An original certificate evidencing the proposer's current industrial (worker's compensation) insurance carrier and coverage amount (NOTE: Workers Compensation Insurance will be required of any Contractor that has employees other than just the owner working on-site to provide the services);

5.4.2 General Liability Insurance. An original certificate evidencing General Liability coverage, naming the Housing Authority as an additional insured, together with the appropriate endorsement to said policy reflecting the addition of the Housing Authority as an additional insured under said policy (minimum of \$1,000,000 each occurrence, general aggregate minimum limit

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of \$1,000,000, together with damage to premises and fire damage of \$50,000 and medical expenses any one person of \$5,000), with maximum deductible amount of \$5,000; and Professional Liability (Errors and Omissions) of a minimum of \$1,000,000; (**Note: evidence of Errors and Omissions insurance is a requirement for submission**).

5.4.3 Automobile Insurance. An original certificate showing the proposer's automobile insurance coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this program, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$100,000/\$300,000 and medical pay of \$5,000.

5.4.4 City/County/State Business License. If applicable, a copy of the proposer's business license allowing that entity to provide such services within the City of Toledo, Lucas County, and/or the State of Ohio.

5.4.5 Certificates/Profile of Firm Form. Pertaining to the aforementioned (within Sections 5.4.1 through 5.4.5) insurance certificates and licenses, each proposer is required to enter related information where provided for on the Profile of Firm Form (do not attach or submit copies of the insurance certificates or licenses within the proposal submittal—we will garner the necessary documents from the successful proposer prior to contract execution).

5.5 Contract Service Standards. All work performed pursuant to this RFQ must conform and comply with all applicable local, state and federal codes, statutes, laws and regulations.

5.5.1 Right to Negotiate Final Fees. The Authority shall retain the right to negotiate the amount of fees that are paid to the successful proposer, meaning the fees proposed by the top-rated proposer may, at the Authority's options, be the basis for the beginning of negotiations. Such negotiations shall begin after the Authority has chosen a top-rated proposer. If the Authority and such proposer cannot arrive at a mutually agreed upon price or terms for the work to be performed, the Authority shall retain the right to end such negotiations and begin negotiations with the next-rated proposer or cancel the solicitation in its entirety. The Authority shall also retain the right to negotiate with and make an award to more than one proposer, as long as such negotiation(s) and/or award(s) are addressed in the above manner (i.e. top-rated first, then next-rated following until a successful negotiation is reached).

5.6 Prompt Return of Contract Documents. All documents required to complete the contract, including contract signature by the successful proposers, shall be provided to the HA within 10 work days of notification by the HA.

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5.7 Public Records Law: All bids/proposals submitted to LMHA are subject to the Ohio Public Records Law (O.R.C. 149.43 and the Sunshine Act [5 USC 522(b)]) and may be subject to disclosure to the public. Information in proposals that would be deemed a trade secret or otherwise not subject to disclosure under public records laws shall be clearly indicated as such by the contractor, including citations from the Ohio Public Records Law or the Sunshine Act for the exemptions. Also, the contractor shall submit four hard copies and upon request, one electronic copy of its proposal and other submissions, which has been redacted of all trade secrets and other information not subject to disclosure pursuant to a public records request. Failure to do so may subject the entire contents to disclosure under public records laws.

5.8

Index of Tables

[Table No. 7]

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**FORM OF BID
(RFP / RFQ Attachment A - insert in Tab No. 1)**

(This Form must be fully completed and placed under Tab No. 1 of the initial Step #1 "hard copy" tabbed bid submittal.)

(1) Instructions. Unless otherwise specifically required, the items listed below must be completed and included in the bid submittal. Please complete this form by marking an "X," where provided, to verify that the referenced completed form or information has been included within the "hard copy" bid submittal submitted by the bidder. Also, complete the following Statement's herein:

[Table No. 1]

"X" =		
Item Included	Tab No.	Bid Submittal Item (one original signature copy of each document)
	1	Form of Bid (Attachment A)
	2	form HUD-5369-C (Attachment B)
	3	form HUD-5369-B (Attachment E)
	4	Section 3 Business Preference Documentation (Attachment D, Optional)
Pricing will be requested when a short list of Contractors has been determined after the evaluation process		

(2) SECTION 3 STATEMENT. Are you claiming a Section 3 business preference? Yes No If "YES," pursuant to the Section 3 portion within the Conditions and Specifications, and pursuant to the documentation justifying such submitted under Tab No. 9, which priority are you claiming? _____.

(3) Debarred Statement. Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of Alabama, or any local government agency within or without the State of Ohio? Yes No If "Yes," please attach a full detailed explanation, including dates, circumstances, and current status.

(4) Disclosure Statement. Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the Agency? Yes No If "Yes," please attach a full detailed explanation, including dates, circumstances, and current status.

Signature Date Printed Name Company

LUCAS METROPOLITAN HOUSING AUTHORITY

REQUEST FOR QUALIFICATIONS (RFQ) No. B18-001, ARCHITECTURAL & ENGINEERING SERVICES

FORM OF BID
(RFP / RFQ Attachment A - insert in Tab No. 1)

(This Form must be fully completed and placed under Tab No. 1 of the initial Step #1 "hard copy" tabbed bid submittal.)

(5) Felony Disclosure. Has any principal(s) or any person(s) proposed to perform the work ever been convicted of a felony? Yes No If "Yes," please attach a full detailed explanation, including dates, circumstances, and current status. PLEASE NOTE: The Agency reserves the right to not make award to any bidder that has staff who has been convicted of a felony if the Agency feels that doing such is in its best interests.

(6) Non-Collusive Affidavit. The undersigned party submitting this bid hereby certifies that such bid is genuine and not collusive and that said bidder entity has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, to fix overhead, profit or cost element of said bid price, or that of any other bidder or to secure any advantage against the Agency or any person interested in the proposed contract; and that all statements in said bid are true.

(7) Bidder's Statement. The undersigned bidder hereby states that by completing and submitting this Form and all other documents within this bid submittal, he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and that if the Agency discovers that any information entered herein to be false, such shall entitle the Agency to not consider or make award or to cancel any award with the undersigned party. Further, by completing and submitting the bid submittal, the undersigned bidder is thereby agreeing to abide by all terms and conditions pertaining to this IFB as issued by the Agency, either in hard copy or on the eProcurement Marketplace, including an agreement to execute the attached Sample Contract form. Pursuant to all RFQ Documents, this Form of Bid, and all attachments, and pursuant to all completed Documents submitted, including these forms and all attachments, the undersigned proposes to supply the Agency with the services described herein, and through his proposal.

Signature

Date

Printed Name

Company

LUCAS METROPOLITAN HOUSING AUTHORITY

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)

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

3. Certificate of Independent Price Determination

(a) The bidder/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.

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

4. Organizational Conflicts of Interest Certification

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

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

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

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

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

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

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

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:



Instructions to Offerors Non-Construction

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

information only

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

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

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

REQUEST FOR QUALIFICATIONS (RFQ) No. 18-Q001, ARCHITECTURAL & ENGINEERING SERVICES

**PROFILE OF FIRM FORM
(RFP / RFQ Attachment C)**

(This Form must be fully completed and submitted to the Agency when notified to do so by the Agency after the submittal deadline.)

(1) Prime Sub-contractor (This form must be completed by and for each).

(2) Name of Firm:

Telephone:

Fax:

Email:

(3) Street Address, City, State, Zip:

(4) Please attached a brief biography/resume of the company, including the following information: (a) Year Firm Established; (b) Year Firm Established in Ohio; (c) Former Name and Year Established (if applicable); (d) Name of Parent Company and Date Acquired (if applicable).

(5) Identify Principals/Partners in Firm (submit under Tab No. 5 a brief professional resume for each):

[Table No. 1]

Name	Title	% of Ownership

(6) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; please submit under Tab No. 5 a brief resume for each. (Do not duplicate any resumes required above):

[Table No. 2]

Name	Title

REQUEST FOR QUALIFICATIONS (RFQ) No. 18-Q001, ARCHITECTURAL & ENGINEERING SERVICES

**PROFILE OF FIRM FORM
(RFP / RFQ Attachment C)**

(This Form must be fully completed and submitted to the Agency when notified to do so by the Agency after the submittal deadline.)

(7) Bidder Diversity Statement. You must mark all the following that apply to the ownership of this firm and enter where provided enter the correct percentage (%) of ownership of each:

- Caucasian American (Male) _____% Public-Held Corporation _____% Government Agency _____% Non-Profit Organization _____%

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise (Qualifies by virtue of 51% or more ownership and active management by one or more of the following):

- Resident-Owned* _____% African American _____% Native American _____% Hispanic American _____% Asian/Pacific American _____% Hasidic Jew _____% Asian/Indian American _____%
- Woman-Owned (MBE) _____% Woman-Owned (Caucasian) _____% Disabled Veteran _____% Other (Specify): _____%

WMBE Certification Number:

Certified by (What Agency):

(NOTE: A CERTIFICATION/NUMBER IS NOT REQUIRED TO PROPOSE - ENTER IF AVAILABLE)

(8) Federal Tax ID No.:

(9) Local Business License No. (if applicable):

(10) State of Ohio License Type and No. (if applicable):

(11) Federal License Type and No. (if applicable):

(12) Worker's Compensation Insurance Carrier:

Policy No.:

Expiration Date:

(13) General Liability Insurance Carrier:

Policy No.

Expiration Date:

(14) Automobile Liability Insurance Carrier:

Policy No.

Expiration Date:

REQUEST FOR QUALIFICATIONS (RFQ) No. 18-Q001, ARCHITECTURAL & ENGINEERING SERVICES

PROFILE OF FIRM FORM
(RFP / RFQ Attachment C)

(This Form must be fully completed and submitted to the Agency when notified to do so by the Agency after the submittal deadline.)

(15) Professional Liability Insurance Carrier (Error and Omissions):
Policy No.
Expiration Date:

Signature

Date

Printed Name

Company

Section 3 Business Preference Submittal Form
(RFP / RFQ Attachment D)

- 1.0 Introduction.** This form must be fully completed, accompanied by all required attachments, for any bidder claiming a Section 3 Business Preference (hereinafter, "Preference").
- 1.1** This fully completed form and any attachments thereto, will become a part of any ensuing contract.
- 1.2** Each bidder shall mark an "X" where provided following for all that apply to his/her claim of a Preference.
- 1.3** The bidder shall provide as an attachment to this completed form a detailed work plan clearly explaining how each following "preference claim" will be accomplished. Failure on the part of the bidder to include any such required attachment fully explaining the claim of the bidder shall result in the Agency not considering the claim for a Preference (though the Agency may, if awarded, later require the bidder to submit the information to satisfy the Section 3 requirements of the ensuing contract).
- 2.0 Current Section 3 Status.** The undersigned bidder hereby claims that it is a Section 3 business concern and claims such preference in that he/she can provide evidence that (the bidder has attached justifying documentation for each item following marked with an "X"):
- 2.1** ____ It is 51% or more owned by a Section 3 resident(s):

[Table No. 1]

(1) Section	(2) Mark "X"* if Included	(3) Description
2.1.1		Agency resident lease
2.1.2		Evidence of participation in a public assistance program
2.1.3		Articles of Incorporation
2.1.4		Fictitious or Assumed Business Name Certificate
2.1.5		List of owners/stockholders and % of each
2.1.6		Latest Board minutes appointing officers
2.1.7		Organization chart with names and titles and brief functional statement
2.1.8		Partnership Agreement
2.1.9		Corporation Annual Report

Section 3 Business Preference Submittal Form
(RFP / RFQ Attachment D)

2.2 ____ At least 30% of its full-time employees include persons that are currently Section 3 residents, or within 3 years of the date of first employment with the business concern were Section 3 residents:

2.2.1 To justify this claim, please see the immediate following:

[Table No. 2]

(1) Classification	(2) Total Number of Current Permanent Employees	(3) Total Number of Section 3 Resident Employees
Trainees		
Apprentices		
Journeypersons		
Laborers		
Supervisory		
Superintendent		
Professional		
Clerical		
Other:		

2.2.2 Attach a listing of all employees listed within column (3) above, including name and total annual income. Also attach proof of the income, such as a copy of the last tax return (please be sure to “black-out” all but the last 4 digits of the person(s) social security number), or other documentation showing receipt of public assistance.

Section 3 Business Preference Submittal Form
(RFP / RFQ Attachment D)

2.3 ____ He/she has a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to a Section 3 business concern.

2.3.1 To justify this claim, please see the immediate following:

[Table No. 3]

(1)	(2)	(3)
Name of Section 3 Firm Receiving the Subcontract	Total Amount of Subcontract(s)	Percentage the Subcontract(s) is/are of the Total Proposed Contract Amount
	\$	%
	\$	%

2.3.2 Attach for each firm listed immediately above:

2.3.2.1 A detailed description of the subcontracted activity; and

2.3.2.2 A fully completed Profile of Firm form.

2.3.2.3 Proof of the income of the ownership of the Section 3 firm receiving the subcontract, such as a copy of the last tax return for the owner(s) (please be sure to “black-out” all but the last 4 digits of the person(s) social security number).

3.0 The undersigned bidder hereby declares:

3.1 The information within this completed form (and any attachments) is, to the best of his/her knowledge, true and accurate.

3.2 He/she is aware that if the Agency discovers that any such information is not true and accurate, such shall allow the Agency to:

3.2.1 NOT award the bidder a Preference; and

3.2.2 If the Agency deems such is warranted (e.g. in the case of submitting information the bidder knows to be untrue), declare such bidder to be nonresponsive and not allow the bidder to receive an award.

Section 3 Business Preference Submittal Form
(RFP / RFQ Attachment D)

- 3.3 He/she is aware that if he/she receives and award as the result of this competitive solicitation, even though he/she may not receive a Preference from the Agency as a result of this submittal, he/she will still be required to, to the greatest extent feasible, implement a Section 3 Plan, including a commitment to interview and consider hiring Section 3 persons (most specifically, residents of the Agency) whenever the successful bidder has need to hire additional employees during the term of the ensuing contract.

The undersigned contractor hereby affirms that the foregoing is true and accurate and that he/she hereby agrees to comply as denoted herein.

Signature

Date

Printed Name

Company

Section 3 Business Preference Explanation
(RFP / RFQ Attachment D-1)

- 1.0 Introduction. The purpose of this document is to, in simplified terms, explain to proposers, major issues pertaining to the Section 3 Business Preference program required by the Agency's funding source, the U.S. Department of Housing and Urban Development (HUD). Also, hereinafter, a Section 3 Business Preference will be referred to as "Preference."

- 2.0 What is Section 3?
 - 2.1 Section 3 is a provision of the Housing and Urban Development Act of 1968, which recognizes that HUD funds are typically one of the largest sources of federal funding expended in communities, including those communities served by the Housing Authority. Section 3 is intended to ensure that when a contractor has need to hire additional people as the result of receiving a contract from the Lucas Metropolitan Housing Authority (hereinafter, the "HA"), preference must be given to low- and very low-income persons residing in Lucas County, Ohio (Section 3 resident), or Section 3 business concerns.
 - 2.2 The requirements pertaining to Section 3 apply only to purchases and contracts the Agency completes for work—the requirements of Section 3 DOES NOT apply to purchases or contracts the Agency completes solely for commodities or equipment; meaning, "no work provided, no Section 3 required."
 - 2.3 Section 3 is race and gender neutral in that preferences are based on income-level and location.

- 3.0 What does the term "Section 3 resident" mean?
 - 3.1 A "Section 3 resident" is:
 - 3.1.1 A public housing resident of the HA; or
 - 3.1.2 A low- or very low-income resident of Lucas County, Ohio.
 - 3.1.2.1 Low- and very low-income who resides in the service area where Lucas Metropolitan Housing Authority services including Lucas County, Ohio, Monroe County, Michigan, Fulton County Ohio and Wood County Ohio with the exception of Bowling Green is located and whose total household income does not exceed the following amounts:

[Table No. 1]

Income Limit Category	(1) Person	(2) Persons	(3) Persons	(4) Persons	(5) Persons	(6) Persons	(7) Persons	(8) Persons
Household Income	\$34,450	\$39,400	\$44,300	\$49,200	\$53,150	\$57,100	\$61,050	\$64,950

- 4.0 What does the term "Section 3 business concern" mean?

**Section 3 Business Preference Explanation
(RFP / RFQ Attachment D-1)**

- 4.1 A "Section 3 business concern" is a business that can provide evidence that it meets one of the following:
- 4.1.1 It is 51% or more owned by a Section 3 resident; or
 - 4.1.2 At least 30% of its full-time employees include person that are currently Section 3 residents, or within 3 years of the date of first employment with the business concern were Section 3 residents; or
 - 4.1.3 Provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications within the preceding 3.1.1 or 3.1.2.

5.0 Is participation in Section 3 optional?

- 5.1 Except for purchases or contracts solely for commodities and equipment, as a part of the solicitation the Agency will offer all bidders the option of a Preference.
- 5.2 In response to a competitive solicitation (Request for Proposals or Qualifications), proposers are not required to respond to the Agency with a claim of a Preference (meaning, such claim is optional and failure to respond with a claim of a Preference will not cause the bidder to be deemed non-responsive); however, if a proposer does claim a Preference, then the HA will consider, investigate, and determine the validity of each such claim for a Preference.
- 5.3 Regardless of whether a proposer claims a Preference in response to a solicitation, the recipient of the award will be required to, "to the greatest extent feasible," implement the requirements of Section 3 during the ensuing awarded contract term.

6.0 Must a contractor receiving an award from the Agency take part in the Section 3 program?

- 6.1 The short answer is "Yes," as detailed following, each contractor must, "to the greatest extend feasible," take part in the program.

- 6.1.1 If the contractor wishes, he/she may claim a Preference during the competitive solicitation process (please see Attachment D, most specifically

Section 3 Business Preference Explanation
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Section 2.0 therein). Pertaining to an IFB competitive solicitation process, the Agency will give a Preference based upon the following:

[Table No. 2]

	Preference = lesser of:
When the lowest responsive bid is less than \$100,000	10% of that bid or \$9,000
When the lowest responsive bid is:	
At least \$100,000 but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000 but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000 but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000 but less than \$500,000	6% of that bid, or \$25,000
At least \$500,000 but less than \$1,000,000	5% of that bid, or \$40,000
At least \$1,000,000 but less than \$2,000,000	4% of that bid, or \$60,000
At least \$2,000,000 but less than \$4,000,000	3% of that bid, or \$80,000
At least \$4,000,000 but less than \$7,000,000	2% of that bid, or \$105,000
\$7,000,000 or more	1½ % of lowest responsive bid, with no dollar limit

6.1.2 It is possible that a contractor may demonstrate, to the Agency's satisfaction that he/she has made a good faith and reasonable effort to comply with the requirements of Section 3, but it is not feasible to implement any portion of the Section 3 program. Such failure must be fully documented by the contractor and approved by the Agency or that contractor may be deemed not responsible by the Agency and the contract may be, at the Agency's discretion, not awarded or terminated.

7.0 Be aware that, as detailed within §135.38, the following Section 3 Clause will be a part of every applicable contract the Agency executes, and when a contractor executes the contract he/she is thereby agreeing to comply with the following:

SECTION 3 CLAUSE

7.1 The work to be performed under this contract is project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and 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 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in, substantial part by persons residing in the area of the Section 3 covered project.

7.2 The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban

Section 3 Business Preference Explanation
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Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.

- 7.3 The contractor will send to each labor organization or representative of workers with which s/he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- 7.4 The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135, the contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of this regulation.
- 7.5 Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided and to such sanctions as are specified by 24 CFR, Part 135.
- 7.6 Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 7.7 With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Action (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
- 8.0 As detailed within 24 CFR §135, Appendix I, *Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents*, as a part of the contract award process, to satisfy the requirements of Section 3 the successful bidder or Contractor will be able to denote the "efforts" his/her firm will formally commit to implement if he/she is awarded a contract:
- 8.1 Entering into "first source" hiring agreements with organizations representing Section 3 residents.

Section 3 Business Preference Explanation
(RFP / RFQ Attachment D-1)

- 8.2 Sponsoring a HUD-certified “Step-Up” employment and training program for section 3 residents.
- 8.3 Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other section 3 residents in the building trades.
- 8.4 Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in §135.34) reside.
- 8.5 Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For the Agency, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.
- 8.6 Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.
- 8.7 Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an Agency or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.
- 8.8 Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside in the neighborhood or service area in which a section 3 project is located.
- 8.9 Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.
- 8.10 Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.

Section 3 Business Preference Explanation
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- 8.11 Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the Agency's or contractor's training and employment positions.
 - 8.12 Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the Agency's or contractor's training and employment positions.
 - 8.13 Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
 - 8.14 Employing a job coordinator or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the Agency, other recipient or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the Agency or contractor intends to fill.
 - 8.15 For the Agency, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR §905.102, and §905.201(a)(6).)
 - 8.16 Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.
 - 8.17 Undertaking job counseling, education, and related programs in association with local educational institutions.
 - 8.18 Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents previously hired for employment opportunities.
 - 8.19 After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.
 - 8.20 Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.
- 9.0 As detailed within 24 CFR §135, Appendix II, *Examples of Efforts To Award Contracts to Section 3 Business Concerns*, as a part of the contract award process, to satisfy the requirements of Section 3 the successful bidder or Contractor will be able to denote the "efforts" his/her firm will formally commit to implement if he/she is awarded a contract:
- 9.1 Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).

Section 3 Business Preference Explanation
(RFP / RFQ Attachment D-1)

- 9.2 In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.
- 9.3 Contacting business assistance agencies, minority contractors associations, and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or bids for contracts for work in connection with section 3 covered assistance.
- 9.4 Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the Agency.
- 9.5 For the Agency, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.
- 9.6 Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for bids.
- 9.7 Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.
- 9.8 Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.
- 9.9 Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.
- 9.10 Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- 9.11 Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.
- 9.12 Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.
- 9.13 Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.
- 9.14 Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

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(RFP / RFQ Attachment D-1)

- 9.15 Developing a list of eligible section 3 business concerns.
- 9.16 For the Agency, participating in the “Contracting with Resident-Owned Businesses” program provided under 24 CFR part 963.
- 9.17 Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.
- 9.18 Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns.
- 9.19 Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.
- 9.20 Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.
- 9.21 Actively supporting joint ventures with section 3 business concerns.
- 9.22 Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

REQUEST FOR QUALIFICATIONS

Supplemental Instructions to Bidders & Contractors (SIBC) (RFQ / RFP/ IFB Attachment F)
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1.0 GENERAL CONDITIONS.

- 1.1 **Applicability.** If referred to within the text of such, this SIBC shall be applicable to all Invitation for Bids (IFB), Request for Qualifications (RFQ) and/ or Request for Proposals (RFP) or Request for Small Purchase Quotation (QSP) solicitations. The Lucas Metropolitan Housing Authority ("LMHA" or "the Agency") conducts and shall be applicable to any contract the Agency awards to or signs with any firm, agency or individual pursuant to that solicitation. A copy of this SIBC shall be made available to any actual or prospective bidder, or Contractor doing, or intending to do, business with LMHA.
- 1.1.1 **HUD Forms.** Unless otherwise specified within the solicitation or contract documents, if any provision in any document listed herein conflicts with any provision within this SIBC, the provision in the IFB or contract document shall govern. Further, in the case of any attached HUD forms (more specifically: HUD-5369-C (8/93); HUD-5369-B (8/93); and HUD-5370-C (01/2014), Section I and/or Section II), the information within such HUD form(s) shall govern any other information issued, especially that issued within any Agency-created forms that are issued as a part of this solicitation.
- 1.2 **Definitions** (pertaining to all solicitation documents issued by the Agency pertaining to this IFB, including the attachments and the ensuing contract):
- 1.2.1 **"Agency"** is the Lucas Metropolitan Housing Authority. Unless otherwise defined herein or within the ensuing contract, whenever the term "the Agency" is used without clearly designating a responsible Agency staff person, the bidder(s) shall assume that responsibility for that item rests with the CO.
- 1.2.2 **"Contract"** refers to the fully executed written agreement that ensues from the IFB. Whereas all solicitation documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within the IFB documents such is referring to both the solicitation documents and the ensuing contract document.
- 1.2.3 **"Contracting Officer (CO)"** - When named within an IFB/RFP/RFQ/QSP document shall refer to either the Executive Director or President and CEO or a person delegated by that person.
- 1.2.4 **"Contractor"** and the term "successful bidder" may be used interchangeably.
- 1.2.5 **"Days"** unless otherwise directed, shall refer to calendar days.
- 1.2.6 **"President and CEO or ED"** is the President and CEO of the Agency or its Executive Director

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- 1.2.7 "Herein" shall refer to all documents issued pursuant to the noted IFB, including the IFB documents and the attachments.
- 1.2.8 "HUD" is the United States Department of Housing and Urban Development. HUD is the Federal agency that the Agency receives some funding from; however, pertaining to this IFB, correspondences, including bid submittals, received from each bidder must exhaust all provisions contained herein prior to contacting HUD (i.e. in the case of a protest).
- 1.2.9 "Offer" is the bid submittal referred to within the following Section 1.2.14 that the bidder delivers to the Agency in response to the IFB.
- 1.2.10 "Offeror" or "Offerors" are the bidders or proposers.
- 1.2.11 "Parties" - When "the parties," "both parties" and/or "either party" is stated within the solicitation documents or the contract, such refers to the Agency and the successful bidder(s).
- 1.2.12 "Bid" and/or "Bid Submittal" is the "hard copy" document that the bidder is required to, as detailed within the IFB or QSP solicitation document, deliver to the Agency.
- 1.2.13 "Protestant" is a prospective or actual bidder who feels that he/she has been treated inequitably by the Agency and wishes the Agency to correct the inequitable condition or situation. To be eligible to file a protest with the Agency pertaining to an IFB or contract, the protestant must have been involved in the IFB process in some manner as a prospective bidder (i.e. registered and received the IFB documents).
- 1.2.14 "Proposer" a proposer is a firm or individual who has submitted a proposal in response to the RFQ / RFP. All terms and conditions shall apply equally to all prospective and/or actual proposers, though prospective proposers may not, after the deadline set for receiving proposals, receive further notices pertaining to that RFP /RFQ—meaning, certain notices (such as the Notice of Results of Evaluation) are typically only delivered to actual proposers and not to all prospective proposers.
- 1.2.15 "Invitation for Bids" (IFB) is the competitive bid process allowed by HUD, especially as defined within Chapter 6 of HUD Procurement Handbook 7460.8 REV 2.
- 1.2.16 "IFB Document(s)" - Whether stated in the singular or the plural, such refers to the body of documents, including attachments and the information posted on the ha.economicengine.com eProcurement Marketplace (hereinafter, the "eProcurement Marketplace"), that the Agency makes available to all prospective bidders wherein is detailed the Agency's requirements.

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- 1.2.17 “Request for Proposal / Request for Qualifications”(RFP / RFQ) is the competitive bid process allowed by HUD, as defined with in Chapter 7 of HUD Procurement Handbook 7460.8 REV 2. It is sometimes referred to as “negotiated procurement”. It is typically used for “services” procurements, and is based on evaluation criteria that is set forth in the solicitation.
- 1.2.18 “Solicitation” or “Competitive Solicitation” is the IFB/ RFP / RFQ / QSP process detailed herein.
- 1.2.19 “Quotation for Small Purchase” (QSP) the competitive bid process allowed by HUD, as defined in Chapter 7 of HUD Procurement Handbook 7460.8 REV 2. This method is used on solicitations that will be under the Agency defined small purchase threshold, and is based on the lowest cost from a responsible and responsive offeror.

2.0 CONDITIONS TO BID.

- 2.1 **Pre-qualification of Bidders.** Prospective bidders or proposers will not be required to pre-qualify in order to submit a bid. However, all bidders will be required to submit adequate information showing that the bidder is qualified to perform the required work (i.e. Profile of Firm Form and required resumes). Failure by the prospective bidder to provide the requested information may, at the Agency’s discretion, eliminate that bidder from consideration, provided that all bidders were required to submit the same information as a part of the solicitation process (in the case of a successful bidder(s), these requirements shall also apply in the context of the successful bidder or bidders).
- 2.2 **IFB Forms, Documents, Specifications, and Drawings.**
- 2.2.1 It shall be each prospective bidder’s responsibility to, prior to submitting a bid in response to the IFB, examine carefully and, as may be required, properly complete and submit all documents issued pursuant to this IFB.
- 2.2.2 Unless otherwise instructed, specifications and drawings (if provided) do not purport to show all the exact details of the work. They are intended to illustrate the character and extent of the performance desired under the proposed contract and may be supplemented or revised from time to time.
- 2.2.3 The Agency shall reserve the right to, prior to award, revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the IFB documents issued, within any attachment or drawing, or within any addenda issued; such notice shall be delivered in writing to each prospective and/or actual bidder. Such changes that are issued before the deadline for receipt of bids shall be binding upon all

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prospective bidders. Such changes that are issued after the receipt of bids, but prior to award shall be binding upon all parties that have submitted bids; however, such parties shall be allowed to reject such changes by, within 5 days of receipt of such written notice, withdrawing his/her bid. Such withdrawal must be delivered, in writing, to the CO within the 5-day deadline period.

2.3 Bid Preparation, Submission, and Receipt by the Agency.

- 2.3.1 Required Forms.** All required forms furnished by the Agency as a part of the IFB document issued shall, as instructed, be fully completed and submitted by the bidder. Such forms may be completed in a legible handwritten fashion, by use of a typewriter, or may be downloaded and completed on a computer. If, during the download, a form becomes changed in any fashion, the bidder must “edit” the form back to its original form (for example, signature lines must appear on the page the line was originally intended to be on).
- 2.3.1 Manner of Submission.** The bid submittal shall be submitted in the manner detailed within the solicitation document. Failure to submit the bid in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that bid, and may, at the discretion of the CO, eliminate that bidder from consideration for award.
- 2.3.2 Time for Receiving Bids.** Bids received prior to the time set as the deadline for the receipt by the Agency of the bid submittal shall be securely kept, unopened, by the Agency. The CO, whose duty it is to open such bids, will decide when the specified time has arrived. No bid received after the designated deadline shall be considered, except as detailed within Section 6 of form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*.
- 2.3.3.1** Bidders are cautioned that any bid submittal that may be time-stamped as being received by the Agency after the exact time set as the deadline for the receiving of bids shall be returned unopened to the bidder. Any such bids inadvertently opened shall not be considered but shall be ruled to be invalid. No responsibility will attach to the Agency or any official or employee thereof, for the pre-opening of, or the failure to open a bid not properly addressed and identified.
- 2.3.4 Public Opening of Sealed Bids.** Pursuant to the IFB process, bids shall be publicly opened at the day and time published in the IFB documents. At the bid opening, only the name of the company and the pertinent cost information will be read aloud (for instance, in the case of bids with multiple line items in a number that it is not realistic to read all item, only the actual or calculated total may be read. The full determination of responsiveness (i.e. minimum compliance with the requirements of the IFB)

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and responsibility will be conducted by an Agency official in private after the public bid opening. Persons other than Agency staff involved in this process are not allowed to be present during the responsive and responsibility evaluations, nor may they inspect the bids until after award has been completed.

2.3.5 Withdrawal of Bids. Bids may be withdrawn as detailed within Section 6(h) of form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*. Negligence on the part of the bidder in preparing his/her bid confers no right of withdrawal or modification of his/her bid after such bid has been received and opened.

2.3.6 Conflicting Conditions. Any provisions detailed within any of the IFB documents which may be in conflict or inconsistent with any of the paragraphs in any of the other IFB documents, including attachments, shall be void to the extent of any such conflict or inconsistency. Further, as stated within Section 1.1.1 of this SIBC, unless otherwise specified within the IFB or contract documents, in the event that any provision in any document listed herein conflicts with any provision within this SIBC, the provision in the IFB or contract document shall govern.

2.3.7 Interpretations. No official oral interpretation can be made to any bidder as to the meaning of any instruction, condition, specifications drawing (if any), or any other document issued pertaining to this IFB. Every request for an official interpretation shall be made by the prospective bidder, in writing, pursuant to the schedule set within the IFB document issued and as directed by the Agency. Official interpretations will be issued in the form of addenda, which will be delivered to each bidder; but it shall be the prospective bidder's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the IFB documents and the proposed contract with the successful bidder and all bidders shall be bound by such addenda, whether received by the prospective or successful bidder(s).

2.4 Exceptions to Specifications.

2.4.1 A bidder may take exception to any of the bid documents or any part of the information contained therein, by submitting, in writing to the CO, at least 10 days prior to the bid deadline, a complete and specific explanation as to what he/she is taking exception to. Proposed alternate documents or information must also be included. A response by the Agency will be issued in writing within 5 days of receipt of such exception request. The Agency reserves the right to agree with the prospective bidder and issue a revision to the applicable IFB requirements or may reject the prospective bidder's request.

2.4.2 When taking exception, prospective bidders must bid services that meet the requirements of the solicitation documents. Exceptions to the

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specification and/or approved “equal” requests may be discussed at the scheduled pre-bid conference (if scheduled). All verbal instructions issued by the Agency officers not already listed within the IFB documents shall only become official when issued as addenda or as a written answer issued pursuant to receipt of a written question.

2.5 Lump Sum Cost Breakdown (LSCB).

2.5.1 The Agency reserves the right to, at any time, request and receive from any or all bidders a LSCB of any or all the costs bid. The bid documents constitute an outline of the work to be completed by the bidder. These documents are intended to include all major items, and the lump sum cost breakdown computed therefrom will be the maximum compensation for all work and materials whatsoever furnished by the bidder in order to comply with the bid documents in their present form, whether or not indicated in the approximate quantities or pertaining to the items of work as listed.

2.5.1.1 The purpose of this LSCB will serve the Agency in two distinct areas:

2.5.1.1.1 **Prior to award of Bids.** The Agency may request a LSCB for any or all items reflected within the IFB document as “lump sum” for the purpose of determining an unbalanced cost bid. The CO, using acceptable methods dictated by the industry, shall conduct the analysis.

2.5.1.1.2 **After Award.** The Agency may request a LSCB for any or all items reflected within the IFB document as “lump sum” for the purpose of making partial payments to the successful bidder.

2.5.1.1.3 **Increase/Decrease.** Under no circumstances, may any cost item reflected as “lump sum” be increased and/or decreased as a result of the LSCB analysis.

3.0 BID EVALUATION.

3.1 **Bid Opening Results.** It is understood by all bidders/prospective bidders that sealed bids received will be publicly opened and read aloud and the results will immediately be a matter of public record; meaning, the Agency will record all bids on a bid tabulation form and make such tabulation available to any person upon request.

3.1.1 **Bid documents for sealed bids** submitted by the bidders shall not be a matter of public record until after award has been completed. The

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Agency shall, however, upon request, verify that the bid documents submitted are/were acceptable.

- 3.2 Award of Bid(s).** The successful bidder shall be determined as the responsive and responsible bidder who submits the lowest actual or calculated cost as detailed with the IFB, as long as he/she is able to deliver the specified items in a timely manner and it is, in the opinion of the Agency, to the best interests of the Agency to accept the bid. All bidders will be notified in a timely manner of the results of the evaluation after award has been completed.
- 3.3 Rejection of Bids.**
- 3.3.1** The Agency reserves the right to, at any time during the bid process, reject any or all bids received. In the case of rejection of all bids, the Agency reserves the right to advertise for new bids or to proceed to do the work otherwise, if in the judgment of the Agency, the best interest of the Agency will be promoted.
- 3.3.2** Prospective bidders acknowledge by downloading and receiving the IFB documents and/or by submitting a bid that the submission of a bid to the Agency is not a right by which to be awarded that bid, but merely an offer by the prospective bidder to perform the requirements of the IFB documents in the event the Agency decides to consider an award to that bidder.
- 3.4 Cancellation of Award.** The Agency reserves the right to, without any liability, cancel the award of any bid(s) at any time before the execution of the contract documents by all parties.
- 3.5 Mistake in Bid Submitted.**
- 3.5.1** A request for withdrawal of a bid due to a purported error need not be considered by the Agency unless the same is filed in writing by the bidder within 48 hours after the bid deadline (bidders may of their own volition withdraw a bid prior to the bid deadline). Any such request shall contain a full explanation of any purported error and shall, if requested by the Agency, be supported by the original calculations on which the bid was computed, together with a certification and notarization thereon that such computation is the original and prepared by the bidder or his/her agent, who must be identified on the notarized form. The foregoing shall not be construed that such withdrawal will be permitted, as the Agency retains the right to accept or reject any bid withdrawal for a mistake.
- 3.5.2** Unless otherwise prohibited within the solicitation documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at the Agency's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the

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mistake occurred, to the CO, for his/her review. This mistake must be corrected before the issuance of contract documents.

- 3.6 Irregular Bid Submittal.** A bid shall be considered irregular for any one of the following reasons, any one or more of which may, at the Agency 's discretion, be cause for rejection:
- 3.6.1** If the forms furnished by the Agency are not used or are altered or if the bid costs are not submitted as required and where provided (especially within the eProcurement Marketplace).
 - 3.6.2** If all requested completed attachments do not accompany the bid submitted.
 - 3.6.3** If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the bid incomplete, indefinite or ambiguous as to its meaning or give the bidder submitting the same a competitive advantage over other bidders.
 - 3.6.4** If the bidder adds any provisions reserving the right to accept or reject any award or to enter into a contract pursuant to an award.
 - 3.6.5** If the individual Pricing Items submitted by a specific bidder are unbalanced in the sense that the listed price of any cost item departs by more than 25% from the Agency's cost estimate for that item.
- 3.7 Disqualification of Bidders.** Any one or more of the following shall be considered as enough for the disqualification of a bidder and the rejection of his/her bid:
- 3.7.1** Evidence of collusion among prospective or actual bidders. Participants in such collusion will receive no recognition as bidders or bidders for any future work of the Agency until such participant shall have been reinstated as a qualified bidder or bidder. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.
 - 3.7.2** More than one bid for the same work from an individual, firm, or corporation under the same or different name(s), unless such was specifically allowed by the Agency within the bid documents issued, including by addendum.
 - 3.7.3** Lack of competency, lack of experience and/or lack of adequate machinery, plant, and/or other resources.
 - 3.7.4** Documented unsatisfactory performance record as shown by past work for the Agency or with any other local, State, or Federal agency, judged from the standpoint of workmanship and progress.

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- 3.7.5 Incomplete work, which in the judgment of the Agency, might hinder or prevent prompt completion of additional work, if awarded.
- 3.7.6 Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
- 3.7.7 Failure to comply with any qualification requirement of the Agency.
- 3.7.8 Failure to list, if required, all subcontractors (if subcontractors are allowed by the Agency) who will be employed by the successful bidder(s) to complete the work of the bid contract.
- 3.7.9 As required by the IFB documents, failure of the successful bidder to be properly licensed by the State of Ohio and/or to be insured by a general liability and/or worker's compensation policy.
- 3.7.10 Any legal reason to be determined, in good faith, to be in the best interests of the Agency.

3.8 Award for a RFP. The RFP /RFQ solicitation will include evaluation criteria by which the offerors' proposal will be reviewed and evaluated. The proposers will be ranked in order, and depending on the ranking and Agency requirements, one or more proposers will be identified. Negotiations may take place for a "Best and Final" offer from the proposers.

3.9 Burden of Proof. If requested by the Agency, it shall be the responsibility of the bidder(s) to furnish the Agency with sufficient data or physical samples, within a specified time, so that the Agency may determine if the goods or services offered conform to the Specifications.

4.0 Right to Protest.

4.1 Rights. Any prospective or actual bidder, offeror, or Contractor who is allegedly aggrieved in connection with the solicitation of a bid or award of a contract, shall have the right to protest. An alleged aggrieved protestant claiming this right is hereby informed that these regulations do not provide for administrative appeal as a matter of right for that alleged aggrieved protestant.

4.1.1 An alleged aggrieved "protestant" is a prospective or actual bidder who feels that he/she has been treated inequitably by the Agency and wishes the Agency to correct the alleged inequitable condition or situation. To be eligible to file a protest with the Agency pertaining to an IFB or contract, the alleged aggrieved protestant must have been involved in the IFB process in some manner as a prospective bidder (i.e. registered and received the IFB documents) when the alleged situation occurred. The Agency has no obligation to consider a protest filed by any party that does not meet these criteria.

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- 4.2 **Administrative Powers.** It is totally within the administrative powers of the ED to grant or deny any requests for administrative appeal. If, in the opinion of the ED, the alleged aggrieved protestant merits an administrative review, the ED shall direct that alleged aggrieved protestant to submit additional data.
- 4.3 **Procedure to Protest.** An alleged aggrieved protestant shall comply with the following protest procedures, and failure to comply in the manner prescribed shall automatically relieve the Agency from accepting or considering that protest:
- 4.3.1 The alleged aggrieved protestant must file, in writing, to the CO the exact reason for the protest, attaching any supportive data. The protestant must state within the written protest document specifically (not by inference) what action by the Agency or condition is being protested as inequitable, making, where appropriate specific reference to the IFB documents issued. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve the Agency from any responsibility to consider the protest and take any corrective action.
- 4.3.2 The written instrument containing the reason for the protest must be received by the CO within 10 days after the occurrence of any of the following:
- 4.3.2.1 The deadline for receiving bids;
- 4.3.2.2 Receipt of notification of the results of the evaluation or the award; or
- 4.3.2.3 The alleged aggrieved protestant knows or should have known the facts.
- 4.3.3 In any case, protests shall be filed no more than 10 days after any of the above (unless the occurrence being protested occurred in its entirety after the bid deadline). Protests received after these dates shall not be considered.
- 4.3.4 The CO shall review the written protest and supportive data, if any. He/she shall, within 10 days after receipt of the written protest, issue a written opinion and decision. This document shall state the reasons for the action taken as well as inform the alleged aggrieved protestant of the right of further administrative review. A copy of this written opinion and decision shall be forwarded to the ED.
- 4.3.5 **Administrative Appeal.** If the alleged aggrieved protestant does not agree with the written opinion and decision issued by the CO, the alleged aggrieved protestant may, after receipt of the written opinion and decision issued by the CO request an administrative appeal hearing be granted. The following procedures must be complied with in the manner prescribed; failure by the alleged aggrieved protestant to comply shall

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automatically relieve the Agency from accepting or acting on that request for administrative hearing:

- 4.3.5.1 The alleged aggrieved protestant must file, in writing, his/her request for an administrative hearing, to the ED, within 5 days of receipt of the written opinion and decision and failure to do so within such 5 days shall relieve the Agency of any responsibility to consider such request.
- 4.3.5.2 The request for an administrative appeal hearing must contain the specific reasons for the appeal and all supporting data for those reasons.
- 4.3.5.3 It shall be within the administrative powers of the ED to, after review of the request submitted, grant or deny any request for administrative appeal.
- 4.3.5.4 If the ED, after complete review of the alleged aggrieved protestant's written request and supporting data, decides that the request does not merit further consideration, he/she shall render his/her decision in writing to the alleged aggrieved protestant. A decision rendered under this paragraph shall be made within 10 days after the receipt of the alleged aggrieved protestant's request for an administrative hearing. This decision shall be final without further administrative recourse.
- 4.3.5.5 If the ED, after review of the alleged aggrieved protestant's written request, decides that the request merits further consideration, he/she shall forward the protestant's written request, along with a cover letter explaining why it merits further consideration and with a recap of all bids submitted and a copy of the original written protest, to the Agency Legal Counsel for consideration. The Agency Legal Counsel shall issue to the alleged aggrieved protestant a decision, in writing, within 10 days of his/her receipt of such documents.
- 4.3.5.5 Such written decision delivered to the alleged aggrieved protestant shall exhaust the Agency internal protest and administrative appeal process available to the alleged aggrieved protestant.

5.0 Disputed Billings (Charges).

- 5.1 **Procedures.** In addition to the procedures detailed within Clause No. 7 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, in the event that the Agency disputes any portion of its billing(s), the Agency shall pay the

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undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

- 5.1.1 The Agency's representative shall, within 10 days after the Agency's receipt of such billing, formally notify the Contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.
- 5.1.2 If such dispute cannot be resolved by the Contractor's response, within 10 days after such notification is given, the CO and the Contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution.
- 5.1.3 If the CO and the Contractor's representative are unable to resolve the dispute through such discussion within 10 days, the Agency shall, within 10 days thereafter, either:
 - 5.1.3.1 Pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of Ohio;
 - 5.1.3.2 Not pay the disputed charge and submit the matter to the appropriate district court in the State of Ohio;
 - 5.1.3.3 Not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of Ohio.

6.0 Additional Considerations.

6.1 Right of Joinder.

- 6.1.1 Any political subdivision within the State of Ohio may be granted the privilege of joining the awarded contract, only at the option of the successful bidder. If the successful bidder so grants such a privilege, the terms and conditions of the IFB documents, including the ensuing contract, may be passed on to the joining political subdivision by the successful bidder.
- 6.1.2 The successful bidder shall retain the unilateral right to allow or disallow any political subdivision the privilege of joining the awarded contract. In the event the successful bidder allows another political subdivision to join the Agency contract, it is expressly understood that the Agency shall in no way be liable for the joining political subdivision obligations to the successful bidder in any manner whatsoever.

- 6.2 **Non-Escalation.** Unless otherwise specified within the IFB documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.

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- 6.3 Funding Restrictions and Order Quantities.** The Agency reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the Agency, if:
- 6.3.1** Funding is not available;
 - 6.3.2** Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,
 - 6.3.3** The Agency's requirements in good faith change after award of the contract.
- 6.4 Required Permits.** Unless otherwise stated in the IFB documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this IFB, whether they are known to either the Agency or the bidders at the time of the bid submittal deadline or the award, shall be the sole responsibility of the successful bidder and any costs submitted by the bidder shall reflect all costs required by the successful bidder to procure and provide such necessary permits.
- 6.5 Taxes.** All persons doing business with the Agency are hereby made aware that the Agency is exempt from paying Ohio State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.
- 6.6 Government Standards.** It is the responsibility of the prospective bidder to ensure that all items and services bid conform to all local, State, and Federal laws concerning safety (OSHA and NIOSH) and environmental control (EPA and Ohio DEP) and any other enacted ordinance, code, law, or regulation. The successful bidder shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law, or regulation. No time extensions shall be granted, or financial consideration given, to the successful bidder for time or monies lost due to violations of any such ordinance, code, law, or regulations that may occur.
- 6.7 Freight on Bill and Delivery.** All costs submitted by the successful bidder shall reflect the cost of delivering the bidden items and/or services to the location(s) specified within the IFB documents or within the contract.
- 6.7.1** The successful bidder agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful bidder. Upon default, the successful bidder agrees that the Agency may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.
- 6.8 Communication.** If during the period of the contract, it is necessary that the Agency place toll or long-distance telephone calls or telegrams in connection therewith (for complaints, adjustments, shortages, failure to deliver, etc.), it is understood that the successful bidder will bear the charge or expense for all such calls and/or telegrams.

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- 6.9 Work on Agency Property.** If the successful bidder's work under the contract involves operations by the successful bidder on Agency premises, the successful bidder shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the Agency's negligence, shall indemnify the Agency, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful bidder, its agents, employees, or subcontractors.
- 6.10 Estimated Quantities.** Unless otherwise indicated within the IFB documents, the quantities reflected within the IFB documents, to the best of the Agency's knowledge, reflect projected consumption data. These quantities are not meant to infer or imply actual consumption figures or quantities that will be purchased by the Agency under the finalized contract; but, pursuant to all IFB documents, these quantities will be used as calculation figures to determine the successful bidder.
- 6.11 Warranty.**
- 6.11.1** The services provided under the contract shall conform to all information contained within the IFB documents as well as applicable Industry Published Technical Specifications, and if one of the above-mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.
- 6.11.1** The liability of the successful bidder to the Agency (except as to title) arising out of the furnishing of the services or of its use under the terms of the contract shall not exceed the correcting of the defect(s) in the services as provided under the contract, and upon expiration of the warranty period all such liability shall terminate except under the warranty for merchantability and the warranty of fitness for a particular purpose.
- 6.12 Official, Agent and Employees of the Agency Not Personally Liable.** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the Agency in any way be personally liable or responsible for any covenant or agreement herein contained, whether either expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 6.13 Subcontractors.** Unless otherwise stated within the IFB documents, the successful bidder may not use any subcontractors to accomplish any portion of the services described within the IFB documents or the contract without the prior written permission of the CO.
- 6.14 Salaries and Expenses Relating to the Successful Bidders Employees.** Unless otherwise stated within the IFB documents, the successful bidder shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the

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performance of the contract. The successful bidder further agrees to comply with all Federal, State, and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.

- 6.15 Attorney's Fees.** In the event that litigation is commenced by one party hereto against the other in connection with the enforcement of any provision of this agreement, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including attorneys' fees, in a reasonable amount, to be determined by the court. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.
- 6.16 Independent Contractor.** Unless otherwise stated within the IFB documents or the contract, the successful bidder is an independent Contractor. Nothing herein shall create any association, agency, partnership, or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 6.17 Severability.** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 6.18 Waiver of Breach.** A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 6.19 Time of the Essence.** Time is of the essence under this agreement as to each provision in which time of performance is a factor.
- 6.20 Limitation of Liability.** In no event shall the Agency be liable to the successful bidder for any indirect, incidental, consequential, or exemplary damages.
- 6.21 Indemnity.**
- 6.21.1** The successful bidder shall protect, indemnify and hold the Agency, its officers, employees, agents, consulting engineers and other retained consultants harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character which the Agency, its officers, employees, agents, consulting engineers or other retained consultants may suffer, or which may be sought against, recovered from or obtainable against the Agency, its officers, employees, agents, consulting engineers or other retained consultants such as:

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- 6.21.1.1 as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act on the part of the successful bidder, its subcontractors or agents, or anyone directly or indirectly employed by any subcontractor or agent, in the fulfillment or performance of the terms, conditions or covenants that are contained in this contract or agreement, regardless of whether or not the occurrence which gave rise to such claim, damage, loss, suit, action, judgment or expense was caused, in part, by any party indemnified hereunder; or
 - 6.21.1.2 as a result of, or by reason of, or arising out of, or on account of, or in consequence of, any neglect in safeguarding the work; or
 - 6.21.1.3 through the use of unacceptable materials or products, or both, which may be defective or manufactured, designed, or installed so as to give rise to a claim; or
 - 6.21.1.4 because of any claim or amount recovered under the “Ohio Workers Compensation Act”, or any other law, ordinance, or decree, which claim, recovery, arose out of or is attributable to any act or failure to act on the part of the successful bidder in the fulfillment or performance of the terms, conditions and covenants that are contained in this contract. Any money due by the successful bidder under and by virtue of this contract which is considered necessary by the Agency for such purpose, may be retained by the Agency for its protection; or in case no money is due, its surety may be held until all such claims, damages, losses, suits, actions, decrees, judgments, attorney’s fees and court costs and other expenses of any kind or character as aforesaid shall have been settled and suitable evidence to that effect furnished to the Agency provided, however, that money due the successful bidder will not be withheld when the successful bidder produces satisfactory evidence that it is adequately protected by public liability and property damage insurance, if required.
- 6.21.2 In this connection, it is expressly agreed that the successful bidder shall, at its own expense, defend the Agency, its officers, employees, agents, consulting engineers and other retained consultants, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the successful bidder has indemnified the Agency, its officers, employees, agents, consulting engineers and other retained consultants against, and if the successful bidder shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the successful bidder including

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attorney's fees and court costs; provided, however, that if the forum in which such claim suit or action is heard determines that the occurrence that gave rise to the same was caused, in whole or in part, by any party who is indemnified hereunder, the Agency shall reimburse the successful bidder for all, or the indemnified party's proportionate share, as the case may be, of the costs of such defense.

- 6.21.2 Reimbursement to the successful bidder by the Agency, in whole or in part, for the costs of protecting traffic shall not serve to relieve the successful bidder of its responsibility as set forth in the IFB documents.
 - 6.21.3 The successful bidder guarantees the payment of all just claims for materials, supplies and labor, and all other just claims against it or any subcontractor, in connection with the contract.
- 6.22 Lobbying Certification.** By proposing to do business with the Agency or by doing business with the Agency, each bidder certifies the following:
- 6.22.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
 - 6.22.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
 - 6.22.3 The successful bidder shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
 - 6.22.4 This clause is a material representation of fact upon which reliance was placed when the award was made or entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

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6.23 2 CFR §200.326, Appendix II, *Contract Provisions For Non-Federal Entity Contracts Under Federal Awards*. Pursuant to this CFR, as issued by the Office of the U.S. Secretary of HUD, the Agency and the Contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this IFB will include the following clauses, whether actually inserted or by reference:

6.23.1 **Remedies for Contractor Breach.** Pertaining to contract-related issues, it is the responsibility of both the Agency and the Contractor to communicate with each other in as clear and complete a manner as possible. If at any time during the term of this contract the Agency or the Contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the Agency has the right to issue unilateral addendums to this contract, but the Contractor does not have the same right). The other party shall, within 10 days, respond in writing to the other party (however, the Agency shall retain the right to, if conditions warrant, require the Contractor to respond in a shorter period of time). Further, the Agency shall, at a minimum, employ the following steps in dealing with the Contractor as to any performance issues:

6.23.1.1 If the Contractor is in material breach of the contract, the Agency may promptly invoke the termination clause detailed within Section No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which form is attached hereto, and terminate the contract for cause. Such termination must be delivered to the Contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.

6.23.1.2 Prior to termination, the Agency may choose to warn the Contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the Contractor on probation, thereby giving the Contractor a certain period of time to correct the deficiencies or potentially suffer termination. The Agency shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the Contractor does not agree with such action, the Contractor shall have 10 days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).

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- 6.23.1.3** After termination, if the Contractor does not agree with the Agency's justification for the termination, the Contractor shall have 10 days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 6.23.1.4** The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.
- 6.23.2** **Termination for Cause and Convenience.** For all contracts in excess of \$10,000, as detailed within Clause No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, attached hereto.
- 6.23.3** **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 6.23.4** **Davis-Bacon Act, as amended (40 U.S.C.3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C.3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors [are] required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors [are] required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or

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Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 6.23.5 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or *contracts for transportation or transmission of intelligence*.
- 6.23.7 Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 6.23.8 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended**—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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- 6.23.9 Mandatory standards and policies relating to **energy efficiency** which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- 6.23.10 **Debarment and Suspension (Executive Orders 12549 and 12689)**—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 6.23.11 **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 6.23.12 ***§200.322 Procurement of recovered materials.*** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only 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, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 6.24 **Additional Federally Required Orders/Directives.** Both parties agree that they will comply with the following laws and directives that the Agency has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this IFB:

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- 6.24.1** Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 6.24.2** Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The Agency hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- 6.24.3** Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex, or national origin. Pursuant to this statute, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 6.24.4** The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 6.24.5** Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 6.24.6** HUD Information Bulletin 909-23 which is the following:
- 6.24.6.1** Notice of Assistance Regarding Patent and Copyright Infringement;
- 6.24.6.2** Clean Air and Water Certification; and
- 6.24.6.2.1** Energy Policy and Conversation Act.
- 6.24.7** The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is

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inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.

- 6.25 Patent Rights:** Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.
- 6.26 Copy Rights / Rights in Data:** In addition to the requirements contained within Clause No. % of Attachment G-1, *General Conditions for Non-Construction Contracts, Section I - (with or without Maintenance Work)*, the Agency has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:
- 6.26.1** Except as provided elsewhere in this clause, the Agency shall have unlimited rights in data first produced in the performance of this contract; form fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation or routine maintenance and repair of items, components, or processes delivered under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software
- 6.26.2** The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.
- 6.26.3** For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants the Agency and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public and perform or display publicly by or on behalf of the Agency.
- 6.26.4** The contractor shall not, without the prior written permission of the CO, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants the Agency a license of the same scope as identified in the preceding paragraph.

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- 6.26.5** The Agency agrees to not remove any copyright notices placed on the data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, the Agency may either return the data to the contractor, or cancel or ignore the markings.
- 6.26.6** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 6.26.7** Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees the Agency shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.
- 6.26.8** The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by the Agency except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any Agency location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.

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

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

**Model Form of Agreement Between
Owner and Design Professional**

Model Form of Agreement Between Owner and Design Professional

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

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

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control

These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 24 CFR 85.36. These contractual agreements are required by Federal law or regulation pursuant to 24 CFR Part 85.36. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

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Introduction to Agreement

Agreement

made as of the _____ day of _____ in the year (yyyy) of _____

Between the **Owner** (Name & Address)

and the **Design Professional** (Name, Address and Discipline)

For the following **Project** (Include detailed description of Project, Location, Address, Scope and Program Designation)

Architectural & Engineering Services on an as-needed, task order basis at various project locations.

The Owner and Design Professional agree as set forth below.

Article A: Services *

A 1.0 Design Professional's Basic Services

A. 1.1 Areas of Professional's Basic Services. Unless revised in a written addendum or amendment to this Agreement, in planning, designing and administering construction or rehabilitation of the Project, the Design Professional shall provide the Owner with professional services in the following areas:

- o Architecture
- o Site Planning
- o Structural Engineering
- o Mechanical Engineering
- o Electrical Engineering
- o Civil Engineering
- o Landscape Architecture
- o Cost Estimating
- o Construction Contract Administration

A 1.2 Phases and Descriptions of Basic Services.

A. 1.2.1 Schematic Design/Preliminary Study Phase. After receipt of a Notice to Proceed from the Owner, the Design Professional shall prepare and deliver Schematic Design/Preliminary Study Documents. These documents shall consist of a presentation of the complete concept of the Project, including all major elements of the building(s), and site design(s), planned to pro-mote economy both in construction and in administration and to comply with current program and cost limitations. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. Additionally, the Design Professional shall make an independent assessment of the accuracy of the information provided by the Owner concerning existing conditions.

Documents in this phase shall include:

- o Site plan(s)
- o Schedule of building types, unit distribution and bedroom count
- o Scale plan of all buildings, and typical dwelling units
- o Wall sections and elevations
- o Outline specifications
- o Preliminary construction cost estimates
- o Project specific analysis of codes, ordinances and regulations
- o Three dimensional line drawings

A. 1.2.2 Design Development Phase. After receipt of written approval of Schematic Design/Preliminary Study Documents, the Design Professional shall prepare and submit to the Owner Design Development Documents. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. These documents shall include the following:

- o Drawings sufficient to fix and illustrate project scope and character in all essential design elements
- o Outline specifications
 - o Cost estimates and analysis
 - o Recommendations for phasing of construction
 - o Site plan(s)
 - o Landscape plan
 - o Floor plans
 - o Elevations, building and wall sections
 - o Updated three dimensional line drawings
 - o Engineering drawings

A. 1.2.3 Bidding, Construction and Contract Document Phase. After receipt of the Owner's written approval of Design Development Documents, the Design Professional shall prepare construction Documents. After consultation with the Owner and Owner's attorney, if requested by the owner, the Design Professional shall also prepare and assemble all bidding and contract documents. The Design Professional shall revise these Bidding, Construction and Contract documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. They shall, include in a detailed, manner all work to be performed; all material; workmanship; finishes and equipment required for the architectural, structural, mechanical, electrical, and site work; survey maps furnished by Owner; and direct reproduction of any logs and subsurface soil investigations.

- o Solicitation for Bids
- o Form of Contract
- o Special Conditions
- o General Conditions
- o Technical Specifications
- o Plans and drawings
- o Updated cost estimates

A. 1.2.4 Bidding and Award Phase. After written approval of Bidding, Construction and Contract Documents from the Owner, the Design Professional shall assist in administering the and award of the Construction Contract. This shall

- o Responding to inquires
- o Drafting and issuing addendum approved by Owner
- o Attending prebid conference(s)
- o Attending public bid operings
- o Reviewing and tabulating bids
- o Recommending list of eligible bids
- o Recommending award
- o Altering drawings and specifications as often as required to award within the Estimated Construction Contract Cost

***To be determined in each Task Order**

A. 1.2.5 Construction Phase. After execution of the Construction Contract, the Design Professional shall in a prompt and timely manner administer the Construction Contract and all work required by the Bidding, Construction and Contract Documents. The Design Professional shall endeavor to protect the Owner against defects and deficiencies in the execution and performance of the work. The Design Professional shall:

- Administer the Construction Contract.
- Conduct pre-construction conference and attend dispute resolution conferences and other meetings when requested by the Owner.
- Review and approve contractor's shop drawings and other submittals for conformance to the requirements of the contract documents.
- At the Owner's written request, and as Additional Service, procure testing from qualified parties.
- Monitor the quality and progress of the work and furnish a written field report weekly, semi monthly, monthly, or _____ This service shall be limited to a period amounting to 110% of the construction period as originally established under the construction contract unless construction has been delayed due to the Design professional's failure to properly perform its duties and responsibilities. The Owner may direct additional monitoring but only as Additional Services.
- Require any sub-consultant to provide the services listed in this section where and as applicable and to visit the Project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Design Professional.
- Review, approve and submit to Owner the Contractor Requests for Payment.
- Conduct all job meetings and record action in a set of minutes which are to be provided to the Owner.
- Make modifications to Construction Contract Documents to correct errors, clarify intent or to accommodate change orders.
- Make recommendations to Owner for solutions to special problems or changes necessitated by conditions encountered in the course of construction.
- Promptly notify Owner in writing of any defects or deficiencies in the work or of any matter of dispute with the Contractor.
- Negotiate, prepare cost or price analysis for and counter-sign change orders.
- Prepare written punch list, certificates of completion and other necessary construction close out documents.
- Prepare a set of reproducible record prints of Drawings showing significant changes in the work made during construction, including the locations of underground utilities and appurtenances referenced to permanent surface improvements, based on marked-up prints, drawings and other data furnished by the contractor to the Design Professional.

_____ *To be determined in each Task Order _____

A. 1.2.6 Post Completion/Warranty Phase. After execution of the Certificate of Completion by the Owner, the Design Professional shall:

- Consult with and make recommendations to Owner during warranties regarding construction, and equipment warranties.
- Perform an inspection of construction work, material, systems and equipment no earlier than nine months and no later than ten months after completion of the construction contract and make a written report to the Owner. At the Owner's request, and by Amendment to the Additional Services section of this contract, conduct additional warranty inspections as Additional Services.
- Advise and assist Owner in construction matters for a period up to eighteen months after completion of the project, but such assistance is not to exceed forty hours of service and one nonwarranty trip away from the place of business of the Design Professional.

A. 1.3 Time of Performance. The Design Professional's schedule for preparing, delivering and obtaining Owner's approval for Basic Services shall be as follows:

- Schematic Design/Preliminary Study Documents with * _____ calendar days for the date of the receipt of a Notice to Proceed.
- Design Development Documents within * _____ calendar days from the date of receipt of written approval by the Owner of Schematic Design/Preliminary Study documents.
- * _____ calendar days from the date of receipt of written approval by the Owner of Design Development Documents.

A. 2.0 Design Professional's Additional Services

A. 2.1 Description of Additional Services. Additional Services are all those services provided by the Design Professional on the Project for the Owner that are not defined as Basic Services in Article A, Section 1.2 or otherwise required to be performed by the Design Professional under this Agreement. They include major revisions in the scope of work of previously approved drawings, specifications and other documents due to causes beyond the control of the Design Professional and not due to any errors, omissions, or failures on the part of the Design Professional to carry out obligations otherwise set out in this Agreement.

A. 2.2 Written Addendum or Contract Amendment. All additional services not already expressly required by this agreement shall be agreed to through either a written

Article B: Compensation and Payment B.

1.0 Basic Services

B. 1.1 Fixed Fee for Basic Services. The Owner will pay the Design Professional for Basic Services performed as defined by A.1.2, a Fixed Fee (stipulated sum) of \$ _____ * _____ plus Reimbursable Expenses identified in Article B.2.0. Such

payment shall be compensation for all Basic Services required, performed, or accepted under this Contract.

B. 1.2 Payment Schedule. Progress payments for Basic Services for each phase of work shall be made in proportion to services performed as follows:

Phase	Amount
Schematic Design/Preliminary Study Phase	\$ ____ * ____
Design Development Phase	\$ ____ * ____
Bidding, Construction & Contract Document Phase	\$ ____ * ____
Bidding & Award Phase	\$ ____ * ____
Construction Phase	\$ ____ * ____
Post Completion/ Warranty Phase	\$ ____ * ____
Total Basic Services	\$ ____ * ____

B. 2.0 Reimbursables

B. 2.1 Reimbursable Expenses. The Owner will pay the Design Professional for the Reimbursable Expenses listed below up to a Maximum Amount of \$ ____ * ____ Reimbursable Expenses are in addition to the Fixed Fee for Basic Services and are for certain actual expenses incurred by the Design Professional in connection with the Project as enumerated below.

B. 2.1.1 Travel Costs. The reasonable expense of travel costs incurred by the Design Professional when requested by Owner to travel to a location that lies outside of a 45 mile radius of either the Project site, Design Professional's office (s), and Owner's office.

B. 2.1.2 Long Distance Telephone Costs. Long distance telephone calls and long distance telefax costs.

B. 2.1.3 Delivery Costs. Courier services and overnight delivery costs.

B. 2.1.4 Reproduction Costs. Reproduction and postage costs of required drawings, specifications, Bidding and Contract documents, excluding the cost of reproductions for the Design Professional or Subcontractor's own use.

B. 2.1.5 Additional Reimbursables. The Design Professional and Owner may agree in an addendum or amendment to this Agreement to include certain other expenses not enumerated above as Reimbursable Expenses. These Reimbursables shall not be limited by the Maximum Amount agreed to above. A separate Maximum Amount for these Reimbursables shall be established.

B .3.0 Additional Services

B. 3.1 Payment for Additional Services. The Owner will pay the Design Professional only for Additional Services agreed to in an addendum or amendment to this Agreement executed by the Owner and the Design Professional pursuant to A.2. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such Additional Services is to be on an hourly basis or other unit pricing method,

for a maximum amount; each such amendment or addendum shall also provide for a method of payment, including, at a minimum, whether payment will be made in partial payments or in lump sum and whether it will be based upon percentage of completion or services billed for.

B. 4.0 Invoicing and Payments

B. 4.1 Invoices. All payments shall require a written invoice from the Design Professional. Invoices shall be made no more frequently than on a monthly basis. Payments for Basic Services shall be in proportion to services completed within each phase of work. When requesting such payment, the invoice shall identify the phase and the portion completed. All invoices shall state the Agreement, name and address to which payment shall be made, the services completed and the dates of completion, and whether the invoice requests payment for Basic Services, Reimbursable or Additional Services. Invoices seeking payment for Reimbursable or Additional Services must provide detailed

B. 4.2 Time of Payment. Upon the Design Professional's proper submission of invoices for work performed or reimbursable expenses, the Owner shall review and, if the work is in conformance with the terms of the Agreement, make payment within thirty days of the Owner's receipt of the invoice.

Article C: Responsibilities

C. 1.0 Design Professional's Responsibilities

C. 1.1 Basic Services. The Design Professionals shall provide the Basic Service set out in Article A.1.0.

C. 1.2 Additional Services. When required under this Agreement or agreed to as set out in A.2.0, the Design Professional shall provide Additional Services on the Project.

C. 1.3 General Responsibilities. The Design Professional shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services, furnished by the Design Professional under this Agreement. The Owner's review, approval, acceptance of, or payment for Design Professional services shall not be construed as a waiver of any rights under this Agreement or of any cause of action for damages caused by Design Professional's negligent performance under this Agreement. Furthermore, this Agreement does not restrict or limit any rights or remedies otherwise afforded the Owner or Design Professional by law.

C. 1.4 Designing Within Funding Limitations. The Design Professional shall perform services required under this Contract in such a manner so as to cause an award of a Construction does not exceed (1) \$ ____ * ____ or (2) an amount to be provided by the Owner in writing to the Design Professional prior to the commencement of Design Professional services. This fixed limit shall be called the Maximum Construction Contract Cost. The amount may be increased by the Owner, but only with written notice to the Design Professional. If the increase results in a change to the scope of work, an amendment to this Agreement will be required. The Design Professional and the Owner may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement. Should bids for the Construction Contract(s) exceed the Maximum Construction Contract Cost, the Owner has the right to require the Design

*** To be determined in each Task Order**

Professional to perform redesigns, rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost without additional compensation or reimbursement.

C. 1.5 Compliance with Laws, Codes, Ordinances and Regulations. The Design Professional shall perform services that conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. If the Project is within an Indian reservation, tribal laws, codes and regulations shall be substituted for state and local laws, codes, ordinances and regulations. However, on such a Native American Projects, the Owner may additionally designate that some or all state and local codes shall apply. In some of these circumstances, a model national building code may be selected by the Indian or Native American Owner. The Design Professional shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all construction documents required for approval by all governmental agencies having jurisdiction over the project. The Design professional shall make all changes in the Bidding and Construction Documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations. If subsequent to the date the Owner issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their change, and such notification shall be required in order for the Design Professional to be entitled to any additional compensation or reimbursement.

C. 1.6 Seal. Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Agreement when required by law or when the project is located on an Indian Reservation.

C. 1.7 Attendance at Conferences. The Design Professional or designated representative shall attend project conferences and meetings involving matters related to basic services covered under this contract. Attendance at community wide meetings shall be considered an additional service.

C. 2.0 Owner's Responsibilities

C. 2.1 Information. The Owner shall provide information regarding requirements for the project, including a program that shall set forth the Owner's objectives and schedule. The Owner shall also establish and update the Maximum Construction Cost. This shall include the Owner's giving notice of work to be performed by the Owner or others and not included in the Construction Contract for the Project. The Design Professional, however, shall be responsible to ascertain and know federal requirements and limitations placed the Project.

C. 2.2 Notice of Defects. If the Owner observes or otherwise becomes aware of any fault or defect in the construction of the project or nonconformance with the Construction Contract, the Owner shall give prompt written notice of those faults, defects or nonconformance to the Design Professional.

C.2.3 Contract Officer. The Owner shall designate a Contract Officer authorized to act on its behalf with respect to the design and construction of the Project. The Contract Officer shall examine documents submitted by the Design Professional and shall promptly render decisions pertaining to those documents so as to avoid unreasonably delaying the progress of the Design Professional's work.

C. 2.4 Duties to Furnish. The Owner shall provide the Professional the items listed below.

C. 2.4.1 Survey and Property Restrictions. The Owner shall furnish topographic, property line and utility information as and where required. The Owner may at its election require the Design Professional to furnish any of these items as an Service.

C. 2.4.2 Existing Conditions. The Owner shall provide the Design Professional any available "built" drawings of or properties, architect surveys, test reports, and any other written information that it may have in its possession and that it reasonably assume affects the work.

C. 2.4.3 Waivers. The Owner shall provide the Design Professional information it may have obtained on any waivers of local codes, ordinances, or regulations or standards affecting the design of the Project.

C. 2.4.4 Minimum Wage Rates. The Owner shall furnish the Design Professional the schedule of minimum wage rates approved by the U.S. Secretary of Laor for inclusion in the solicitation and Contract Documents.

C. 2.4.5 Tests. When expressly agreed to in writing by both the Owner and the Design Professional, the Owner shall furnish the Design Professional all necessary structural, mechanical, chemical or other laboratory tests, inspections and reports for required for the Project.

C. 2.4.6 Contract Terms. The Owner or its legal counsel may provide the Design Professional text to be incorporated into Bidding and Construction Contract Documents.

Article D: Contract Administration

D. 1.0 Prohibition of Assignment. The Design Professional shall not assign, subcontract, or transfer any services, obligations, or interest in this Agreement without the prior written consent of the Owner. Such consent shall not unreasonably be withheld when such assignment is for financing the Design Professional's performance.

D. 1.1 Ownership of Documents. All drawings, specifications, studies and other materials prepared under this contract shall be the property of the Owner and at the termination or completion of the Design Professional's services shall be promptly delivered to the Owner. The Design Professional shall have no claim for further employment or additional compensation as a result of exercise by the Owner of its full rights of ownership. It is understood, however, that the Design Professional does not represent such data to be suitable for re-use on any other project or for any other purpose. If the Owner re-uses the subject data without the Design Professional's written verification, such re-use will be at the sole risk of the Owner without liability to the Design Professional.

D. 1.2 Substitutions.

A. The Design Professional shall identify in writing principals and professional level employees and shall not substitute or replace principals or professional level employees without the prior approval of the Owner which shall not unreasonably be withheld.

B. The Design Professional's personnel identified below are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Design Professional shall notify the Owner reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the contract. No diversion or substitution of such key personnel shall be made by the Design professional without the prior written consent of the Owner.

____ Refer to Design Professional's Proposal for _____
____ List of personnel. _____

D. 1.3 Suspension. The Owner may give written notice to the Design Professional to suspend work on the project or any part thereof. The Owner shall not be obligated to consider a claim for additional compensation if the Design Professional is given written notice to resume work within 120 calendar days. If notice to resume work is not given within 120 calendar days, the Design Professional shall be entitled to an equitable adjustment in compensation.

D. 1.4 Subcontracts. The Design Professional will cause all applicable provisions of this Agreement to be inserted in all its subcontracts.

D. 1.5 Disputes. In the event of a dispute arising under this Agreement, the Design Professional shall notify the Owner promptly in writing and submit its claim in a timely manner. The Owner shall respond to the claim in writing in a timely manner. The Design Professional shall proceed with its work hereunder in compliance with the instructions of the Owner, but such compliance shall not be a waiver of the Design Professional's rights to make such a claim. Any dispute not resolved by this procedure may be determined by a court of competent jurisdiction or by consent of the Owner and Design Professional by other dispute resolution methods.

D. 1.6 Termination. The Owner may terminate this Agreement for the Owner's convenience or for failure of the Design Professional to fulfill contract obligations. The Owner shall terminate by delivering to the Design Professional a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Design Professional shall immediately discontinue all services affected and deliver to the Owner all information, reports, papers, and other materials accumulated or generated in performing this contract whether completed or in process. If the termination is for convenience of the Owner, the Owner shall be liable only for payment for accepted services rendered before the effective date of termination.

D. 1.7 Insurance. The Design professional shall carry Commercial or Comprehensive General Liability Insurance, Professional Liability Insurance (for a period extending two years past the date of completion of construction), and other insurance as are required by law, all in minimum amounts as set forth below. The Design Professional shall furnish the Owner certificates of insurance and they shall state that a thirty day notice of prior cancellation or change will be provided to the Owner. Additionally, the Owner shall be an additional insured on all Commercial or Comprehensive General liability policies.

Insurance	Limits or Amount
See Request for Qualifications for Insurance Limits	

D. 1.8 Retention of Rights. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Design Professional shall be and remain liable to the Owner in accordance with the applicable law for all damages to the Owner caused by the Design professional's negligent performance of any of the services furnished under this contract.

Article E: Additional Requirements

E. 1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

E. 1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

E. 1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 24 CFR 85.36 (f) prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

E. 1.3 Restrictive Drawings and Specifications. In accordance with 24 CFR 85.36(c)(3)(i) and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

E. 1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 968.235), the Design Professional shall provide such a certification to the Owner.

E. 1.5 Retention and Inspection of Records. Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

E. 1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

E. 1.7 Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner, or
- (iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest

and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

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

E. 1.8 Disputes. In part because of HUD regulations (24 CFR 85.36(i)(1)), this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

E. 1.9 Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Design Professional Agreement, unless it is for an amount of \$10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

E. 1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, 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 from it.

E. 1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee 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.

E. 1.12 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3.

As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. Reserved.

H. Reserved.

E. 1.13 Reserved.

E. 1.14 Clean Air and Water. (Applicable to contracts in excess of \$100,000). Because of 24 CFR 85.36(i)(12) and Federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of \$100,000.

E. 1.15 Energy Efficiency. Pursuant to Federal regulations (24 C.F.R. 85.36(i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

E. 1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

E. 1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

E. 1.18 Prohibition Against Liens. The Design professional is Prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all design professional subcontracts.

Article F: Other Owner Requirements (if any)

(Continue on additional pages as necessary)

This Agreement is entered into as of the day and year first written above.

Owner

Design Professional

(Housing Authority)

(Firm)

(Signature)

(Signature)

(Print Name)

(Print Name)

(Print Title)

(Print Title)

Addendum (If any)
(Additional Services and other modifications)

This is an Addendum to a Standard Form of Agreement between Owner and Design Professional signed and dated the _____ day of _____ in the year (yyyy) of _____ between the Owner _____ and Design Professional _____ on Project _____. The parties to that Agreement agree to modify the Agreement by the above delineated Additional Services and modifications.

This Addendum is dated this _____ day of _____ in the year (yyyy) of _____

Owner

Design Professional

(Housing Authority)

(Firm)

(Signature)

(Signature)

(Print Name)

(Print Name)

(Print Title)

(Print Title)

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 3/31/2020)

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

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

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$105,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

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. 3/31/2020)

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

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

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

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

1. Minimum Wages

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

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

2. Withholding of funds

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

3. Records

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

4. Apprentices and Trainees

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

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

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.

Federal Labor Standards Provisions

U.S. Department of Housing and Urban Development Office of Labor Relations

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). 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 classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) 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.

(ii) (a) 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 and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of 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.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee 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. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or 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 the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) 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 the individual 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.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any 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 such 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 clause set forth in subparagraph (1) of this paragraph, 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 the clause set forth in subparagraph (1) of this paragraph.

(3) 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 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 other Federal contract with the same prime contract, 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 clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Certification of Payments to Influence Federal Transactions

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

OMB Approval No. 2577-0157 (Exp. 01/31/2017)

Tab 10

Attachment G-6

Applicant Name

Program/Activity Receiving Federal Grant Funding

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official

Title

Signature

Date (mm/dd/yyyy)

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**Equal Employment
Opportunity Certification**
Excerpt From 41 CFR §60-1.4(b)

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

Department of Veterans Affairs
OMB Control No. 2502-0029
(exp. 9/30/2016)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor 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, 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 agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor 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 advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor 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.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts 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.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

Firm Name and Address

By

Title

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Excerpt from HUD Regulations

200.410 Definition of term "applicant".

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

200.420 Equal Opportunity Clause to be included in contracts and subcontracts.

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, 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 agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

(2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, 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 orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference to the equal opportunity clause.

200.425 Modification in and exemptions from the regulations in this subpart.

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

(1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

(2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

(3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

(4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

(5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.

US Department of Housing and Urban Development
Office of Housing/Federal Housing Commissioner

US Department of Agriculture
Farmers Home Administration

Part I to be completed by Principals of Multifamily Projects (See instructions)		For HUD HQ/FmHA use only	
Reason for submission:			
1. Agency name and City where the application is filed		2. Project Name, Project Number, City and Zip Code	
3. Loan or Contract amount \$	4. Number of Units or Beds	5. Section of Act	6. Type of Project (check one) <input type="checkbox"/> Existing <input type="checkbox"/> Rehabilitation <input type="checkbox"/> Proposed (New)

7. List all proposed Principals and attach organization chart for all organizations

Name and address of Principals and Affiliates (Name: Last, First, Middle Initial) proposing to participate	8 Role of Each Principal in Project	9. SSN or IRS Employer Number

Certifications: The principal(s) listed above hereby apply to HUD or USDA FmHA, as the case maybe, for approval to participate as principal(s) in the role(s) and project listed above. The principal(s) each certify that all the statements made on this form are true, complete and correct to the best of their knowledge and belief and are made in good faith, including any Exhibits attached to this form. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. The principal(s) further certify that to the best of their knowledge and belief:

1. Schedule A contains a listing, for the last ten years, of every project assisted or insured by HUD, USDA FmHA and/or State and local government housing finance agencies in which the principal(s) have participated or are now participating.
2. For the period beginning 10 years prior to the date of this certification, and except as shown on the certification:
 - a. No mortgage on a project listed has ever been in default, assigned to the Government or foreclosed, nor has it received mortgage relief from the mortgagee;
 - b. The principals have no defaults or noncompliance under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project;
 - c. There are no known unresolved findings as a result of HUD audits, management reviews or other Governmental investigations concerning the principals or their projects;
 - d. There has not been a suspension or termination of payments under any HUD assistance contract due to the principal's fault or negligence;
 - e. The principals have not been convicted of a felony and are not presently the subject of a complaint or indictment charging a felony. (A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less);
 - f. The principals have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;
 - g. The principals have not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond;
3. All the names of the principals who propose to participate in this project are listed above.
4. None of the principals is a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in Standards of Ethical Conduct for Employees of the Executive Branch in 5 C.F.R. Part 2635 (57 FR 35006) and HUD's Standard of Conduct in 24 C.F.R. Part 0 and USDA's Standard of Conduct in 7 C.F.R. Part 0 Subpart B.
5. None of the principals is a participant in an assisted or insured project as of this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification, have not been filed with HUD or FmHA.
6. None of the principals have been found by HUD or FmHA to be in noncompliance with any applicable fair housing and civil rights requirements in 24 CFR 5.105(a). (If any principals or affiliates have been found to be in noncompliance with any requirements, attach a signed statement explaining the relevant facts, circumstances, and resolution, if any).
7. None of the principals is a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.
8. Statements above (if any) to which the principal(s) cannot certify have been deleted by striking through the words with a pen, and the relevant principal(s) have initialed each deletion (if any) and have attached a true and accurate signed statement (if applicable) to explain the facts and circumstances.

Name of Principal	Signature of Principal	Certification Date(mm/dd/yyyy)	Area Code and Tel. No.
This form prepared by (print name)			Area Code and Tel. No.

Schedule A: List of Previous Projects and Section 8 Contracts. Below is a complete list of the principals' previous participation projects and participation history in multifamily Housing programs of HUD/FmHA, State and local Housing Finance Agencies. **Note:** Read and follow the instruction sheet carefully. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If no previous projects, write by your name, **"No previous participation, First Experience"**.

1. Principals Name (Last, First)	2. List of previous projects (Project name, project ID and, Govt. agency involved)	3. List Principals' Role(s) (indicate dates participated, and if fee or identity of interest participant)	4. Status of loan (current, defaulted, assigned, foreclosed)	5. Was the Project ever in default during your participation Yes No If yes, explain		6. Last MOR rating and Physical Insp. Score and date

Part II- For HUD Internal Processing Only

Received and checked by me for accuracy and completeness; recommend approval or refer to Headquarters after checking appropriate box.

Date (mm/dd/yyyy)	Tel No. and area code	<input type="checkbox"/> A. No adverse information; form HUD-2530 approval recommended. <input type="checkbox"/> B. Name match in system <input type="checkbox"/> C. Disclosure or Certification problem <input type="checkbox"/> D. Other (attach memorandum)	
Staff	Processing and Control		
Supervisor	Director of Housing/Director, Multifamily Division	Approved <input type="checkbox"/> Yes <input type="checkbox"/> No	Date (mm/dd/yyyy)

Instructions for Completing the Previous Participation Certificate, form HUD-2530

Carefully read these instructions and the applicable regulations. A copy of those regulations published at 24 C.F.R. 200.210 to 200.245 can be obtained from the Multifamily Housing Representative at any HUD Office. Type or print neatly in ink when filling out this form. Mark answers in all blocks of the form. If the form is not filled completely, it will delay approval of your application.

Attach extra sheets as you need them. Be sure to indicate "Continued on Attachments" wherever appropriate. Sign each additional page that you attach if it refers to you or your record.

Carefully read the certification before you sign it. Any questions regarding the form or how to complete it can be answered by your HUD Office Multifamily Housing Representative.

Purpose: This form provides HUD with a certified report of all previous participation in HUD multifamily housing projects by those parties making application. The information requested in this form is used by HUD to determine if you meet the standards established to ensure that all principal participants in HUD projects will honor their legal, financial and contractual obligations and are acceptable risks from the underwriting standpoint of an insurer, lender or governmental agency. HUD requires that you certify your record of previous participation in HUD/USDA-FmHA, State and Local Housing Finance Agency projects by completing and signing this form, before your project application or participation can be approved.

HUD approval of your certification is a necessary precondition for your participation in the project and in the capacity that you propose. If you do not file this certification, do not furnish the information requested accurately, or do not meet established standards, HUD will not approve your certification.

Note that approval of your certification does not obligate HUD to approve your project application, and it does not satisfy all other HUD program requirements relative to your qualifications.

Who Must Sign and File Form HUD-2530:

Form HUD-2530 must be completed and signed by all principals applying to participate in HUD multifamily housing projects, including those who have no previous participation. The form must be signed and filed by all principals and their affiliates who propose participating in the HUD project. Use a separate form for each role in the project unless there is an identity of interest.

Principals include all individuals, joint ventures,

partnerships, corporations, trusts, non-profit organizations, any other public or private entity that will participate in the proposed project as a sponsor, owner, prime contractor, turnkey developer, managing agent, nursing home administrator or operator, packager, or consultant. Architects and attorneys who have any interest in the project other than an arm's length fee arrangement for professional services are also considered principals by HUD.

In the case of partnerships, all general partners regardless of their percentage interest and limited partners having a 25 percent or more interest in the partnership are considered principals. In the case of public or private corporations or governmental entities, principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation.

Affiliates are defined as any person or business concern that directly or indirectly controls the policy of a principal or has the power to do so. A holding or parent corporation would be an example of an affiliate if one of its subsidiaries is a principal.

Exception for Corporations – All principals and affiliates must personally sign the certificate except in the following situation. When a corporation is a principal, all of its officers, directors, trustees and stockholders with 10 percent or more of the common (voting) stock need not sign personally if they all have the same record to report. The officer who is authorized to sign for the corporation or agency will list the names and title of those who elect not to sign. However, any person who has a record of participation in HUD projects that is separate from that of his or her organization must report that activity on this form and sign his or her name. The objective is full disclosure.

Exemptions – The names of the following parties do not need to be listed on form HUD-2530: Public Housing Agencies, tenants, owners of less than five condominium or cooperative units and all others whose interests were acquired by inheritance or court order.

Where and When Form HUD-2530 Must Be Filed:

The original of this form must be submitted to the HUD Office where your project application will be processed at the same time you file your initial project application. This form must be filed with applications for projects, or when otherwise required in the situations listed below:

- Projects to be financed with mortgages insured under the National Housing Act (FHA).
- Projects to be financed according to Section 202 of the Housing Act of 1959 (Elderly and

Handicapped).

- Projects in which 20 percent or more of the units are to receive a subsidy as described in 24 C.F.R. 200.213.
- Purchase of a project subject to a mortgage insured or held by the Secretary of HUD.
- Purchase of a Secretary-owned project.
- Proposed substitution or addition of a principal or principal participation in a different capacity from that previously approved for the same project.
- Proposed acquisition by an existing limited partner of an additional interest in a project resulting in a total interest of 25 percent or more or proposed acquisition by a corporate stockholder of an additional interest in a project resulting in a total interest of 10 percent or more.
- Projects with U.S.D.A., Farmers Home Administration, or with state or local government housing finance agencies that include rental assistance under Section 8 of the Housing Act of 1937. For projects of this type, form HUD-2530 should be filed with the appropriate applications directly to those agencies.

Review of Adverse Determination: If approval of your participation in a HUD project is denied, withheld, or conditionally granted on the basis of your record of previous participation, you will be notified by the HUD Office. You may request reconsideration by the HUD Review Committee. Alternatively, you may request a hearing before a Hearing Officer. Either request must be made in writing within 30 days from your receipt of the notice of determination.

If you do request reconsideration by the Review Committee and the reconsideration results in an adverse determination, you may then request a hearing before a Hearing Officer. The Hearing Officer will issue a report to the Review Committee. You will be notified of the final ruling by certified mail.

Specific Line Instructions:

Reason for submitting this Certification: e.g., refinance, change in ownership, change in management agent, transfer of physical assets, etc.

Block 1: Fill in the name of the agency to which you are applying. For example: HUD Office, Farmers Home Administration District office, or the name of a State or local housing finance agency. Below that, fill in the name of the city where the office is located.

Block 2: Fill in the name of the project, such as "Greenwood Apts." If the name has not yet been selected, write "Name unknown." Below that, enter the HUD contract or project identification number, the Farmers Home Administration project number, or the State or local housing finance agency project or contract number. Include **all** project or contract

identification numbers that are relevant to the project. Also enter the name of the city in which the project is located, and the ZIP Code.

Block 3: Fill in the dollar amount requested in the proposed mortgage, or the annual amount of rental assistance requested.

Block 4: Fill in the number of apartment units proposed, such as "40 units." For hospital projects or nursing homes, fill in the number of beds proposed, such as "100 beds."

Block 5: Fill in the section of the Housing Act under which the application is filed.

Block 7: Definitions of all those who are considered principals and affiliates are given above in the section titled "Who Must Sign and File...."

Block 8: Beside the name of each principal, fill in the appropriate role. The following are examples of possible roles that the principals may assume: Owner/Mortgagor, Managing Agent, Sponsor, Developer, General Con-tractor, Packager, Consultant, Nursing Home Administrator etc.

Block 9: Fill in the Social Security Number or IRS employer number of every principal listed, including affiliates.

Instructions for Completing Schedule A:

Be sure that Schedule A is filled-in completely, accurately and the certification is properly dated and signed, because it will serve as a legal record of your previous experience. All Multifamily Housing projects involving HUD/ FmHA, and State and local Housing Finance Agencies in which you have previously participated **must be** listed. Applicants are reminded that previous participation pertains to the individual principal within an entity as well as the entity itself. A newly formed company may not have previous participation, but the principals within the company may have had extensive participation and disclosure of that activity is required.

Column 2. All previous projects must be listed or your certification cannot be processed. Include the name of all projects, project number, city where it is located and the governmental agency (HUD, USDA-FmHA or state or local housing finance agency) that was involved.

Column 3. List the role(s) as a principal, dates participated and if fee or identity of interest (IO) with owners.

Column 4. Indicate the current status of the loan. Except for current loan, the date associated with the status is required. Loans under a workout arrangement are considered assigned. For all noncurrent loans, an explanation of the status is required.

Column 5. Explain any project defaults during your participation.

Column 6. Provide the latest Management Review (MOR) rating and Physical Inspection score.

Certification: After you have completed all other parts of

form HUD-2530, including schedule A, read the Certification carefully. In the box below the statement of the certification, fill in the names of all principals and affiliates as listed in block 7. Each principal should sign the certification with the exception in some cases of individuals associated with a corporation (see "Exception for Corporations" in the section of the instructions titled "Who Must Sign and File Form HUD-2530). Principal who is signing on behalf of the entity should attach signature authority document. Each principal who signs the form should fill in the date of the signature and

a telephone number. By providing a telephone number, HUD can reach you in the event of any questions.

If you cannot certify and sign the certification as it is printed because some statements do not correctly describe your record, use a pen to strike through those parts that differ with your record, and then sign and certify.

Attach a signed statement of explanation of the items you have struck out on the certification. Item 2e. relates to felony convictions within the past 10 years. If you are convicted of

a felony within the past 10 years, strike out 2e. and attach statement of explanation. A felony conviction will not necessarily cause your participation to be disapproved unless there is a criminal record or other evidence that your previous conduct or method of doing business has been such that your participation in the project would make it an unacceptable risk from the underwriting stand point of an insurer, lender or governmental agency.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by law (42 U.S.C. 3535(d) and 24 C.F.R. 200.217) and by regulation at 24 CFR 200.210. This information is needed so that principals applying to participate in multifamily programs can become HUD-approved participants. The information you provide will enable HUD to evaluate your record with respect to established standards of performance, responsibility and eligibility. Without prior approval, a principal may not participate in a proposed or existing multifamily project. HUD uses this information to evaluate whether or not principals pose an unsatisfactory underwriting risk. The information is used to evaluate the potential principals and approve only individuals and organizations that will honor their legal, financial and contractual obligations.

Privacy Act Statement: The Housing and Community Development Act of 1987, 42 U.S.C. 3543 requires persons applying for a Federally-insured or guaranteed loan to furnish his/her Social Security Number (SSN). HUD must have your SSN for identification of your records. HUD may use your SSN for automated processing of your records and to make requests for information about you and your previous records with other public agencies and private sector sources. HUD may disclose certain information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. You must provide all of the information requested in this application, including your SSN.

Public reporting burden for this collection of information is estimated to average 1 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. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

A response is mandatory. Failure to provide any of the information will result in your disapproval of participation in this HUD program.