



LOUISVILLE METRO HOUSING AUTHORITY

3223 S. Seventh Street Road
Louisville, KY 40216
(502)569-6693

RFP #1621

**LEGAL SERVICES for LEASE ENFORCEMENT and
NON-PAYMENT OF RENT**

POSTED DATE: 4/23/2024

PRE-BID DATE: 4/30/2024 @ 10 a.m.

OPEN DATE: 5/14/2024 @ 10 a.m.

OPENING DATE: 5/14/2024

OPENING TIME: 10 a.m.

REQUEST FOR PROPOSALS #1621

TITLE: LEGAL SERVICES for LEASE ENFORCEMENT and NON-PAYMENT OF RENT

Please submit your firm's quotation for the service, labor, material, equipment or supplies listed in the attached specification. Bidders are to give a complete description if they are quoting on an "equal to" the brand specified by the Louisville Metro Housing Authority.

The Louisville Metro Housing Authority is exempt from Federal Excise Tax and State Sales Tax. Exemption certificates for either of these taxes will be furnished to the successful bidder.

The Louisville Metro Housing Authority reserves the right to reject any or all bids and/or, to accept any bid submitted on a "per-item" basis.

All bids and quotations will remain firm for **ninety (90) days**.

Bidders must acknowledge the Non-Collusive Affidavit.

The bids/proposals will be publicly opened in the office of the Louisville Metro Housing Authority's Purchasing Department located at: 3223 South 7th Street Road Louisville, KY 40216, on the date and time specified above. Bidders must acknowledge the attached applicable special conditions.

NOTICE

THREE (3) signed copies, one marked "original" and two marked "copy" of the bid documents shall be enclosed in the envelope which shall be sealed and clearly labeled with the bid number and name of project, so as to guard against any opening prior to the opening time stated above. The bidder shall also be responsible for placing the firm's name, proposal number, and the opening date and time on the outside of the envelope. FAILURE TO DO SO MAY RESULT IN DISQUALIFICATION

SILENT PERIOD

Make certain to follow the silent period instructions included below.

Bid/Proposals shall be addressed to: Louisville Metro Housing Authority
ATTN: Steven Webb
3223 South 7th Street Road
Louisville, KY 40216

DEADLINE FOR QUESTIONS

All questions must be received before 2:00 p.m. on 5/7/2024

Questions regarding the scope of work can be sent to Ucesia Sistrunk at,

SISTRUNK@LMHA1.ORG

SECTION M and SECTION 3 PROGRAM

Questions regarding Section M/3 can be sent to Phil Reidinger at,

REIDINGER@LMHA1.ORG before 2 p.m. on 5/7/2024

All other questions to Steve Webb at, WEBB@LMHA1.ORG

SILENT PERIOD INSTRUCTIONS

The silent period begins on 5/7/2024 at 2:00 p.m. and extends through to the award of contract. During this period no questions concerning the status of your bid may be asked of any LMHA staff.

Once the Bids/Proposals have been thoroughly evaluated, all interested parties will be notified of the results.

The Pre-Bid Conference and the Opening will be held at:

3223 S. 7th Street Road, Louisville, KY 40216 at 10 a.m. on the dates mentioned on the cover sheet.

NON-COLLUSIVE AFFIDAVIT

AFFIDAVIT

State of _____)

County of _____) ss.

_____, being first duly sworn, deposes and says:

That he/she _____
(a partner or officer of the firm of, etc.)

the party making the foregoing proposal or bid, that such proposal or bid is genuine and the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said bidder 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, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Local Housing Authority or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

Signature of:

Bidder, if the bidder is an individual;

Partner, if the bidder is a partnership;

Officer; if the bidder is a corporation.

Subscribed and sworn to before me

this _____ day of _____, 20__.

My Commission expires _____, 20__.

**REQUEST FOR PROPOSAL
SCOPE OF WORK FOR LEGAL SERVICES FOR LEASE ENFORCEMENT AND
NON-PAYMENT OF RENT**

This RFP is to advise you that the Louisville Metro Housing Authority (the "Authority") is seeking proposals from attorneys to perform legal services for the Authority providing the following contract services:

- Provide legal assistance in the court eviction process for residents that have failed to pay rent, are repeatedly delinquent in making rent payments or have violated the lease agreement to the extent eviction becomes necessary.
- Prepare and file legal documentation necessary to process legal eviction action.
 - Prepare and file all filings required to institute a non-payment of rent eviction against said individuals.
 - Make all Court appearances necessary and required to obtain an eviction order.
 - Not later than 14 days after the date of mailing of the 14th Day Notice of Intent to Terminate has been sent, the Louisville Metro Housing Authority shall provide a list of all residents who have failed to pay rent for the month in question.
 - Eight days following the Court date set by counsel the Louisville Metro Housing Authority shall provide a list of all residents who are to be set out by the Sheriff.
 - Louisville Metro Housing Authority shall be responsible for the timely delivery and accuracy of all information provided to counsel.
- Prepare and file legal documentation necessary to process legal eviction action.
- Prepare and file legal documents necessary to process set-outs by the Sheriff's Department.
- Provide the Authority with continuing monthly reports that delineate those residents for whom filings were made for eviction, and cost reports.
- Appear in District Court (virtually or in-person), on the designated court date of each month and on subsequent dates as required. Also, may be required to attend and provide representation during grievance hearings.
- Provide general legal assistance to Housing Authority staff in the enforcement of the Authorities residential lease and continued occupancy policy.
- Louisville Metro Housing Authority shall pay all Court costs, filing fees, Sheriff's fees or other fees pursuant to the eviction process.

Interested attorneys must submit a letter of interest demonstrating an understanding of the required services; evidence of an ability to perform the work; a financial proposal in the form of the amount to be charged for the work; and a demonstration of the respondent's experience and background in performing work of this nature.

The selected firm will perform all legal services necessary as counsel on behalf of the Authority

STATEMENT OF QUALIFICATIONS GUIDELINES

1. Statement of Experience, Qualifications and Firm Information

Name of firm and address of the office handling this account. Length of time the company has been licensed to do business in the State of Kentucky. Brief descriptions of similar projects previously performed by your firm and/or its members.

2. Project Management

Give the names of the relevant background and experience of the partner (or principle), manager or senior who would be responsible for facilitating and working with the Authority. Provide the names, experience and qualifications of individuals who in all likelihood would be assigned to projects under this contract. Discuss how the firm would handle availability for the engagements.

3. Fees and Charges

Prepare a schedule showing the billing rate for each individual who may make court appearances for submission of evictions for late rent.

Prepare a schedule showing the billing rate for each individual who may make court appearances for eviction hearings, trials and other related court appearances.

Prepare a schedule showing the reimbursable expenses to be billed under this type of service.

Prepare a schedule showing the minimum billing for review of a file.

4. Contract Manager

Discuss how your firm will manage its relationship with the Authority including items such as informal requests for advice, assistance in scoping future projects and dispute resolution between your firm and the Authority.

Legal Services for Lease Enforcement and Non-payment of Rent

1. Prepare and file legal documents necessary to process Non-payment Evictions.

_____ per filing

2. Prepare and file legal documents necessary to process For Cause Lease Violation Evictions.

_____ per filing

3. Make all court appearances and provide legal assistance in the court eviction process necessary to obtain an eviction order for; residents that have failed to pay rent, residents whom are repeatedly delinquent in making rent payments or residents who have violated the lease agreement.

_____ per hour

4. Prepare and file documents necessary to process setouts by the Sheriff's Department.

_____ per filing

5. Provide general legal assistance to Housing Authority staff in the enforcement of the Authority's residential lease and continued occupancy.

_____ per hour

The contract price resulting from this proposal shall be firm for a period of one (1) year and the Louisville Metro Housing Authority will enter into a one (1) year contract with the successful offeror. The Louisville Metro Housing Authority may renegotiate a contract with the successful offeror for not more than four (4) additional one (1) year extensions.

No contract awarded pursuant to a proposal submitted in response to this request may be assigned either in whole or in part without first receiving written consent of the Louisville Metro Housing Authority. Any attempted assignment, either in whole or in part, without such consent shall be null and void and in such event the Louisville Metro Housing Authority shall have the right at its option to terminate the contract.

The firm shall bear all costs and expenses in the performance of this contract including any personal injury or damage incurred to person or property during the course of this contract. The firm entering into this contract shall maintain appropriate insurance to include at a minimum "malpractice" and the Louisville Metro Housing Authority shall be held harmless.

In evaluating proposals, the Authority will use the following criteria and the following points:

1. Qualifications and experience of the individuals in the firm; up to 45 points.
2. Fee; up to 45 points.
3. Assurance of the firm's ability to complete the assigned services by the stated deadlines; up to 10 points.

TERMS OF CONTRACT

The terms of this agreement are for a one (1) year period with a yearly renewal option for up to an additional four (4) years. Either party may terminate this agreement by giving written notice thirty (30) days prior to the anniversary date.

FUNDING OUT CLAUSE

If funds are not appropriated or otherwise made available to support contract continuations in any fiscal years, L.M.H.A. shall have the right to terminate the contract without any obligation or penalty.

TERMINATIONS

Terminations for Convenience: L.M.H.A. may terminate a contract, in whole or in part, without showing cause upon written notice to the Contractor. L.M.H.A. shall pay all reasonable costs incurred by the Contractor up to the date of termination. The Contractor will not be reimbursed for any anticipatory profits which have not been earned up to the date of termination.

Termination for Default: When the Contractor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of L.M.H.A. Failure on the part of a Contractor to fulfill contractual obligations shall be considered just cause for termination of the contract and the Contractor is not entitled to any costs incurred by the Contractor up to the date of termination.

PRE-BID CONFERENCE (If any)

To be held at 3223 S. 7th Street Rd., Louisville, KY 40216 at 10 a.m. on the appointed date. A site visit may follow the meeting.

OPENING DATE INSTRUCTIONS

The opening may be viewed at 3223 S. 7th Street Rd., Louisville, KY 40216 at 10 a.m. on the appointed date.

INSURANCE

Contractor, performing as an independent Contractor, hereunder, shall be fully responsible for providing Worker's Compensation, Commercial General Liability, and Automobile Liability coverage as follows:

Type of Insurance	Limits of Liability (minimum)
Worker's Compensation	Statutory
Employer's Liability	\$1,000,000 (each accident)
Commercial General Liability	\$1,000,000 combined single limit
Comprehensive Form	
Premises Operations	
Explosion and Collapse Hazard	
Underground Hazard	
Products/Completed Operations Hazard	
Contractual Insurance	
Broad Form Property Damage	
Independent Contractors	
Automobile Liability	\$1,000,000 combined single limit
Owned	
Hired	
Non-owned	

The Louisville Metro Housing Authority shall have no responsibility of liability for such insurance coverage.

Contractor must provide a certificate of insurance compliance within 15 calendar days after notification of award. The Louisville Metro Housing Authority must be notified 30 days in advance of insurance cancellation or termination. Certificate must include: name and address of insurance company (must be authorized by the Insurance Department of Kentucky to transact business in the State of Kentucky or be named on the approved listing of non-admitted insurers); Policy Number; and liability coverage and amounts.

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

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

8. Contract Termination; Debarment

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 (l) 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)(l) 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)(l) 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.

SECTION M

(v.5370C)

**MBE, WBE & DBE, and SECTION 3 PROGRAMS
CONTRACTUAL REQUIREMENTS, FORMS AND
DOCUMENTS**

LMHA Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disabled Business Enterprise (DBE) and Section 3 Programs

All bidders must comply with the requirements of LMHA's MBE, WBE and DBE, and Section 3 Programs to be considered responsive.

THE PARTICIPATION PERCENTAGE GOALS FOR THIS PROJECT ARE:

MBE - TWENTY-FIVE PERCENT (25%)

WBE - TEN PERCENT (10%)

DBE - ONE HALF OF ONE PERCENT (.5%)

SECTION 3 REGULATORY REQUIREMENTS:

- **TWENTY-FIVE (25) PERCENT OR MORE OF THE TOTAL NUMBER OF LABOR HOURS WORKED BY ALL WORKERS EMPLOYED FOR THIS PROJECT WILL BE PERFORMED BY SECTION 3 WORKERS, AND**
- **FIVE (5) PERCENT OR MORE OF THE TOTAL NUMBER OF LABOR HOURS WORKED BY ALL WORKERS EMPLOYED FOR THIS PROJECT WILL BE PERFORMED BY TARGETED SECTION 3 WORKERS.**

I. LMHA Minority Business Enterprise (MBE), Women Business Enterprise (WBE), and Disabled Business Enterprise (DBE) Programs

A. *Generally*

This contract includes provisions regarding **MINORITY BUSINESS ENTERPRISE (MBE), WOMEN BUSINESS ENTERPRISE (WBE), and DISABLED BUSINESS ENTERPRISE (DBE)** solicitation and employment for firms wishing to participate in LMHA federally funded procurement activities that have potential for MBE, WBE, or DBE involvement in accordance with Executive Order 11625.

FAILURE TO MEET THE MBE, WBE and DBE GOALS MAY HAVE A SERIOUS IMPACT ON THE EVALUATION OF A BIDDER'S RESPONSIVENESS!

B. Definitions

The following definitions are used throughout the bid documents and Contract Documents:

1. **MBE** - Means Minority Business Enterprise. That is, a business which is fifty-one percent (51%), or more, owned by one or more persons who are members of a racial minority ("Racial Minority" is defined below), and in which such persons share economic interests and have proportionate control over management, interest in capital, and interest in earnings (minority/non-minority joint ventures are addressed elsewhere in these documents).
2. **WBE** - Means Women Business Enterprise. That is, a business which is at least fifty-one percent (51%) owned by one or more Women, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more Women; is managed by, and the daily business operations are controlled by one or more Women; and is a domestic corporation with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm or other business.
3. **DBE** - Means Disabled Business Enterprise. That is, a business which is fifty-one percent (51%), or more, owned by one or more disabled individuals, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more disabled individuals; is managed by, and the daily business operations are controlled by one or more disabled individual; and is a domestic corporation with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm or other business.
4. **MBE Certification** -- All MBE, WBE, and DBE firms must be certified through either the Tri-State Minority Supplier Development Council, the Louisville and Jefferson County Human Relations Commission, or must provide evidence satisfactory to LMHA of minority ownership.
5. **Racial Minority** - Also called "Minority," means any United States Citizen who is:
 - a) African American (racial classification 2) - All persons of origins in any black African racial group not of Hispanic origin; or,
 - b) Hispanic American (racial classification 3) - All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish descended culture or origin, regardless of race; or,
 - c) Asian American (racial classification 4) - All persons having origins in any of the Pre-Magellanic peoples of the Far East, Southeast Asia, the Indian Sub-Continent, or the Pacific Islands; or,

- d) **American Indian or Native Alaskan** (racial classification 5) - All persons having origins in any of the Pre-Colombian peoples of North America, including Alaska, who maintain identifiable tribal affiliations, through membership and participation or community-identification; or,
 - e) **Hasidic Jew** (racial classification 6) - All persons having origins in the Hasidic Jewish culture, who maintain identifiable cultural affiliations, through membership and participation or community-identification.
6. **Disabled Person** - Means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, or has a record of such an impairment, or is regarded as having such an impairment.
7. **Woman** - Means a person born with the physical and genetic characteristics commonly associated with the Women gender as currently defined by the professional medical community.

Women and disabled persons are not "Minority" persons, for the purposes of this project, unless they also meet one of the above-indicated definitions of a "Racial Minority."

C. *MBE, WBE, and DBE Certification*

All MBE, WBE, and DBE firms must be certified through the **Tri-State Minority Supplier Development Council**, 600 W. Main Street, Louisville, Kentucky 40202, (502) 625-0159, or the **Louisville and Jefferson County Human Relations Commission**, 410 West Chestnut Street, Louisville, Kentucky 40202, (502)574-3631. Certifications from other agencies will be reviewed on a case by case basis. A copy of the certification must be submitted upon request.

Questions concerning MBE participation may be directed to the Louisville Metro Housing Authority's MBE/Section 3 Coordinator, Phil Reidinger, at (502) 569-4922 or Reidinger@LMHA1.org.

- 1. Certification through one or more of the listed agencies indicates that a firm meets or exceeds the certifying agency's requirements for MBE, WBE, or DBE certification, however, it should not be construed as implying LMHA approval of such MBE, WBE, or DBE. MBE, WBE, or DBE certification is not indicative of any qualification to perform the work for which the Bidder has proposed the MBE firm. It is the Bidder's inherent responsibility to ensure, **prior to submitting a bid**, that **ALL** proposed subcontractors are qualified.

D. *MBE, WBE, and DBE Participation in LMHA Contracts*

This policy applies to LMHA projects for construction, demolition, renovation, abatement, and similar activities. HUD mandates that the primary procurement

responsibility of PHAs is to secure the best goods or services at the best price. However, MBE, WBE, and DBE participation is an integral and highly important part of LMHA's contracting activities. A minimum MBE, WBE, and DBE participation percentage goal has been established for this project and set forth above. The potential for achieving the MBE, WBE, and DBE participation percentage goal may depend upon the relative availability of MBE, WBE, and DBE firms in the categories of work anticipated. The Contract will be awarded to the responsible and responsive bidder who submits the lowest price, provided award serves LMHA's best interests.

1. **IN ORDER TO BE CONSIDERED RESPONSIVE**, a bidder must either meet the goals or provide evidence conclusively demonstrating that it made a strenuous, albeit unsuccessful, good faith effort to meet the goals. **Failure to aggressively respond to these requirements** is grounds for rejection of bid as non-responsive.

2. Law prohibits public housing agencies, including LMHA, from mandating MBE, WBE, or DBE participation. Bidders on LMHA projects are not obligated to use MBE, WBE, or DBE goods or services simply to meet the MBE, WBE, or DBE participation goal if the goods or services are available from non-MBE, non-WBE, or non-DBE sources at lower cost or using the MBE, WBE, or DBE would increase the cost of performance. Likewise, this policy shall not be construed as endorsing the representation of MBE, WBE, or DBE participation, when in fact a substantial portion of the participation proposed to be performed by an MBE, WBE, or DBE will be performed by the Contractor or by a third tier, non-MBE, non-WBE, or non-DBE subcontractor. For example:

If, on the *List of Proposed Subcontractors*, the bidder indicates that an MBE, WBE, or DBE will provide case work and trim carpentry services; and, the MBE, WBE, or DBE intends to, or commonly does, subcontract a substantial portion of its work to third tier non-MBE, non-WBE, or non-DBE subcontractors; such conditions would conflict with the intent of LMHA's MBE, WBE, and DBE Policy and the bidder's MBE, WBE, or DBE participation percentage would be reduced commensurately and its responsiveness reevaluated accordingly. The foregoing statements should not be construed as diminishing LMHA's commitment to MBE, WBE, or DBE participation. LMHA is committed to MBE, WBE, and DBE participation and expects contractors to employ MBE, WBE, and DBE firms to the fullest extent feasible.

E. Calculating MBE Participation

1. General -- An MBE's, WBE's, and DBE's participation in the Contract may count toward the goal to the extent that the MBE, WBE, or DBE performs Contract work with its own forces or through an MBE, WBE, or DBE subcontractor that uses its own forces. Work that an MBE, WBE, or DBE

subcontracts to a non-MBE, non-WBE, or non-DBE subcontractor does not count toward the goal. Any contractor, subcontractor, or joint venture, that claims MBE, WBE, or DBE participation may be required, at any time, to produce evidence that the portion of the total contract price claimed was actually awarded to, performed, or supplied by MBE, WBE, or DBE firms.

2. MBE, WBE, and DBE Qualifications -- For their participation to count toward the goal, MBE, WBE, and DBE firms must be currently certified as MBE, WBE, or DBE firms at the time of the bid opening. MBE, WBE, and DBE firms, to participate in the Contract, must meet all the responsiveness and responsibility requirements imposed on other contractors and subcontractors under the Contract.
3. Commercial Utility -- The participation of an MBE, WBE, or DBE may count toward the goal only if the MBE, WBE, or DBE performs a commercially useful function in executing the Contract work.
 - a) An MBE, WBE, or DBE firm's function may be commercially useful if it includes direct, day-to-day responsibility for significant work of the Contract and the MBE, WBE, or DBE actually fulfills its responsibilities by performing, managing, and supervising that work.
 - b) Responsibility for negotiating prices, determining quality and quantities, ordering, installing, and paying for materials and supplies involved in the MBE's, WBE's, or DBE's portion of the Contract work may, also, indicate commercial utility.
 - c) An MBE's, WBE's, or DBE's function is not commercially useful if the firm's actual role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to present the appearance of MBE, WBE, or DBE participation. In determining whether a firm is an extra participant, LMHA may examine similar transactions, contracts, or projects, particularly those in which MBE, WBE, or DBE firms do not participate.
 - d) An MBE, WBE, or DBE that does not perform, or bear and exercise responsibility for, at least 12 percent of the total cost of its Contract work with its own forces, or that subcontracts a greater portion of its Contract work than would be expected under normal industry practice for the type of work involved, is preemptively not performing a commercially useful function. An MBE, WBE, or DBE may challenge the presumption that it is not performing a commercially useful function. Because no privity can exist between LMHA and a subcontractor, MBE, WBE, and DBE subcontractors must assert such challenges through the prime contractor.
 - e) LMHA may evaluate industry practices, the amount and type of work awarded to the MBE, WBE, or DBE, and any other factors LMHA

deems appropriate, to determine whether a function is commercially useful.

4. MBE, WBE, or DBE Prime Contractors -- MBE, WBE, or DBE firms are under the same obligations as any other prime contractor with respect to LMHA's MBE, WBE, or DBE goals. To receive MBE, WBE, or DBE participation credit, an MBE, WBE, or DBE prime contractor must perform at least 12% of the Contract work with its own forces. MBE, WBE, or DBE prime contractors may be credited with MBE, WBE, or DBE participation to the extent that they perform the Contract work with their own forces and employ MBE, WBE, or DBE subcontractors pursuant to the provisions of this policy. For example:

If an MBE, WBE, or DBE prime contractor will perform \$12,000-worth of work with its own forces, and the total contract price is \$100,000, MBE, WBE, or DBE participation would be 12%. Thus, if the MBE, WBE, or DBE participation goal was 20%, the MBE, WBE, or DBE prime contractor would be short of the goal and required to either obtain another 8% participation or demonstrate fruitless good faith efforts to obtain another 8% and request a waiver of that portion of the goal.

5. Non-MBE, WBE, or DBE Prime Contractors - may be credited with MBE, WBE, or DBE participation based on the dollar value of that portion of the total contract work subcontracted to MBE, WBE, or DBE firms and performed by such MBE, WBE, or DBE firms using their own forces or through third tier MBE, WBE, or DBE subcontractors that use their own forces. For example:

If a non-MBE, WBE, or DBE prime contractor subcontracts \$15,000-worth of the total contract work to one or more MBE, WBE, or DBE subcontractors, and the total contract price is \$75,000, MBE, WBE, or DBE participation would be 20% ($\$15,000/\$75,000$).

6. MBE, WBE, or DBE Subcontractors -- To receive MBE, WBE, or DBE participation credit, an MBE, WBE, or DBE subcontractor must perform at least 12% of its portion of the Contract work with its own forces. An MBE, WBE, or DBE subcontractor's participation in the Contract counts toward the goal to the extent that the MBE, WBE, or DBE performs Contract work with its own forces and through third-tier MBE, WBE, or DBE subcontractors that use their own forces. Work that an MBE, WBE, or DBE subcontractor subcontracts to a non-MBE, WBE, or DBE subcontractor does not count toward the goal. For example:

If an MBE, WBE, or DBE firm is subcontracted to fabricate and supply equipment for this project, at least 12% of the fabrication must be performed by the MBE, WBE, or DBE firms' own forces, in its own facility.

- a) A prime contractor shall receive no credit for the participation of an MBE, WBE, or DBE subcontractor unless the prime contractor, before the start of work, delivers to LMHA a fully executed original

counterpart of the agreement between the prime contractor and the MBE, WBE, or DBE subcontractor.

- b) Such agreement must bear the prime contractor's and MBE, WBE, or DBE subcontractor's notarized signatures, must state the price the MBE, WBE, or DBE will receive for its work, and must include a reasonably detailed description of the work the subcontractor will perform.

- 7. Joint Ventures - Joint ventures between an MBE, WBE, or DBE and a non-MBE, WBE, or DBE, bidding and performing as a joint venture prime contractor or sub-contractor, may count toward the goal to the extent of the dollar value of the Contract work performed with the MBE, WBE, or DBE party's forces. For example:

If the joint venture will perform \$35,000-worth of the total contract work with its joint forces, and the MBE, WBE, or DBE party's forces will perform \$15,000-worth of that work, and the total contract price is \$100,000, MBE, WBE, or DBE participation would be 15% ($\$15,000/\$100,000$).

If, in the preceding example, the joint venture was the prime contractor and employed MBE, WBE, or DBE, WBE, or DBE subcontractors to perform \$10,000-worth of the remaining total contract work, MBE, WBE, or DBE participation would be 25% ($(\$15,000 + \$10,000)/\$100,000$).

- a) A joint venture shall receive no MBE, WBE, or DBE participation credit unless, before the start of work, it delivers to LMHA a fully executed original counterpart of the "Joint Venture Agreement".
- b) Such agreement must bear the notarized signatures of all parties to the agreement, must state the sum each party will receive for its work, and must include a reasonably detailed description of the work each party will perform.
- c) To be counted at all, the MBE, WBE, or DBE party's portion of the dollar value of the work must be distinct and clearly defined.

- 8. Materials and Supplies - Any contractor or subcontractor may, under certain conditions, claim MBE, WBE, or DBE participation credit for MBE, WBE, or DBE suppliers who provide materials for the Contract work. MBE, WBE, or DBE supplier participation is based, generally, on the dollar value of the goods purchased from the MBE, WBE, or DBE supplier. For example:

Subject to the conditions following this example, if a non-minority prime contractor purchases \$20,000-worth of supplies from an MBE, WBE, or DBE supplier, and the total contract price is \$100,000, MBE, WBE, or DBE participation would be 20% ($\$20,000/\$100,000$). Materials and supplies purchased from MBE, WBE, or DBE firms for use in the Contract may count toward the goal as follows:

- a) If the materials or supplies are purchased from an MBE, WBE, or DBE manufacturer, 100 percent of the cost of the materials or supplies may count toward the goal.
 - (1) For the purposes of these provisions, a “manufacturer” is a business entity that operates or maintains a factory or production facility that routinely produces, on its premises and in the normal course of its business, materials, supplies, articles or equipment required under the Contract.
 - b) Materials and supplies purchased from MBE, WBE, or DBE firms who are regular retail or wholesale dealers will only be counted toward the goal at 60 percent of their cost.
 - (1) For the purposes of these provisions, a “regular retail or wholesale dealer” is a business entity that:
 - (a) owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles or equipment required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the normal course of business; and
 - (b) is an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the items required under the Contract.
 - (2) A person may be a regular retail or wholesale dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as described above, if the person owns and operates distribution equipment for distribution of such products.
 - (3) Long-term lease agreements by which a regular retail or wholesale dealer supplements its own distribution equipment may be acceptable as to the goal, but ad hoc or contract-by-contract agreements for that purpose are not.
 - (4) Packagers, brokers, manufacturers’ representatives, and other persons who arrange or expedite transactions are not regular retail or wholesale dealers within the meaning of these provisions. Such persons’ or entities’ participation shall not count toward the MBE, WBE, or DBE or DBE goal.
9. Fees or commissions -- charged by an MBE, WBE, or DBE that is neither a manufacturer nor a regular retail or wholesale dealer, for assistance in procuring materials or supplies, or for feed or transportation charges for delivering materials or supplies required under the Contract, may count

toward the goal, provided LMHA finds such fees or commissions are reasonable and not excessive in comparison to fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves shall count toward the goal under these circumstances, unless they qualify under one of the other provisions of this subsection.

10. Professional Services -- Fees or commissions charged by an MBE, WBE, or DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Contract, may count toward the goal, if LMHA finds them reasonable and not excessive in comparison to fees customarily allowed for similar services.
11. Any contractor, subcontractor, or joint venture that claims MBE, WBE, or DBE participation may, at any time, be required to produce evidence that the portion of the total contract price claimed was actually awarded to, and performed or supplied, by MBE, WBE, or DBE firms.

F. *Required Forms*

Bidders must submit the following two (2) forms, among others, as a part of the bid proposal, regarding proposed employment of MBE, WBE, or DBE firms on this project:

1. *Schedule of Minority Business Participation*
 - a) The Bidder shall list, on this form, all MBE, WBE, or DBE firms proposed to perform as prime contractors or subcontractors for this project; the type of work to be performed; the anticipated start and completion dates for the work to be performed; and the agreed upon price for the work.
 - b) The Bidder, by completing this form, represents that, if awarded this contract, it will enter into formal contracts (provided each MBE, WBE, or DBE is accepted, in writing, by LMHA), in the amounts indicated, with the MBE, WBE, or DBE firms listed on this form.
2. *Schedule of MBE, WBE, or DBE Unavailability*
 - a) In the event the Bidder is unable to achieve the MBE, WBE, or DBE participation percentage goal, the Bidder shall list on this form all MBE, WBE, or DBE firms contacted and/or considered, but not proposed to participate in this project, and the reasons they are not proposed to participate.

FAILURE TO SATISFY THE MBE, WBE, or DBE PARTICIPATION PERCENTAGE GOALS MAY HAVE A SIGNIFICANT ADVERSE IMPACT ON A BIDDER'S RESPONSIVENESS!

G. Evidence of Responsiveness

As evidence that the Bidder has made a significant good faith effort to involve MBE, WBE, or DBE firms in this project, the Contractor, upon request, shall make available to the Louisville Metro Housing Authority such documentation as is described below.

Bidders that fail to meet MBE, WBE, or DBE goals and fail to demonstrate sufficient good faith efforts to merit a waiver, may be required to forfeit their bid guaranty as agreed liquidated damages.

H. Waiver of MBE, WBE, or DBE Goals

Minority Business Enterprise participation is a priority objective of this agency and LMHA's MBE, WBE, and DBE policy applies to all construction and abatement contracts. If, because of extreme circumstances, a bidder cannot meet the MBE, WBE, or DBE participation percentage goal, LMHA may grant a full or partial waiver of the goal. LMHA will, however, grant a waiver of the MBE, WBE, or DBE participation percentage goal only upon receipt of persuasive evidence that a bidder has made diligent, albeit ultimately unsuccessful, efforts to meet the MBE, WBE, or DBE participation percentage goal (as further explained below).

1. **Bidders must make every reasonable effort to meet the MBE, WBE, or DBE goals.**

Limited or merely formalistic efforts are not considered "good faith" efforts. The bidder must demonstrate that, given all relevant circumstances, it actively and aggressively endeavored to meet the MBE, WBE, or DBE goals.

2. **In the event a bidder finds that it cannot fully satisfy the MBE, WBE, or DBE goals of this solicitation, the bidder must submit a written request for a full or partial waiver of the goals and receive approval prior to submission of bid. All request for waivers for MBE, WBE, and DBE must be submitted with the proposals.**

The "MBE, WBE and DBE Waiver Request Information Sheet" can be found on Page 16 of this Section.

<p>IF THE BIDDER WILL NOT USE <u>ANY</u> SUBCONTRACTORS OR HAS MET THE <u>FULL</u> MBE, WBE, AND DBE GOALS, IT IS NOT NECESSARY TO REQUEST A WAIVER.</p>

- a) The written request for a waiver must explain how the bidder views and evaluates the subcontractable components of a project and why the bidder was unable to attain the MBE, WBE, or DBE participation percentage goal. The request must also include detailed narrative statements describing the bidder's "good faith" efforts to secure MBE, WBE, and DBE participation. If bidder has requested such waiver from LMHA within the last five (5) years, submit copies of all waiver requests.

3. Examples of "good faith efforts" to attain the MBE, WBE, or DBE goal include, but are not necessarily limited to:
 - a) **Attending scheduled meetings**, regarding the project.
 - b) **Providing written notice**, (preferably certified mail) to a reasonable number of MBE, WBE, and DBE firms requesting bids. *A reasonable number means at least as many MBE, WBE, or DBE firms as non-MBE, WBE, or DBE firms, in each trade category, must be contacted.* Copies of certified letters sent to MBE, WBE, or DBE firms requesting bids, and original, signed, receipts, or copies of telegrams soliciting bids from MBE, WBE, or DBE firms, indicating the date of delivery, would be considered evidence of such efforts.
 - c) **Allowing sufficient time** (five working days, or more, as time permits) **for MBE, WBE, and DBE firms to respond** to a written notice. *Sufficient time means initiating contact with MBE, WBE, or DBE firms at least as far in advance of the bid date as contact is initiated with non-MBE, WBE, or DBE firms.* Original responses from MBE, WBE, or DBE firms indicating the reasons why they do not wish to participate in this project and bids received from MBE, WBE, or DBE firms on those firm's letterhead or standard bid forms would be considered evidence of such efforts.
 - d) **Following up** written notification by **telephone or other means**. Date-stamped copies of telephone conversation records and faxed letters would be considered evidence of such efforts.
 - e) **Contacting MBE, WBE, and DBE assistance agencies** and organizations (see Section J of Official Bid Package for lists) and the LMHA's MBE/Section 3 Coordinator at (502) 569-4922, for assistance in locating qualified MBE, WBE, or DBE firms. Date-stamped copies of telephone conversation records and faxed or mailed letters would be considered evidence of such efforts.
 - f) **Selecting portions of the work to be performed by MBE, WBE, and DBE firms** in order to increase the likelihood of meeting the MBE, WBE, or DBE goals. Documentation demonstrating that extra effort was made to solicit MBE, WBE, or DBE bids for categories of work in which MBE, WBE, or DBE firms are particularly well represented in the geographical area of the project would be considered evidence of such efforts.
 - g) **Providing MBE, WBE, and DBE firms with adequate information about the project** when requesting quotations (i.e., identifying potential subtrades involved in the project and identifying a potential dollar range for those subtrades). Copies of certified letters sent to MBE, WBE, and DBE firms, and original, signed, receipts, date-stamped copies of telephone records and faxed or mailed follow-up

letters, or copies of telegrams sent to MBE, WBE, and DBE firms, would be considered evidence of such efforts.

- h) **Advertising in general circulation media (e.g., Courier-Journal), and media aimed at minorities (e.g., Louisville Defender)**, at least 20 days before bids are due. Or, if 20 days are not available, publication for a shorter, but maximum available, period is acceptable. Copies of legal advertisements published as an attempt to obtain MBE, WBE, and DBE involvement would be considered evidence of such efforts.
 - i) **Making efforts to assist MBE, WBE, or DBE firms** in obtaining bonding, credit, or insurance. Date-stamped copies of telephone conversation records and faxed or mailed letters to MBE, WBE, or DBE firms and/or bondsmen, creditors, or insurers would be considered evidence of such efforts.
 - j) **Making efforts to meet and negotiate** with potential MBE, WBE, and DBE Bidders prior to the bid opening. Copies of certified letters sent to MBE, WBE, and DBE firms and original, signed, receipts, date-stamped copies of telephone records and faxed or mailed follow-up letters, or copies of telegrams sent to MBE, WBE, and DBE firms, would be considered evidence of such efforts.
 - k) **Efforts made by the Bidder to expand its search** for MBE, WBE, and DBE firms, beyond the usual geographic boundaries. Documentation demonstrating that such efforts were made would be considered evidence of such efforts.
4. LMHA reserves the right to examine the Bidder's bid preparation materials, including all requests for bids the Bidder issued to potential subcontractors, the Bidder's bid calculation work sheets, and the Bidder's telephone records, notes, and any other information LMHA believes may be helpful in verifying the Bidder's assertions.
5. LMHA's "MBE, WBE and DBE Waiver Request" review protocol includes the following steps:
- a) The contractor's "MBE, WBE and DBE Waiver Request" and supporting documentation will be reviewed by the MBE, WBE, DBE and Section 3 Coordinator and the appropriate LMHA Directors overseeing the solicitation. The Waiver Request Reviewers Team will collectively make a determination for the appropriate waiver action.
 - b) The MBE, WBE, DBE and Section 3 Coordinator will send the written recommendation from the Waiver Request Reviewers Team to the Deputy Executive Director. If necessary, the Deputy Executive Director will schedule a meeting with the Waiver Request Reviewers Team for additional dialogue regarding the suggested waiver action.
 - c) The Deputy Executive Director will forward its and the Waiver Request Reviewers Team's recommendations to the Executive Director for final review and approval. This recommendation will include

- “MBE, WBE and DBE Waiver Request” and supporting documentation, and a transmittal signature sheet.
- d) The MBE, WBE, DBE and Section 3 Coordinator will send a written notification regarding the “MBE, WBE and DBE Waiver Request” decision to the contractor or offeror.
6. The bidder's **delivery of a request for waiver does not**, in and of itself, **ensure that such a request will be granted**.
- a) A full or partial waiver may be granted only after the Louisville Metro Housing Authority has thoroughly reviewed the project's MBE, WBE, or DBE participation potential. Documentation supporting a request for waiver, if such evidence exists, may be presented to the Louisville Metro Housing Authority's Executive Director for a final decision.
- b) If a waiver is granted, and there are no other impediments to the award of the contract, the contract award process may proceed.
- c) If a waiver is not granted, or if no request for waiver is received, and the bid is otherwise acceptable, the Louisville Metro Housing Authority may require the Bidder to satisfy the total MBE, WBE, and DBE goals at no additional cost to the Louisville Metro Housing Authority or may deem the Bidder non-responsive.

I. Replacing MBE, WBE, or DBE Subcontractors

1. Any contractor who proposes to replace a proposed or accepted MBE, WBE, or DBE subcontractor must maintain the MBE, WBE, or DBE participation percentage that existed prior to the replacement of that subcontractor, or, if possible, achieve an even greater MBE, WBE, or DBE participation percentage. If the contractor finds it cannot satisfy these requirements, it must submit a request for waiver of the MBE, WBE, or DBE participation percentage goal, as prescribed above.
2. LMHA reserves the right to conduct compliance reviews on minority and non-minority contractors that utilize MBE, WBE, or DBE subcontractors, or perform as joint ventures. Contractors shall maintain records of all MBE, WBE, or DBE participation for three (3) years following completion of the project. Failure on the part of the contractor to comply with these requirements could result in the withholding of payment, termination of the Contractor's right to proceed with the work, legal fines, imprisonment, or all of the above.

J. Assistance to MBE, WBE, and DBE firms

The Louisville Metro Housing Authority actively works to assist minority vendors and contractors/subcontractors. LMHA is committed to providing equal opportunities for Minority Business Enterprises (MBE, WBE, and DBE firms).

**MBE, SECTION 3 AND EEO
CONTRACT REQUIREMENTS
FORMS AND DOCUMENTS (v.5370C)**

Page 14 of 30

Such opportunities are advertised through newsletters and newspapers, including minority newspapers, minority purchasing councils, and the Department of Housing and Urban Development.

When requested, LMHA will provide special assistance, to the fullest extent possible, to MBE, WBE, and DBE firms, by providing instruction on the preparation of bids, MBE, WBE, and DBE policy, and any other requirements related to LMHA's MBE, WBE, and DBE program, in connection with activities including but not necessarily limited to:

1. Architectural, Engineering, and similar Professional Services contracts;
2. Construction and Maintenance contracts;
3. Purchase Contracts; and,
4. Bank Deposits.

MBE, WBE, or DBE firms, and others, seeking assistance in these areas should first contact:

1. Tri-State Minority Supplier Development Council, 600 West Main Street, Louisville, KY 40202.
Contact: (502) 625-0159
2. Kentucky Cabinet for Economic Development, Department of Existing Business & Industry, Minority Business Division, 2201 Capital Plaza Tower, Frankfort, KY 40601.
Contact: (502) 564-2064
3. Louisville and Jefferson County Human Relations Commission, 410 West Chestnut Street, Suite 300A, Louisville, KY 40202.
Contact: (502) 574-3631

<p>NOTE: The following forms on pages 15-22 shall be completely filled out and submitted with the bid.</p>

SCHEDULE OF MBE, WBE, AND DBE PARTICIPATION

(Name of Bidder)

For each MBE, WBE, or DBE firm proposed to participate in this project, list the firm's name, business address, category of work, percentage of total bid to be performed by the firm, and the firm's Federal Tax ID number in the space provided below. Use additional sheets if necessary.

The combined total of MBE participation proposed is _____ % of the total bid amount.
The combined total of WBE participation proposed is _____ % of the total bid amount.
The combined total of DBE participation proposed is _____ % of the total bid amount.

In addition to completion of this form, a Bidder who has met the MBE, WBE, and DBE goals must submit a copy of the signed sub-bid from each MBE, WBE, and DBE subcontractor listed with its bid.

The bidder, if successful, agrees to enter into a formal contract with each of the above referenced firms, in the amounts indicated, provided those firms are acceptable to the Louisville Metro Housing Authority.

NOTE: With respect to all MBE, WBE and DBE firms, whether proposed or otherwise, Bidder [or Contractor] hereby certifies that it and its fiduciaries and affiliates (i) have engaged in a fair and impartial manner with all such firms; (ii) have not utilized any such firms to obtain any unfair advantage; (iii) have made no negligent or fraudulent representations or misrepresentations to or about such firms; (iv) and there exist no side deals or undisclosed contracts or agreements that would otherwise frustrate the purpose of contracting with any MBE, WBE or DBE firms.

Signature/Title: _____ Date: _____

NOTE: Failure to complete and submit THIS form or comply with directions therein is ground for bid rejection.

MBE, WBE AND DBE WAIVER REQUEST INFORMATION SHEET

Contractor's Name: _____
Business Address, City, State and Zip Code: _____

Telephone Number: _____
Contract Person: _____

Project Name and Proposal Number: _____

WAIVER REQUESTED FOR: (fill in as needed for any that apply)

MBE: _____ WBE: _____ DBE: _____
% Requested: _____ % Requested: _____ % Requested: _____

NOTE: The "MBE, WBE and/or DBE waiver percentages" requested, when added with the "MBE, WBE and/or DBE percentages" proposed on Page 15, must add up to the percentage needed for each category (MBE is 25%; WBE is 10%; and DBE is 0.5%).

STEPS TAKEN TO MEET GOALS: (must choose one for respond for each "step"):

	YES	NO
1 Provide written notice to potential bidders		
2 Allowed sufficient time to respond		
3 Follow-up written notification to potential bidders		
4 Contacting MBE, WBE, and DBE Agencies		
5 Selecting portions of work to be performed by MBE, WBE and DBE		
6 Advertising in general circulation media		
7 Making efforts to meet and negotiate with potential MBE, WBE and DBE bidders		

PROVIDE A WRITTEN NARRATIVE OF THE "GOOD FAITH EFFORTS" TAKEN AND RESULTS: (Use Additional Sheets if Necessary):

NOTE: With respect to all MBE, WBE and DBE firms, whether proposed or otherwise, Bidder [or Contractor] hereby certifies that it and its fiduciaries and affiliates (i) have engaged in a fair and impartial manner with all such firms; (ii) have not utilized any such firms to obtain any unfair advantage; (iii) have made no negligent or fraudulent representations or misrepresentations to or about such firms; (iv) and there exist no side deals or undisclosed contracts or agreements that would otherwise frustrate the purpose of contracting with any MBE, WBE or DBE firms.

Signature/Title: _____ Date: _____

LIST OF PROPOSED SUBCONTRACTORS

The following list of proposed subcontractors is required to be submitted with each bidder's proposal, in accordance with the requirements of Section C of this solicitation. All subcontractors are subject to the approval of LMHA. **PROPOSED SUBCONTRACTORS AND SUBCONTRACT AMOUNTS SHALL NOT BE CHANGED, NOR SHALL ANY ADDITIONAL SUBCONTRACTORS BE EMPLOYED, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE LOUISVILLE METRO HOUSING AUTHORITY.**

<u>NAME OF SUBCONTRACTOR</u>	<u>CATEGORY OF WORK</u>	<u>\$ Amount</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

(Employer ID numbers must be provided upon request)
Use Additional Sheets If Necessary

**THIS FORM MUST BE COMPLETED AND SUBMITTED
WITH THE OFFICIAL BID PACKAGE.**

NOTE: WITHIN TWO WEEKS OF CONTRACT EXECUTION, THE GENERAL CONTRACTOR SHALL SUBMIT, FOR THIS CONTRACT, COPIES OF ALL SUBCONTRACTOR CONTRACTS OR WRITTEN AGREEMENTS TO THE LOUISVILLE METRO HOUSING AUTHORITY

NOTE: If third tier subcontracts are intended, the information on the following page must be provided for each proposed subcontractor.

NOTE: With respect to all MBE, WBE and DBE firms, whether proposed or otherwise, Bidder [or Contractor] hereby certifies that it and its fiduciaries and affiliates (i) have engaged in a fair and impartial manner with all such firms; (ii) have not utilized any such firms to obtain any unfair advantage; (iii) have made no negligent or fraudulent representations or misrepresentations to or about such firms; (iv) and there exist no side deals or undisclosed contracts or agreements that would otherwise frustrate the purpose of contracting with any MBE, WBE or DBE firms.

Signature/Title: _____ Date: _____

EMPLOYMENT DEMOGRAPHICS

This form to be completed and submitted by the prime contractor and every proposed subcontractor. Failure to complete and submit this form is grounds for rejection.

Company Name: _____ Contractor Subcontractor

1 Last Name	2 First Name	3 Job Classification	4 Date Hired	5 Description of Work	6 Race	7 Sec 3

Certified By: _____
 (Authorized Officer's Signature)

Date: _____

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

 (Notary's Signature)

 (Notary's Printed Name)

**AFFIX
 NOTARY'S
 SEAL**

My commission expires _____.

See the following page for instructions for completing this form.

The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

Instructions for Completing EMPLOYMENT DEMOGRAPHICS Form

1. **Duty to Submit Form** -- Every bidder shall complete the *Employment Demographics* form (hereafter, the Form). Every bidder shall ensure that each of its sub-bidders also completes the Form. The Bidder shall submit fully executed Forms for itself and each sub-bidder, with its bid, in the package labeled "Supplemental Bid Information."
2. **Space Constraints/Additional Forms** -- If the space provided on a single Form is insufficient to list every employee (see definition below) of the bidder or sub-bidder completing the Form (hereafter, the Entity), such Entity shall use additional Forms. Said Entity shall, however, ensure that each separate Form is dated, signed, and notarized. Each Official Bid Package contains one (1) blank copy of the Form. From that, the Bidder shall make as many copies as needed to ensure compliance with the preceding requirements.
3. **Completing the Form** -- The Form is divided into seven numbered columns. Write the appropriate name and check the appropriate box at the top of the Form, then complete each column as follows:

Columns 1 and 2 -- Identify, by name, each and every employee, officer, principal, and agent of the Entity. Identify every such person (hereafter, the employee), whether or not intended to perform work under or related to this Contract. Be careful to list each employee by last name first. List only proper, legal names, do not list nicknames. Do not list names of persons the Entity employs as independent contractors. If the employee routinely works less than 37 and 1/2 hours per week, write the letter "P" in the left margin adjacent to the employee's name.

Column 3 -- State the employee's job classification (e.g., laborer, carpenter, plumber, electrician). Use the job classifications the Entity actually, routinely uses to describe the employee. Should you have questions refer to the Wage Determination from Section K.

Column 4 -- State the date upon which the Entity hired the employee. If the employee has left the Entity's employ in the past and returned to work for the Entity again, state the most recent date of hire.

Column 5 -- Describe the nature of the work the employee routinely performs for the Entity. For example, if the employee's job title is "Laborer," the employee's work may be described as "performs unskilled physical labor." Or, a "Secretary" might be described as doing "filing, typing, etc." Use additional lines if necessary, to provide a clear description of an employee's duties.

Column 6 -- State the employee's race. Use the racial classifications provided in page 2, Section M. Use the number 1 for Caucasian. If you write "other" or a similar classification in Column 6, attach a signed statement explaining in detail exactly what is meant by such description. Attach a separate signed statement for each employee so described, tailoring each such statement to the employee to whom it refers.

Column 7 -- State if the employee is certified as a Section 3 Workers (as per II, A. 1.(g)) with "S" or Targeted Section 3 Workers (as per II, A. 1.(j)) with "T" or leave blank if there is no Section 3 certification. Documentation of Section 3 status must be provided upon request.

4. Each Form shall be signed and dated by an authorized officer of the Entity and shall be notarized.

AGREEMENT TO NOTIFY LMHA OF JOB OPENINGS

(This form to be completed and submitted by prime contractor and all subcontractors.)

By my signature below, _____ (hereafter "the Company"), agrees to the
(Company's Name)
following conditions:

1. The Company shall, if awarded the contract for which this Bid is offered, give LMHA notice of any and all job openings that may arise at the Company during the course of that contract.
2. Such notice shall be in writing and mailed, first class, to LMHA via the U.S. Postal Service within two business days after such opening arises. The notice shall describe the minimum qualifications and requirements of the job, the nature of the work, the expected pay rate or range, the place and manner of submitting applications, the name, address and telephone number of the person to contact to obtain an application or additional information, and the date by which applications must be submitted.
3. LMHA will notify its residents of such job openings and encourage qualified residents to submit applications for employment.
4. The Company will, if it receives an application from a qualified LMHA resident, give that application and applicant the same opportunity and consideration for the job as would be given any other, similarly qualified applicant and, if such applicant is the most qualified applicant and there is no bar to employing the applicant, the Company will hire the applicant for the job if it hires anyone for the job.

Date: _____

By: _____
(Authorized Officer's Signature)

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

(Notary's Signature)

(Notary's printed name)

My commission expires _____.

**AFFIX
NOTARY'S
SEAL**

**STATEMENT OF INTENT TO PERFORM AS A
MINORITY BUSINESS ENTERPRISE CONTRACTOR/SUBCONTRACTOR**

(Separate form required for each MBE, WBE, and DBE prime or sub-bidder)

Name of Prime Bidder: _____

Name of MBE firm completing this form: _____

The undersigned wishes to perform work in connection with the above referenced project as:

Individual Corporation Partnership Joint Venture

The undersigned hereby confirms its status as a Minority Business Enterprise as defined by LMHA and that **a copy of the certification from the agency specified in Section C of this solicitation, or other evidence, is attached hereto.**

The undersigned intends to perform the following work in connection with this project (specify, in detail, the work to be performed):

Bid amount to be entered by sub-contractor \$ _____

The undersigned MBE projects its start and completion dates for the work as follows:

Project Start: _____ Project Completion: _____

BY: _____
(Signature of MBE's Principal) (Name and Title)

THIS FORM MUST BE COMPLETED, and included in this *Supplemental Bid Information* package, by each and every MBE contractor or subcontractor proposed to participate in this project.

The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

AFFIDAVIT OF MINORITY BUSINESS ENTERPRISE
(Separate form required for each MBE, WBE, and DBE proposed)

State of _____ County of _____

I hereby declare and affirm that _____ is a Minority
(Bidder's printed company name)

Business Enterprise (MBE), as defined by LMHA in the bid solicitation and that I am an officer of the above referenced MBE firm, and that I am authorized to provide information required by LMHA to support that firm's representation that it is a Minority Business Enterprise.

I do solemnly declare and affirm, under the penalties of perjury, that the foregoing is true and correct, and that I am authorized, on behalf of the above-named firm, to make this affidavit.

(Signature of Affiant) (Printed name and title of Affiant)

STATE OF _____, COUNTY OF _____, CITY OF _____

On this _____ day of _____, 20____,

_____, the undersigned officer, personally appeared before me,
(Printed name of Affiant)

known to me to be the person described in the foregoing Affidavit, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

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

(Notary's Signature) (Notary's printed name)

My commission expires _____.

**AFFIX
NOTARY'S
SEAL**

THIS FORM MUST BE COMPLETED, and included in this *Supplemental Bid Information* package, by each and every minority contractor or subcontractor proposed to participate in this project.

The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

LEGITIMACY OF JOINT VENTURE

(Separate form required for each joint venture)

Majority Party's Name, Address, Phone, and Principal's Name:

Minority Party's Name, Address, Phone, and Principal's Name:

Portion of work to be performed by Majority Party: _____ % \$ _____
Portion of work to be performed by Minority Party: _____ % \$ _____

(Provide additional details on following page if applicable.)

"The undersigned do hereby declare and affirm, under the penalties of perjury, that the foregoing statements are true and correct and that **all material information necessary to identify and explain the terms and operation of the joint venture, and the intended participation by each joint venture, in this undertaking, is attached hereto.** Further, the undersigned agree to provide LMHA current, complete, and accurate information regarding the actual joint venture work, payments and any proposed changes in the above-stated arrangements, and to permit audits and/or examinations of books, records, and files of the joint ventures by authorized representatives of LMHA. The undersigned recognize and acknowledge that the statements herein are given under oath and any material misrepresentation will be grounds for terminating any contract that may be awarded the undersigned for this project."

BY: _____
(Signature of Majority Party's Principal)

Date: _____

BY: _____
(Signature of Minority Party's Principal)

Date: _____

Which, if any, of the parties to this venture are MBE firms? _____

THIS FORM MUST BE COMPLETED, and included in this *Supplemental Bid Information* package, by every joint venture proposed to participate in this project (ATTACH the Joint Venture Agreement and Letters of Incorporation).

The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

DETAILS OF JOINT VENTURE AGREEMENT

(Separate form required for each joint venture)

The **Majority** Party normally employs _____ tradespersons and performs work in the following trades:

The **Minority** Party normally employs _____ tradepersons and performs work in the following trades:

Indicate all work to be performed under this contract by the parties to this joint venture and the dollar value of each item (on a per-party basis):

<u>Description of Work Item</u>	<u>Party Performed By</u>	<u>\$ Value</u>

Total Dollar Value: \$ _____

(Attach additional pages if needed.)

**IF THE BID INVOLVES A JOINT VENTURE OR JOINT VENTURES, THIS FORM
MUST BE COMPLETED AND SUBMITTED WITH THE OFFICIAL BID PACKAGE.**

II. SECTION 3 PROGRAM REGULATORY REQUIREMENTS (In accordance with 24 CFR 75)

A. The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u - Section 3) is to ensure that employment and other economic opportunities shall be to the greatest extent feasible and directed to low and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low income persons.

1. Definitions of specific terms are as follows:

- a) *1937 Act* means the United States Housing Act of 1937, 42 U.S.C. 1437 et seq.
- b) *Contractor* means any entity entering into a contract with:
 - A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or
 - A subrecipient for work in connection with a Section 3 project.
- c) *Labor hours* means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.
- d) *Low-income person* means a person as defined in Section 3(b)(2) of the 1937 Act, which is a person who's annualized income is at or below \$43,050 as determined per HUD FY 2021 Income Limits Documentation for Louisville Metro Area.
- e) *Professional services* mean non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services
- f) *Section 3 Business Concern* means:
 - (1) A business concern meeting at least one of the following criteria, documented within the last six-month period:
 - (i) It is at least 51 percent owned and controlled by low- or very low-income persons; or

- (ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 Workers; or
- (iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

(2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

(3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

g) *Section 3 Worker* means:

(1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

- (i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
- (ii) The worker is employed by a Section 3 business concern.
- (iii) The worker is a YouthBuild participant.

(2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.

(3) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

h) *Section 8-assisted housing* refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

i) *Subcontractor*: Any entity (other than a person who is an employee of the Contractor) that has a contract with the Contractor to undertake a portion of the Contractor's obligation for the performance of work.

j) *Targeted Section 3 Worker* means a Section 3 Worker who is:

- (1) A worker employed by a Section 3 Business Concern; or
 - (2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - (i) A resident of Louisville Metro Housing Authority or Section 8-assisted housing;
 - (ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or
 - (iii) A YouthBuild participant.
 - k) *YouthBuild* refers to programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).
2. Requirements for Contractors and Subcontractors are as follows:
- a) Employment and training.
 - (1) Consistent with existing Federal, state, and local laws and regulations, contractors, and subcontractors, must make their best efforts to provide employment and training opportunities generated by this project to Section 3 Workers.
 - (2) Contractors and subcontractors, must make their best efforts described in paragraph (a)(1) of this section in the following order of priority:
 - (i) To residents of the public housing projects for which the public housing financial assistance is expended;
 - (ii) To residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;
 - (iii) To participants in YouthBuild programs; and
 - (iv) To low- and very low-income persons residing within the Louisville Metropolitan Area.
 - b) Contracting.
 - (1) Consistent with existing Federal, state, and local laws and regulations, Contractors, and subcontractors, must make their best efforts to award contracts and subcontracts to business

concerns that provide economic opportunities to Section 3 workers.

- (2) Contractors and subcontractors, must make their best efforts described in paragraph (b)(1) of this section in the following order of priority:
 - (i) To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;
 - (ii) To Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section-8 assisted housing managed by the PHA that is providing the assistance;
 - (iii) To YouthBuild programs; and
 - (iv) To Section 3 business concerns that provide economic opportunities to Section 3 Workers residing within the Louisville Metropolitan Area.

3. Contractor's Safe Harbor:

- a) General. LMHA and other recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary, if they:
 - (1) Certify that they have followed the prioritization of effort listed in Section 2 a (2) and 2 b (2); and
 - (2) Meet or exceed the Section 3 benchmarks as described in paragraph (b) of this section.
- b) Benchmarks for the project are as follows:
 - (1) Twenty-five (25) percent of the labor hours performed on this project shall be by Section 3 Workers as defined in Section 1 (g). The ratio to determine Section 3 Worker labor hours is the number of labor hours worked by Section 3 Workers divided by the total number of labor hours worked by all workers on the project.

$\frac{\text{Section 3 Worker Labor Hours}}{\text{Total Labor Hours}} = 25\%$

- (2) Five (5) percent of the labor hours performed on this project shall be by Targeted Section 3 Workers as defined in Section 1 (j). The ratio to determine Targeted Section 3 Worker labor hours is the number of labor hours worked by Targeted Section 3 Workers divided by the total number of labor hours worked by all workers on the project.

$\frac{\text{Targeted Section 3 Worker Labor Hours}}{\text{Total Labor Hours}} = 5\%$

- (3) The Contractor and subcontractors will exclude Professional Services as defined in Section 1 (e), from the total number of labor hours performed on the project.
- (4) Contractors and subcontractors may report on the labor hours based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems.
- c) Reporting of Labor Hours:
- (1) Contractors and subcontractors must report to Louisville Metro Housing Authority:
- (i) The total number of labor hours worked;
 - (ii) The total number of labor hours worked by Section 3 Workers; and
 - (iii) The total number of labor hours worked by Targeted Section 3 Workers.
- (2) It is the Bidder's inherent responsibility to determine employees are Section 3 Workers (as per II A 1 (g)) and Targeted Section 3 Workers (as per II A 1 (j)) and must provide documentation upon request.
- (3) Section 3 workers' and Targeted Section 3 Workers' labor hours may be counted for five years from when their status as a Section 3 Worker or Targeted Section 3 Worker is established.
- (4) Contractors and subcontractors shall submit Labor Hours weekly. Labor Hours may be submitted via certified payroll forms so long as Employees are clearly designated as Non-Section 3 Worker, Section 3 Worker or Targeted Section 3 Worker

- B. **Employment Demographics Reporting Requirements** -- The Contractor and each subcontractor shall complete and submit "Employment Demographics" forms once every month, or more frequently if LMHA so chooses, during the course of the contract.

In completing the forms, the Contractor and each subcontractor shall clearly identify persons newly employed since the last form was submitted (hereafter "New Hires"). The Contractor or subcontractor shall provide the address and telephone number of each New Hire, and shall state whether each New Hire is a Section 3 Worker or Targeted Section Worker. The Contractor shall collect the forms and deliver them to LMHA by the seventh calendar day of each such month. LMHA will provide the Contractor with proper, blank forms at the pre-construction conference, from which the Contractor shall make and distribute copies for its own use and its subcontractors' use. The Contractor's failure to submit a monthly Employment Demographics form, or that of any subcontractor, is ground for termination, for default, of the Contractor's right to proceed with the work.

- C. **Notice of Job Openings** -- The Contractor shall notify LMHA of any and all job openings that arise in the Contractor's company during the course of the Contract. Such notice shall be in writing and mailed, first class, to LMHA via the U.S. Postal Service within two business days after such opening arises. The notice shall describe the minimum qualifications and requirements of the job, the nature of the work, the expected pay rate or range, the place and manner of submitting applications, the name, address and telephone number of the person to contact to obtain an application or additional information, and the date by which applications must be submitted. LMHA will notify its residents of such job openings and encourage qualified residents to submit applications for employment. The Contractor shall, if it receives an application from a qualified LMHA resident, give that application and applicant the same opportunity and consideration for the job as would be given any other, similarly qualified applicant and, if such applicant is the most qualified applicant and there is no bar to employing the applicant, the Contractor shall hire the applicant for the job if it hires anyone for the job. The Contractor's right to proceed with the work may be terminated, for default, upon failure to perform this obligation.

END OF SECTION M