

**Request for Proposal  
for  
RAD PHYSICAL CONDITION ASSESSMENT  
AND  
CNA e-TOOL**

**PROPOSAL NO. 1553**

for

**LOUISVILLE METRO HOUSING AUTHORITY**

420 South Eighth Street  
Louisville, Kentucky 40203

**Lisa Osanka**  
Executive Director and Contracting Officer

November 2021

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# **I. REQUEST FOR PROPOSAL**

**REQUEST FOR PROPOSALS  
FOR  
RAD PHYSICAL CONDITION ASSESSMENT AND CNA e-TOOL FOR  
THE LOUISVILLE METRO HOUSING AUTHORITY**

**Proposal #1553**

**A. OBJECTIVE:**

The Louisville Metro Housing Authority (LMHA) is requesting proposals from qualified firms, with a documented record of providing the required services, preferably for public housing authorities or similar agencies, to conduct a RAD Physical Condition Assessment and CNA e-Tool for properties owned and operated by LMHA throughout the city of Louisville, KY.

Specifically, LMHA seeks to identify the capital needs of its portfolio of properties as part of its current Strategic Planning Process. Refer to the “project specific section for details. See Appendix A and B for a listing of all the LMHA properties included on this RFP.

**B. RFP BOOKLET:**

The complete Request for Proposal (RFP) booklet, which contains all pertinent information and forms needed to submit a responsive proposal can be obtained online (free of charge) at Housing Agency Marketplace [https://ha.economicengine.com/requests.html?company\\_id=9038](https://ha.economicengine.com/requests.html?company_id=9038) or visit our website at [www.lmha1.org](http://www.lmha1.org) and follow the links under bid opportunities.

**C. CONTACT PERSON:**

All communications regarding this solicitation should be made in writing to Jeffrey Ralph at [Ralph@LMHA1.org](mailto:Ralph@LMHA1.org).

**D. SUBMISSION OF PROPOSALS:**

Proposals must be received at the Louisville Metro Housing Authority by **10:00 a.m. local time, Tuesday November 2, 2021**. Address proposals to:

**Attn: Steve Webb  
Louisville Metro Housing Authority  
3223 South Seventh Street Road  
Louisville, Kentucky 40216**

The Louisville Metro Housing Authority reserves the right to accept or reject any or all proposals and/or waive any informalities in the procurement process. LMHA is an equal opportunity employer and is committed to affirmative action in the involvement of minority businesses to the maximum extent possible. LMHA encourages MBE, WBE, DBE and Section 3 firms or individuals to respond. Non-minority firms or individuals are requested to seek participation of minority businesses as sub-consultants or in partnership arrangements to the maximum extent possible, as described in part VIII in this document.

**II. INSTRUCTIONS TO OFFERORS – NON-CONSTRUCTION**

**HUD FORM 5369-B**

# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

## 6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

#### **7. Contract Award**

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

(b) The HA may

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

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

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

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

#### **8. Service of Protest**

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

#### **9. Offer Submission**

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

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

[Describe bid or proposal preparation instructions here:]

**III. CERTIFICATIONS AND REPRESENTATIONS OF OFFEROR**

**HUD FORM 5369-C**



**Certifications and  
Representations  
of Offerors  
Non-Construction Contract**

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

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

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

**1. Contingent Fee Representation and Agreement**

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

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

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

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

**3. Certificate of Independent Price Determination**

(a) The bidder/offeror certifies that---

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

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

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

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

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

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

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

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

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

#### 4. Organizational Conflicts of Interest Certification

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

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

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

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

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

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

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

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

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

#### 6. Conflict of Interest

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

#### 7. Offeror's Signature

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

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

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

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

**IV. GENERAL CONDITIONS FOR  
NON-CONSTRUCTION CONTRACTS**

**HUD FORM 5370-C**

# General Conditions for Non-Construction Contracts

## Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

- 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.

### 2. Withholding of funds

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

### 3. Records

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

### 4. Apprentices and Trainees

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

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

### 1. Minimum Wages

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

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

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

## 5. Disputes concerning labor standards

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

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.
  - (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.
- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

## 6. Contract Work Hours and Safety Standards Act

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

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

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

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

#### **7. Subcontracts**

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

#### **8. Non-Federal Prevailing Wage Rates**

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

**V. AFFIDAVIT OF NON-COLLUSION/ADDENDUM ACKNOWLEDGEMENT**

**AFFIDAVIT OF NON-COLLUSION**

State of \_\_\_\_\_,

County of \_\_\_\_\_,

\_\_\_\_\_, being first duly sworn,  
(Printed name of Representative)

deposes and says:

That he or she is \_\_\_\_\_  
(A Partner, Officer, etc. of bidding firm)

of 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 submit 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 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 Louisville Metro Housing Authority or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

BY: \_\_\_\_\_  
(\* Signature)

Subscribed and sworn to before me this \_\_\_\_\_ day

of \_\_\_\_\_, 20\_\_\_\_.

Signature of Notary: \_\_\_\_\_

**AFFIX SEAL  
OF NOTARY**

My commission expires: \_\_\_\_\_.

- |  |
|--|
| <p>* Signature of:</p> <ol style="list-style-type: none"><li>1. Bidder, if the bidder is an individual;</li><li>2. Partner, if the bidder is a partnership; or</li><li>3. Corporate Officer, if the bidder is a corporation.</li></ol> |
|--|

<p><b>NOTE: Failure to complete and submit <u>THIS</u> form is ground for bid rejection.</b></p>
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**RECEIPT OF ADDENDA IS ACKNOWLEDGED FOR:**

ADDENDUM NUMBER      ADDENDUM DATE

_____	_____
_____	_____
_____	_____

Attach additional  
sheets if  
necessary.

TO BE RESPONSIVE COMPANIES SUBMITTING PROPOSAL'S MUST ACKNOWLEDGE  
ADDENDA

## **VI. PROJECT SPECIFIC INFORMATION**

**PROJECT SPECIFIC INFORMATION  
FOR  
RAD PHYSICAL CONDITION ASSESSMENT AND CNA e-TOOL FOR  
THE LOUISVILLE METRO HOUSING AUTHORITY**

**Proposal #1553**

**Issue Date:** October 20, 2021

**Submission Date:** 10:00 a.m., November 2, 2021

**A. INTRODUCTION AND OVERVIEW**

The Louisville Metro Housing Authority (LMHA) is a public housing agency which, as of July 2021, owned and/or managed more than 3,700 units of conventional and scattered site housing in Louisville, Kentucky, and also operates a Section 8 Rental Assistance Program in the same locality.

Our mission is to provide decent, safe and sanitary housing for low-income families. LMHA receives funding from the U.S. Department of Housing and Urban Development (HUD) for the operation and modernization of low-income public housing owned by LMHA.

The purpose of this solicitation is to select a qualified firm to perform a RAD Physical Condition Assessment (RPCA) and CNA e-Tool for the properties owned and operated by LMHA (identified in Appendix A and Appendix B), and as requested and directed by the LMHA, in accordance with the contract to be executed between the LMHA and the selected firm.

The proposers shall have the following minimum qualifications:

- a. Have training and experience to evaluate building systems, health, and safety conditions, and physical and structural conditions, and to provide cost estimates for maintaining, rehabilitating, or improving deficiencies, using both traditional and Green principles. Must also have environmental expertise, as inspection will include environmental issues as well. Must have any required licenses.
- b. Have the designation of Leadership in Energy and Environmental Design Accredited Professional (LEED AP), in either the United States Green Building Council's LEED New Construction and Major Renovation or the LEED Existing Building Maintenance and Operations examination tracks, or an equivalent designation.
- c. Have completed 10-hours of education in the last calendar year in the areas of Green Building, Sustainability, Energy Efficiency, or Indoor Air Quality.
- d. Have knowledge of the requirements for the "green building" standard, which may include: Enterprise Green Communities, LEED-H, LEED-H Midrise, LEED-NC, ENERGY STAR-STAR New Homes, ENERGY STAR Multifamily High Rise, EarthCraft House, EarthCraft Multifamily, Earth Advantage New Homes, Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building Label), and the National Green Building Standard (NGBS) or other industry-recognized green building standard deemed acceptable by LMHA and HUD in its sole discretion.
- e. Be certified to complete building energy audits by RESNET or BPI (or their training providers), or be a Certified Energy Manager (CEM), or be a State equivalent certified energy auditor, or be a professional architect, or be a registered professional engineer, or be a RESNET certified Home Energy Rater or BPI Certified Building Analyst.

- f. Have experience in collecting utility consumption data and in using industry-recognized methods for estimating missing data and normalizing it for weather occurrences and property vacancies.
- g. Demonstrated experience with cost estimating.
- h. Demonstrated knowledge of applicable local and state building codes and ordinances.
- i. Demonstrated knowledge of Section 504 and Americans with Disabilities Act.
- j. Have acceptably completed written evaluation reports for similar types of multifamily rental housing projects in similar physical condition and age in the subject market or in similar areas, preferably including two (2) or more buildings that were receiving Section 8 or public housing assistance when the report was prepared.
- k. Have an acceptable record of performance with HUD. Not be suspended, debarred or under a HUD-imposed LDP (Limited Denial of Participation) or involved as a defendant in criminal or civil action with HUD.
- l. Have produced reports that are well regarded in the marketplace in terms of content, timeliness and responsiveness. The contractor should have this personal experience, not just the company.
- m. Have the capacity to complete the project inspection and prepare the report in a time frame acceptable to the LMHA.
- n. In no event should the qualifications of the contractor or related consultants be less than as described in ASTM E2018-15 Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process.

The selected firm will be able to access the sites Monday to Friday, from 8:00AM to 4:00 PM, with the exception of the following holidays:

- a. New Year Day - January 1
- b. Martin Luther King, Jr. Day - Third Monday in January
- c. Memorial Day - Last Monday in May
- d. Juneteenth – June 19
- e. Independence Day - July 4
- f. Labor Day - First Monday in September
- g. Thanksgiving Day - Fourth Thursday in November
- h. Day after Thanksgiving Day - Fourth Friday in November
- i. Christmas Day - December 25
- j. Day after Christmas Day - December 26
- k. If holiday falls on a Saturday, it will be observed on the preceding Friday. If holiday falls on a Sunday, it will be observed on the following Monday.

The Time of Completion will be **180 calendar days** from the day of the execution of the Form of Owner and Consultant Agreement. Proposed completion dates less than 180 calendar days will be considered.

## **B. SCOPE OF SERVICES / MINIMUM DELIVERABLES**

The RAD Physical Condition Assessment (RPCA) shall comply with all RAD PCA Requirements, including without limitation:

- a. HUD's Rental Assistance Demonstration (RAD): Physical Condition Assessment Statement of Work and Contractor Qualifications (RPCA) (attached as Appendix C).
- b. HUD Multifamily Accelerated Processing (MAP)
- c. American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. (ASHRAE Procedures for Commercial Building Energy Audits, Second Edition 2011, level II guidelines).
- d. The final RPCA will be required to be input into the then current HUD CNA e-Tool.

- e. Units, structures and facilities will be inspected and reviewed by sampling methods in conformity with HUD's RPCA and CNA e-tool guidance. HUD expects that appropriate statistical sampling methods and techniques will be used by the Contractor to reach conclusions about repair needs.

The RPCA drives the scope of rehab work, the development budget, and the initial and annual deposits to replacement reserves for developments selected for RAD conversion. The RPCA will allow for the completion of a financing plan for HUD approval and to budget and implement building improvements, energy/water conservation opportunities and "green" improvements under future competitively bid contracts if needed. The RPCA will inform LMHA Staff of capital needs for those developments not yet transitioned to RAD.

## **C. TECHNICAL REQUIREMENTS**

The successful proposer must:

- a. Prepare the RPCA and CNA e-Tool in the format of and in conformity with current RPCA and CNA e-Tool guidance.
- b. Perform interviews as needed with knowledgeable LMHA staff as to existing documents, plans, building histories, maintenance, records, REAC scores, etc. of each property.
- c. Identify all development components that will be part of the assessment.
- d. Establish a sampling methodology for units that will satisfy the RPCA and CNA e-Tool requirements.
- e. Establish a plan for assessment of all non-dwelling structures and spaces at each site.
- f. Estimate a remaining Expected Useful Life for each component based on HUD's tables.
- g. Prepare a report to be provided to LMHA in narrative and spreadsheet forms that meet LMHA requirements and in conformity with RPCA and CNA e-Tool requirements.
- h. Identify any deficiencies that could have an impact on health and safety and bring this to the immediate attention of the LMHA point-of-contact.

The Consulting firm shall identify in the RPCA the source(s) of information from which it derived data to develop the general description of needed physical improvements. The LMHA shall retain such information in its files as support documentation for the information submitted on the RPCA and CNA e-Tool; for post review by the HUD, residents, or community members if and when needed.

The LMHA will provide to the firm site-specific information such as PIC data, plans, utility data, REAC Inspection results, etc. as available and as necessary for the firm to complete the RPCA and CNA e-Tool; and it will also make available to the contractor key control monitors to facilitate access to occupied units.

## **D. INSTRUCTIONS AND NOTICE TO PROPOSERS:**

### **1. GENERAL**

The instruction below provides guidance for the preparation and submission of proposals. The purpose is to establish the requirements, format and content of proposals, so that the proposals are complete, contain all essential information and can be evaluated fairly.

## 2. SUBMISSION AND CONTENT

### a. Inquiries

Inquiries concerning the Request for Proposal (RFP) should be submitted in writing to Jeffrey Ralph at [Ralph@LMHA1.org](mailto:Ralph@LMHA1.org).

### b. Submission Date

Proposals shall be submitted one (1) original and two (2) copies prepared in the format and detail outlined below, to enable LMHA to make a thorough evaluation.

All proposals shall be submitted in sealed envelopes marked **“RAD Physical Condition Assessment and RAD CNA e-Tool – Proposal #1553”**.

All proposals must be received no later than **10:00 a.m. local time, on Tuesday November 2, 2021**. Address proposals to:

**Attn: Steve Webb  
Louisville Metro Housing Authority  
3223 South Seventh Street Road  
Louisville, Kentucky 40216**

Faxed or E-Mailed Proposals will not be accepted. All proposals will be valid for **ninety (90) days**.

### c. Submission Contents

The proposal shall be divided and numbered into tabbed sections as, follows:

- Cover sheet with company name, address, year of establishment, contact information, and summary of the work that the company does. Please note on the cover sheet if the firm is a minority or women owned business enterprise.
- Experience in providing RPCA and CNA e-Tool for similar types of projects and agencies. Please include a description of prior training and experience evaluating energy needs, identifying energy related cost savings and knowledge of applicable energy and environmental standards as well as the local jurisdiction codes and requirements related to the specific properties. Include information about experience and training of key staff who will be working on this project if selected.
- List of all applicable licenses, certifications, and designations (qualifications).
- Description of how the firm proposes to complete the RPCA and CNA e-Tool. Include timelines for each phase of the proposed RPCA and CNA e-Tool (technical proposal) to include a completion date.
- If needed, the firm shall acknowledge in their proposal, in form of a letter, receipt of any amendment(s) to this RFP. Proposers failure to acknowledge an amendment may result as a rejection of the offer.
- Line-item budget for the proposed RPCA and CNA e-Tool

- Proof of General Liability Insurance (Certificate of Insurance) in the amount of \$1,000,000 per occurrence.
- HUD 5369-C (in Part III)
- Non-Collusive Affidavit/Addendum Acknowledgement (in Part V)
- HUD 51915 - Model Form of Agreement Between Owner and Design Professional (in Part VII)
- MBE, WBE and DBE Requirements/Section 3 Program (in Part VIII)
- At least three professional references with contact information.

### **3. RESTRICTION ON DISCLOSURE AND USE OF DATA**

A proposer that includes propriety or confidential information in its proposal shall state if this information is not to be disclosed to the public or used for any purpose other than proposal evaluation.

In addition to the requirements above, the proposer shall conspicuously mark each separate sheet containing proprietary or confidential information the proposer wishes to restrict with a notation to that effect.

### **4. COMPLETE AND ACCURATE SUBMISSION**

A proposer's failure to provide accurate information in response to this RFP may disqualify the proposer from further participation in the selection process.

A proposal may be corrected, modified or withdrawn, provided that the correction modification or request for withdrawal is made by the proposer, in writing, and is received at the place and prior to the date and time designated in the RFP for final receipt of proposals. After such date and time, the proposer may not change any provision of its proposal in a manner prejudicial to the interest of the LMHA and/or fair competition.

### **5. RETENTION**

All proposals are the property of LMHA and shall be retained by LMHA. Therefore, proposals will not be returned.

### **6. CANCELLATION/WAIVER**

LMHA reserves the right to cancel this RFP or to reject, in whole or part, any and all proposals received in response to this RFP, upon its determination that such cancellation or rejection is in the best interest of LMHA. LMHA further reserves the right to waive any minor informalities in any proposal received, if it be in the public interest to do so. The decision as to whom shall receive a contract award, or whether or not an award shall be made as a result of this RFP, shall be at the absolute sole discretion of LMHA. In addition, multiple awards may be made.

### **7. KEY PERSONNEL**

The key personnel specified by the successful firm are considered to be essential to the work being performed under this contract. Prior to diverting any of the key personnel for any reason(s), the contractor shall notify LMHA in writing, at least thirty (30) days in advance, and shall submit

justification (including proposed situations) in sufficient detail to permit evaluation of the impact on the contract. The firm shall not change names of these personnel or hours to be devoted, before or after contract award, without written permission from LMHA.

**8. PART OF CONTRACT**

The contents of the proposal submitted by the successful proposer(s) may become part of any contract award at the sole discretion of LMHA.

**9. NO COMPENSATION FOR PROPOSAL**

Proposer will not be compensated for work or cost related to preparation or submission of this proposal.

**E. EVALUATION FACTORS FOR AWARD**

No proposals will be opened or reviewed until after the deadline. Under the competitive proposal process, submissions are not opened publicly. All proposals will be initially reviewed to determine compliance with the proposal format specified within this RFP. Proposals that do not comply with these requirements may be rejected without further review.

**ALL PROPOSALS WILL BE EVALUATED BASED ON THE CRITERIA BELOW:**

<u>FACTORS</u>	<u>POINTS</u>
1. Cover Sheet	5
2. Experience	25
3. Qualifications	25
4. Technical Proposal (Approach/Work Plan)	30
5. <u>Pricing</u>	<u>15</u>
<b>Total Points</b>	<b>100</b>

**F. SELECTION PROCESS**

The purpose of this RFP is to solicit quality proposals so that LMHA may select one that meets its needs and requirements. It is further desired that the RFP process will insure competitiveness among offerors. LMHA urges all interested offerors to carefully review the requirements of this RFP. Written proposals containing the requested information will serve as the initial basis for the selection of finalists. All proposals will be reviewed by LMHA based on the evaluation criteria contained in this RFP. LMHA will select firms based on the evaluation criteria and LMHA's particular needs.

In order to be considered, proposals must be received no later than 10:00 a.m. local time, on



November 2, 2021 via mail or delivery. Proposals must be sealed, marked with the title of this RFP, and the offeror's name address and telephone number. All material must be submitted in an 8 ½" x 11" format. **Please submit an original and two (2) copies.**

The above deadline is firm as to date and hour. An offeror may select any mode of delivery; however, the risk of non-delivery shall remain with the offeror. LMHA will treat as ineligible for consideration, and will return unopened, any submission received after the deadline.

Faxed or E-mailed submissions will not be accepted. All timely submissions will become the property of LMHA and will not be returned. Proposals will be held in confidence and not released in any manner until after contract award.

#### **G. REQUEST FOR PROPOSAL (RFP) INTERPRETATION**

The intent of this RFP is to establish the general specifications for services needed and to provide prospective offerors with sufficient information to enable them to provide an acceptable response to this RFP. Every effort has been made to outline the requirements, and to provide information in a format that is clear and concise. Nevertheless, questions may arise, or additional information may be needed. Questions and inquiries regarding this RFP must be submitted in writing. **All inquiries must be received no later than 2:00 p.m. local time, on Tuesday, October 28, 2021 and should be submitted to:**

**Jeffrey Ralph, Director of Strategic Initiatives**  
**Louisville Metro Housing Authority**  
[Ralph@LMHA1.org](mailto:Ralph@LMHA1.org)

Answers will be provided as written addenda to this RFP. Answers will be issued as soon as possible and will become part of this RFP. The addendum(s) will be put on "The Housing Agency Marketplace". **All offerors must acknowledge the addendum(s) in their proposal.**

#### **H. LMHA OPTIONS**

LMHA reserves the right to cancel this RFP, or to reject, in whole or part, any or all proposals received in response to this RFP, upon its determination that such cancellation or rejection is in the best interest of LMHA. LMHA further reserves the right to waive any minor informalities, or the failure of any offeror to comply therewith, if it is in the public interest to do so. LMHA will pay no compensation to any proposer for any cost related to preparation or submittal of this proposal.

LMHA will reject the proposal of any offeror who is debarred by the U.S. Department of Housing and Urban Development (HUD) from providing services to public housing authorities and reserves the right to reject the proposal of any offeror who has previously failed to perform any contract properly for LMHA.

The determination of the criteria and process whereby proposals are evaluated and the decision as to who shall receive a contract award shall be at the sole and absolute discretion of LMHA.

## **VII. FORM OF OWNER AND CONSULTANT AGREEMENT**

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

OMB Approval No. 2577-0157 (exp. 11/30/2023)

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

# Model Form of Agreement Between Owner and Design Professional

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

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

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number. These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 2 CFR 200. These contractual agreements are required by Federal law or regulation pursuant to 2 CFR Part 200. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

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## Introduction to Agreement

**Agreement**

made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year (yyyy) of \_\_\_\_\_

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

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

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

The Owner and Design Professional agree as set forth below.

---

## Article A: Services

### A 1.0 Design Professional's Basic Services

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

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

### A 1.2 Phases and Descriptions of Basic Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

- o Schematic Design/Preliminary Study Documents within \_\_\_\_\_ calendar days for the date of the receipt of a Notice to Proceed.
- o Design Development Documents within \_\_\_\_\_ calendar days from the date of receipt of written approval by the Owner of Schematic Design/Preliminary Study documents.
- o Bidding, Construction and Contract Documents within \_\_\_\_\_ calendar days from the date of receipt of written approval by the Owner of Design Development Documents.

#### A. 2.0 Design Professional's Additional Services

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

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

### Article B: Compensation and Payment B.

#### 1.0 Basic Services

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



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

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

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

#### B. 2.0 Reimbursables

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

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

B. 2.1.2 Long Distance Telephone Costs. Long distance tele-phone calls and long distance telefax costs.

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

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

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

#### B. 3.0 Additional Services

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

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

#### B. 4.0 Invoicing and Payments

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

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

#### Article C: Responsibilities

##### C. 1.0 Design Professional's Responsibilities

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

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

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

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

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

C. 1.5 Compliance with Laws, Codes, Ordinances and Regulations. The Design Professional shall perform services that conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. The Design Professional shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all construction documents required for approval by all governmental agencies having jurisdiction over the project. The Design professional shall make all changes in the Bidding and Construction Documents necessary to obtain governmental approval with out additional compensation or reimbursement, except in the following situations. If subsequent to the date the Owner issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their change, and such notification shall be required in order for the Design Professional to be entitled to any additional compensation or reimbursement. Both the owner and design professional are responsible for ensuring that the design and construction comply with any applicable accessibility laws, including the Fair Housing Act (see 24 C.F.R. § 100.205), Sect. 504 of the Rehabilitation Act (Sect. 504), and the Americans with Disabilities Act (ADA). Compliance with Sect. 504 requires adherence to the Uniform Federal Accessibility Standards (See <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-standards/ufas>) and compliance with the ADA requires adherence to the 2010 ADA standards (See [https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards\\_prt.pdf](https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards_prt.pdf)).

C. 1.6 Seal. Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Agreement when required by law .

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

#### C. 2.0 Owner's Responsibilities

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

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

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

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

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

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

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

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

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

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

#### Article D: Contract Administration

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

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

D. 1.2 Substitutions.

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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

Insurance	Limits or Amount

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

**Article E: Additional Requirements**

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

E. 1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 2 CFR 200.

E. 1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 2 CFR 200 prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

E. 1.3 Restrictive Drawings and Specifications. In accordance with 2 CFR 200 and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

E. 1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 905), the Design Professional shall provide such a certification to the Owner.

E. 1.5 Retention and Inspection of Records. Pursuant to 2 CFR 200, access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

E. 1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 2 CFR 200. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfill the requirements of the construction contract.

E. 1.7 Conflicts of Interest. Based in part on federal regulations (2 CFR 200 and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

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

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

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

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

E. 1.8 Disputes. In part because of HUD regulations (2 CFR 200, this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

E. 1.9 Termination. In part because of HUD regulations (2 CFR 200), this Design Professional Agreement, unless it is for an amount of \$10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

E. 1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

E. 1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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

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

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

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

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

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

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

G. Reserved.

H. Reserved.

E. 1.13 Reserved.

E. 1.14 Clean Air and Water. (Applicable to contracts in excess of \$150,000). Because of 2 CFR 200) and Federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of \$150,000.

E. 1.15 Energy Efficiency. Pursuant to Federal regulations (2 CFR 200) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

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

E. 1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 § CFR Part 1, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, disability, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government. Pursuant to 24 CFR § 1000.12, other civil rights statutes do apply to Indian Housing Authorities such as, Section 504, the Indian Civil Rights Act, and the Age Discrimination Act. (29 USC 794; 25 USC 1301.1303; and 42 USC 6101-6107 respectively).

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

#### **Article F: Other Owner Requirements (if any)**

(Continue on additional pages as necessary)

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

<p>Owner</p> <p>_____</p> <p>(Housing Authority)</p> <p>_____</p> <p>(Signature)</p> <p>_____</p> <p>(Print Name)</p> <p>_____</p> <p>(Print Title)</p>	<p>Design Professional</p> <p>_____</p> <p>(Firm)</p> <p>_____</p> <p>(Signature)</p> <p>_____</p> <p>(Print Name)</p> <p>_____</p> <p>(Print Title)</p>
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Addendum (If any)

(Additional Services and other modifications)

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

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

Owner

Design Professional

\_\_\_\_\_  
(Housing Authority)

\_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Print Title)

**VIII. MBE, WBE, DBE AND SECTION 3 PROGRAMS / CONTRACTUAL  
REQUIREMENTS, FORMS AND DOCUMENTS**



**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](mailto: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.

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

- 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)**

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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

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

**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:**

\_\_\_\_\_

**WAVIER 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	Marking 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.**

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**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**

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**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 Title	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)

My commission expires \_\_\_\_\_.

**AFFIX  
NOTARY'S  
SEAL**

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 title (e.g., secretary, laborer, carpenter, CEO). Use the job titles the Entity actually, routinely uses to describe the employee.

**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:**

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

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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):

**Description of Work Item**

**Party Performed By**

**\$ Value**

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

**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**

**IX. APPENDIX A**

**RAD PHYSICAL CONDITION ASSESSMENT SITES – LMHA OWNED**



**LMHA Owned Units**

AMP #	PROJECT NAME	ADDRESS	MANAGER	PH Units
003	PARKWAY PLACE	1622-B S 13TH ST	LMHA	635
012	DOSKER MANOR	413 E MUHAMMAD ALI BLVD	LMHA	666
013	ST CATHERINE CT	1114 S 4TH ST	LMHA	159
014	550 APTS	550 S 8TH ST	LMHA	69
014	AVENUE PLAZA	400 S 8TH	LMHA	224
017	EAST PAGES LANE	4715 EAST PAGES LN	LMHA	14
017	FEGENBUSH LANE	4513 FEGENBUSH LN	LMHA	7
017	NOLTEMAYER WYNDE COMPLEX	4400 NOLTEMAYER WYNDE CT	LMHA	46
017	WHIPPS MILL ROAD COMPLEX	10014 WHIPPS MILL RD	LMHA	17
017		1015 VINE STREET	LMHA	8
017		655 COUNTRY CLUB RD	LMHA	10
017		2906 RIO RITA	LMHA	8
017		2127 BANK ST	LMHA	6
017		3627 W BROADWAY	LMHA	6
017		621 E ST. CATHERINE	LMHA	10
017		1131 S 6TH ST	LMHA	6
017	*OTHER	VARIOUS	LMHA	93
018	LOURDES HALL	735 EASTERN PKWY	LMHA	62
018	WILL E SEAY PLAZA	4314 BISHOP LN	LMHA	89
034	801 E BROADWAY	801 E BROADWAY ST	LMHA	22
034	BAYBERRY PLACE	8714 BAYBERRY PL	LMHA	10
034	BRECKINRIDGE LANE	3332 BRECKINRIDGE LANE	LMHA	22
034	DEL MARIA WAY	5508 DEL MARIA WAY	LMHA	21
034	NORBROOK APTS	4506 FEGENBUSH LN	LMHA	9
034	SIX MILE LANE APTS	2903 SIX MILE LN	LMHA	15
034	TAYLORSVILLE ROAD APTS	9910 TAYLORSVILLE RD	LMHA	8
034	THIRD STREET ROAD APTS	8018 OLD THIRD STREET RD	LMHA	8
034	TOWNEPARK	12509 TOWNEPARK WAY	LMHA	12
034	VAUGHN MILL RD APTS	7209 VAUGHN MILL RD	LMHA	12
034		328 BIRCHWOOD AVE	LMHA	9
034		500 E JEFFERSON ST	LMHA	8
034		4737 SOUTHERN PKWY	LMHA	6
034		3931 S THIRD ST	LMHA	8
034		1820 NEVILLE DR	LMHA	10
034		2214/2218 STEIER LN	LMHA	14
034		3600, 3602, 3618, 3620 MANSCLICK RD	LMHA	16
034		2855-2863 GRINSTEAD DR	LMHA	5
034	BERRYTOWN APTS	1211 HEAFER RD	PRIVATE	17
034	ST MARTIN APTS	807 E GRAY ST	PRIVATE	26
034	*OTHER	VARIOUS	LMHA	143
061	HOLLY PARK	2714 HOLLYPARK DR	LMHA	44
061	NEWBRIDGE	9702 NEWBRIDGE RD	LMHA	20
061	POWERHOUSE LN	1100 POWERHOUSE LN	LMHA	9
061	TERRIER CT	2301 TERRIER CT	LMHA	8
061	*OTHER	VARIOUS	LMHA	9
061	H TEMPLE SPEARS	1515 CYPRESS ST	PRIVATE	68

\* OTHER - REFERS TO INDIVIDUAL PROPERTIES WITHIN AN "AMP" THAT ARE NON-CONTIGUOUS

**X. APPENDIX B**

**RAD PHYSICAL CONDITION ASSESSMENT SITES – MIXED FINANCE**

### Mixed-Finance Developments

AMP #	PROJECT NAME	ADDRESS	MANAGER	PH Units	Total Units
027	PARK DUVALLE	3621 CHAUNCEY AVE	PRIVATE	59	100
030	PARK DUVALLE	1804 Russell Lee Drive	PRIVATE	92	213
031	PARK DUVALLE	1804 Russell Lee Drive	PRIVATE	78	108
032	PARK DUVALLE	1804 Russell Lee Drive	PRIVATE	134	192

**XI. APPENDIX C**

**RENTAL ASSISTANCE DEMONSTRATION (RAD): PHYSICAL CONDITION**

**ASSESSMENT STATEMENT OF WORK AND CONTRACTOR**

**QUALIFICATIONS**

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# **Rental Assistance Demonstration (RAD): Physical Condition Assessment Statement of Work and Contractor Qualifications**

## **Introduction:**

HUD has drafted the RAD Physical Condition Assessment (RPCA) with the specific intention that it not only meet the RAD Program requirements, but that it also be compliant with the requirements, as they may be modified from time to time, of HUD Multifamily Accelerated Processing (MAP) and the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. (ASHRAE) Procedures for Commercial Building Energy Audits, Second Edition 2011, Level II guidelines.

## **Overview:**

The RPCA has three parts:

**Part 1: PCA Report Comparing Traditional and Green Requirements** – It is the traditional PCA that identifies repairs necessary in the first year following restructuring and the repairs and replacements during the next 20 years; it only offers “traditional” and “green” components that meet local building code; it estimates costs using both “traditional” and “green” principles; and it provides comments on the benefits (financial and otherwise) of the green alternative.

**Part 2: Energy Audit** – It evaluates how energy and water is used at the property. It documents prudent utility-related improvements (water and energy) to the property, the cost of the improvements, and a simple financial payback analysis (however, note that a more sophisticated analysis is available for systems with multiple components with varying estimated useful lives and where the full lifecycle cost analysis is useful). It includes an initial assessment of potentially viable alternatives for generating electricity, heating water, and heating and cooling the conditioned space at the building.

**Part 3: Utility Consumption Baseline** – It contains data on all utility usage at the property, both tenant-paid and owner-paid, and including all common areas for a full 12-month period. It establishes a baseline to allow for benchmarking, and for future measurement of consumption and costs. As such, the utility baseline creates a whole building consumption profile, addressing missing utility data, vacancies, and weather patterns, in achieving its aim of establishing that standard on which future consumption can be compared.

The RPCA contractor may complete any of the components for which it has the necessary qualifications; otherwise, the contractor may subcontract to others who have the necessary qualifications. The RPCA Contractor must integrate and evaluate the findings and recommendations and incorporate all three components into one report.

## **PART 1. PCA REPORT COMPARING TRADITIONAL AND GREEN REQUIREMENTS**

### **1. Qualifications:** The contractor must

A. Have training and experience to evaluate building systems, health, and safety conditions, and physical and structural conditions, and to provide cost estimates for maintaining, rehabilitating, or improving deficiencies, using both traditional and Green principles. Must also have environmental expertise, as inspection will include environmental issues as well. Must have any required licenses.

B. Have the designation of Leadership in Energy and Environmental Design Accredited Professional (LEED AP), in either the United States Green Building Council's LEED New Construction and Major Renovation or the LEED Existing Building Maintenance and Operations examination tracks, or an equivalent designation.

C. Have completed 10-hours of education in the last calendar year in the areas of Green Building, Sustainability, Energy Efficiency, or Indoor Air Quality.

D. Have knowledge of the requirements for the "green building" standard, if any, identified by the owner, which may include: Enterprise Green Communities, LEED-H, LEED-H Midrise, LEED-NC, ENERGY STAR New Homes, ENERGY STAR Multifamily High Rise, EarthCraft House, EarthCraft Multifamily, Earth Advantage New Homes, Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label), and the National Green Building Standard (NGBS) or other industry-recognized green building standard deemed acceptable by HUD in its sole discretion.

E. Have acceptably completed written evaluation reports for similar types of multifamily rental housing projects in similar physical condition and age in the subject market or in similar areas, preferably including two (2) or more buildings that were receiving Section 8 or public housing assistance when the report was prepared.

F. Have an acceptable record of performance with HUD. Not be under suspension or debarment by HUD, or involved as a defendant in criminal or civil action with HUD.

G. Have produced reports that are well regarded in the marketplace in terms of content, timeliness and responsiveness. The contractor should have this personal experience, not just the company.

H. Have the capacity to complete the project inspection and prepare the report in a time frame acceptable to the Lender/Owner<sup>1</sup>.

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<sup>1</sup> Throughout this Statement of Work and Contractor Qualifications document, "Lender/Owner" is used to describe the party ordering, reviewing, and accepting the RPCA (the client for the RPCA contractor). If the owner is pursuing financing as part of the RAD conversion, then a Lender is the client. If not, then the Owner is the client. All RPCAs are subject to HUD's review and acceptance.

**2. Statement of Work:** The contractor shall

- A. Perform a Physical Condition Assessment (PCA) for each asset specified by the Lender/Owner and report the findings.
- (i) The report shall be prepared according to the Fannie Mae document: “Physical Needs Assessment Guidance to the Property Evaluator” (Exhibit 1), except as modified herein. This standard is meant to meet or exceed ASTM E 2018-08, Annex 1.1 concerning multifamily properties as well as Appendix XI.1 concerning qualifications, XI.2 concerning verification of measurements and quantities based on as-built drawings when available or field counts or measurements when necessary, XI.3 concerning service company research. Appendix XI.5 concerning the recommended table of contents is also recommended. Further, this report must be “MAP-compliant,” fully meeting or exceeding the current requirements of HUD Multifamily Accelerated Processing.
  - (ii) The report shall include color photographs and a detailed narrative describing the property’s exterior and interior physical elements and condition, including architectural and structural components, and mechanical systems.
  - (iii) The Contractor shall conduct and document site inspections of enough dwelling units to be able to formulate an accurate estimate of repair, replacement and major maintenance needs and all office, community space, and common areas. In no event shall the inspection be of less than 25% of occupied units, and 100% of all vacant units and common areas.
    - a. In some cases, depending on the size and condition of the Project, all or nearly all units will need to be inspected by the Contractor.
    - b. In other cases, a lesser number of units may need to be inspected by the Contractor. But in no event shall the number of units be less than specified in subparagraph (iii) above.
    - c. The Department expects that appropriate statistical sampling methods and techniques will be used by the Contractor to reach conclusions about repair needs. Units shall be randomly sampled while taking into consideration occupied and unoccupied units and the unit size mix, i.e. one bedrooms, two-bedrooms, etc. If a significant number of units are found to be in poor condition, the Lender/Owner may require that additional units be inspected. The Contractor may also determine that additional units and/or common areas require inspection to fully achieve the objective of considering green building principles, and if so, must coordinate the parameters of the inspection with the Lender/Owner.
  - (iv) The inspection must document individual building write ups for all multi-building complexes,
  - (v) For older structures the Contractor/ and lender should consider forensic investigations of primary building systems, including but not limited to structural, building envelope, conveyance, mechanical, electrical and plumbing systems, where visual or non-invasive examination alone may not be sufficient to support a conclusion about the condition or remaining useful life of system components.



While recognizing that age and condition of structures are not always related, a guideline for use of forensic methods is structures 30 or more years of age. It is the responsibility of the lender to assure that the Contractor employs investigative methods appropriate to the age, condition, physical composition of the property and the local environment.

When undertaken, a forensic examination should result in a written report, attached to the PCA, which report should include at a minimum the following:

- a. A statement of the examiner's particular experience, education, technical or trade certifications or other qualifications establishing the examiner's expertise relevant to the matter examined.
  - b. A description of the physical component(s) or system examined including the portions, quantities, and/or locations examined and the relevant products and materials found installed.
  - c. A description of the trade or industry recognized techniques, tests or analytical methods of examination used.
  - d. A summary of the estimated age, condition, and serviceability of the products, materials or system examined.
  - e. The examiner's recommendation of any repairs and/or replacements.
  - f. The examiner's estimate of the remaining useful life of the system or component assuming any recommended repairs or replacements are completed.
- (vi) Using the RPCA model<sup>2</sup> provided by the Lender/Owner, the Contractor will complete the Component Replacement Summary, Utility Types and Rates, Cap Needs Input, Utility Savings, cell D28 of the Water Savers, Utility Baseline – Summary, Utility Baseline – Monthly, and the Reserves 20 Year Schedule worksheets, considering the factors described below (note that completion of the RPCA model worksheets overlaps with the Energy Audit and Utility Consumption Baseline statements of work, Parts 2 and 3 herein). By completing the herein named worksheets in the RPCA model, the 20 Year Schedule and Detailed 20 Year Schedule worksheets will automatically be populated. The Contractor is to review that worksheet to ensure the data inputs on the other worksheets are generating the desired results. The Water Savers worksheet is an optional approach to estimating water savings, but **cell D28 must be completed** (and it links to the Utility Savings worksheet).

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<sup>2</sup> The RPCA model is available at [www.hud.gov/RAD](http://www.hud.gov/RAD)

(vii) The report shall include:

- a. **Critical items:** Identify in detail, and report immediately to property management and the Lender/Owner, any repair item(s) that represents a critical repair.

Critical repairs include:

1. Remedies for exigent health and safety hazards or code violations;
2. Correction of conditions that adversely affect ingress or egress;
3. Correction of conditions preventing sustaining occupancy;
4. Correction of accessibility deficiencies.

It is the lender’s responsibility to assure that accessibility requirements are accurately applied to projects by the Contractor with knowledge of Federal and, where applicable, state and local requirements. These requirements are:

- (1) The Fair Housing Act design and construction requirements apply to all multifamily housing built after March 13, 1991.
- (2) Section 504 of the Rehabilitation Act of 1973 applies to all Federally assisted programs, facilities and housing.
- (3) The Americans with Disabilities Act of 1990 (ADA) applies to public accommodations and commercial facilities and to any such portion of a multifamily property.
- (4) Summary Table of Applicable Federal Accessibility Requirements

ACTIVITY & YEAR BUILT	MARKET RATE APARTMENTS	AFFORDABLE (not assisted, e.g. LIHTC’s)	FEDERALLY ASSISTED**
Projects built (1st occupancy*) after 3/13/1991	Fair Housing Act Requirements	Fair Housing Act Requirements	Fair Housing Act & 504/UFAS Requirements
Projects built from 7/11/1988 to 3/13/1991	None	None	504/UFAS Requirements
Sub Rehab of projects built after 7/11/1988	None	None	504/UFAS Requirements (load bearing wall exception)
Refinance of projects built prior to 7/11/1988***	None	None	504/UFAS Requirements (load bearing wall and financial/administrative burden exceptions)
All Public Accommodation	ADA	ADA	ADA & 504 UFAS

\*1<sup>st</sup> occupancy means a building occupied for any purpose, not just for housing.

\*\*\*"Federally assisted" projects include those financed or assisted by Project Based Vouchers, 202/811, HOME, HOPWA, Rent Supplements, 236, TCAP, BMIR, etc.

(5)State and Local Accessibility Laws. The Fair Housing Act does not preempt state and local government measures affording persons with disabilities greater access than is required by the Fair Housing Act and some state and local governments do apply more stringent requirements. When state or local requirements exceed the Fair Housing Act design and construction requirements, the former prevail to the extent of such excess.

(6)Adaptable Does Not Mean Deferrable. A common misinterpretation of the Fair Housing Act design and construction requirements holds that the term “adaptable” contemplates a delay or deferral of the time when “features of adaptable design” required by the statute or regulations may be completed. This is inaccurate. The “features of adaptable design” described in the Fair Housing Act design and construction standards are required at original design and construction. Adaptable for purposes of Section 504 is defined at 24 CFR 8.3 and contemplates limited future physical changes to meet specific needs of particular persons with disabilities.

**b. Repair/Rehab items (Short Term Physical Needs):** Identify and estimate the cost of the repairs, replacements, and significant deferred and other maintenance items that will need to be addressed within 12 months of closing (do not include items that are not broken but may need replacement in the near future). The items evaluated (both recommended and not recommended) are explained in the narrative report and the recommended items are documented in the Cap Needs Input worksheet of the RPCA model. That data input automatically generates the rehab escrow needs that appear in column B of the 20 Year Schedule worksheet of the RPCA model. Review column B of that worksheet to ensure the data input generated the correct result.

**c. Market Comparable Improvements:** After discussion with the Lender/Owner and the Lender’s appraiser, the inspector may include repairs or improvements that are necessary for marketability in the list of Repair/Rehab needs. The repairs/ improvements identified should be those necessary for the project to retain its original market position as an affordable project in a decent, safe and sanitary condition (recognizing any evolution of standards appropriate for such a project). The project should be able to compete in the non-subsidized market on the basis of rents rather than amenities. Where a range of options exists, the least costly options for repair or rehabilitation should be chosen, when both capital and operating costs are taken into consideration.

**d. Long-term Physical Needs/ Reserve Items:** Identify and provide an estimate of the major maintenance and replacement items that are required to maintain the project’s physical integrity over the next twenty (20) years. (Note that the Fannie Mae Guidance to the Property Evaluator only requires an 18-year assessment maximum). The items evaluated (both recommended and not recommended) are explained in the narrative report and the recommended items are documented in the Cap Needs Input worksheet of the RPCA model. That data input automatically

generates the 20 Year Schedule worksheet of the RPCA model. Review that worksheet to ensure the data input generated the correct result.

- e. **Reserve Costs.** The Contractor shall estimate the Initial Deposit to the Reserve for Replacement Account and the Annual Deposit to the Reserve for Replacement Account based on the cost of “Near Term” replacement and major maintenance needs of the Project.

f. **Environmental Concerns:**

- (1) This applies to all existing properties constructed prior to 1978 which have not been demonstrated to be LBP- and/or asbestos-free. For projects that contain LBP and/or asbestos, the Contractor is responsible for engaging the services of a qualified LBP and/or asbestos abatement contractor(s) to prepare a scope of work for the abatement of LBP and/or asbestos. Where the scope of abatement work consists of permanent enclosure or encapsulation, but not removal, of LBP and/or asbestos, the qualified abatement contractor(s) must also prepare, separate from the scope of abatement work, an Operations and Maintenance (O&M) Plan for LBP and/or asbestos. The O&M Plan contains ongoing maintenance activities for LBP and/or asbestos, to be followed for as long as the LBP and/or asbestos remains in place. All abatement work and ongoing maintenance activities for LBP and/or asbestos shall conform to the following Regulatory requirements:

a. For LBP, 24 CFR Part 35;

b. For asbestos, 40 CFR Part 61.

- (2) The report shall provide a description of directly observed potential on-site environmental hazards and include a completed Environmental Restrictions Checklist (see Exhibit 2).
- (3) The report must meet HUD’s requirements, as they may be modified from time to time, for the detection and remediation of radon. These requirements were initially described in HUD Mortgage Letter 2013-07, issued January 31, 2013.

- g. **Green Building Principles:** An objective of the report is to identify all opportunities to improve energy efficiency, maximize water efficiency, use reused and recycled materials where practical, safeguard the indoor air quality of the property, be of less harm to the environment generally, and remove/ re-use replaced materials and construction debris appropriately. The Contractor is required to evaluate all components in the building, all building systems, and all components on the property, and the property itself, to identify all opportunities to achieve the stated objective. **The Contractor is expected to consider the most promising types of improvements being used generally in applicable green buildings, to identify all alternatives considered, to provide a justification for the green alternative recommended and a brief explanation of why the non-selected alternatives are less appropriate for the subject property.** Each line item must identify the:

- (1) costs of the traditional repair/replacement to meet local building code, as applicable, and the alternative using green building principles;
- (2) cost estimate for both the traditional and green approaches; and
- (3) expected benefits of the green alternative, both financial and nonfinancial.

(viii) The report shall identify any physical deficiencies as a result of:

- a. a visual survey;
- b. a review of any pertinent documentation; and
- c. interviews with the property owner, management staff, tenants, interested local community groups and government officials, where appropriate.

(ix) The report shall include the Contractor's professional opinion as to whether tenant relocation is necessary to complete the recommended scope of work for rehabilitation.

B. The RPCA must also include the following subcomponents:

- (i) Acknowledgements (who prepared report, the preparer's qualifications or a certification that the preparer meets the qualifications required in Part 1.1, when report was prepared, who received report, and when report was reviewed).
- (ii) Appendices (color photographs, site plans, maps, etc.).

C. In addition, the contractor shall:

- (i) Recommend any additional professional reports needed, for example, to determine the presence or degree of structural defects, or to complete additional investigation into an environmental issue, such as radon testing that was not envisioned at the time of engagement. The Lender/Owner will be responsible for obtaining such reports.
- (ii) If requested by the Lender/HUD, the RPCA Contractor will review the requirements of a particular "green building standard"<sup>3</sup> and include in the RPCA its professional opinion on whether the rehabilitation recommended in the RPCA will meet the requirements of the particular "green building standard".
- (iii) If the services of a subcontractor were secured to inspect the property and complete the report, the contractor shall review the inspection for quality, consistency, and agreed upon format and conformance with these requirements.
- (iv) If requested by the Lender/Owner, attend a formal kick-off meeting to clarify the requirements and scope of the work to be performed.

<sup>3</sup> Must be an industry-recognized standard for green building, such as the Enterprise Green Communities Criteria, LEED-H, LEED-H Midrise, LEED-NC, ENERGY STAR New Homes, ENERGY STAR Multifamily High Rise, EarthCraft House, EarthCraft Multifamily, Earth Advantage New Homes, Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label), and the National Green Building Standard (NGBS) or other industry-recognized green building standard in HUD's sole discretion.

### **3. Deliverables**

A. A draft narrative report and RPCA model (with completion of these worksheets: Component Replacement Summary, Utility Types and Rates, Cap Needs Input, 20 Year Schedule, Detailed 20 Year Schedule, Rehab Escrow Needs, Utility Savings, **at least cell D28** of Water Savings, Utility Data Collection, and the Reserves 20 Year Schedule) shall be submitted electronically, as instructed by the Lender/Owner, for review prior to completion of the final report.

B. The Lender/Owner will review the draft deliverables and discuss any necessary corrections with the Contractor that are necessary for the drafts to be finalized.

C. The final narrative report shall be completed in the number of originals and copies requested by the Lender/Owner. It will also be submitted electronically along with the RPCA model, as instructed by the Lender/Owner.

**NOTE:** The final deliverable from the RPCA contractor shall consist of two files:  
1- PDF file, including the narratives from all three parts of this statement of work (PCA, Energy Audit and Utility Consumption Baseline.)  
2- EXCEL file of the completed RPCA model.

## **PART 2. ENERGY AUDIT**

### **1. Qualifications:** The contractor shall

A. Be certified to complete building energy audits by RESNET or BPI (or their training providers), or be a Certified Energy Manager (CEM), or be a State equivalent certified energy auditor, or be a professional architect, or be a registered professional engineer, or be a RESNET certified Home Energy Rater or BPI Certified Building Analyst.

B. Not be under suspension or debarment by HUD, or involved as a defendant in criminal or civil action with HUD.

C. Produce reports that are well regarded in the marketplace in terms of content, timeliness and responsiveness. The contractor should have this personal experience, not just the company.

D. Have the capacity to complete the project inspection and prepare the report in a time frame acceptable to the Lender/Owner.

### **2. Statement of Work**

These requirements are intended to fully satisfy and exceed the requirements in the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. (ASHRAE) Procedures for Commercial Building Energy Audits, Second Edition 2011, Level II guidelines.

- A. An energy audit identifies how energy and water is used in a facility.
  - (i) Data is collected on energy and water use and costs and a physical inspection of the property and energy-related equipment is performed.
  - (ii) The physical inspection reviews equipment and space conditions, past maintenance schedules, remaining useful life, and system performance, along with building envelope characteristics and conditions.
  - (iii) Physical inspection may also consider indicators of performance issues such as leaking or soiled heat exchangers, high humidity, poor space temperature control, and comfort concerns. Some of these characteristics may be indicators of improperly sized heating or cooling equipment.
  
- B. An energy audit analyzes utility costs of the existing property, including separate rates, if any, for owner and tenant accounts, such as for electricity. Utility data is trended and benchmarked against similar properties with like heating and cooling requirements, and used to provide estimates of energy and water savings that may be gained by implementing cost effective conservation measures.
  
- C. An energy audit provides a prioritized list of recommended cost-effective energy and water efficiency improvements to reduce utility costs.
  - (i) Cost-effective energy and water efficiency improvements are energy or water conserving measures whose estimated utility savings exceed the installed cost of the improvement over the measure's useful life.
  - (ii) Recommendations are based on engineering and economic analysis and consider factors such as operating hours, equipment efficiency, and building and occupant energy and water demand characteristics.
  - (iii) Costs are generally developed through industry norms or available historical project information.
  
- D. Insulation in attics, walls, basements, floors, and ducts for heating and cooling circulation, should, at a minimum, be upgraded to current local building code for new construction, unless prevented by physical obstructions. Additional insulation beyond code should be recommended if cost-justified.
  
- E. In addition, the energy audit includes a recommendation on whether additional caulking and sealing is a cost-justified expenditure.
  
- F. An energy audit report includes the following:

- (i) Current energy, water and sewerage usage and costs (kilowatt-hour, therms, ccf, utility cost) input in the RPCA model. NOTE: This requirement includes all utility usage at the property, both tenant-paid and owner-paid, and all common areas.
- (ii) Evidence that the Contractor used the Air Conditioning Contractors of America (ACCA) Manual J guide or another recognized methodology to size the recommended heating and cooling systems. The sizing shall consider other energy-related improvements being made to the property, including additional insulation, energy-efficient windows, etc. The Lender/Owner may request the Contractor prepare several calculations based on possible improvements or may contact the Contractor subsequent to the completion of the initial calculation and ask for a revision based on a specific set of improvements.

Exception: There are two exceptions to the requirement to complete a load calculation to appropriately size the heating and cooling systems:

- a. When the existing units are already the smallest available and there are no known property management or tenant complaints indicating that the existing systems may be inadequate. To justify this exception, the Contractor must inquire of the site property management and of any tenants encountered during the inspection of units, and not receive comments that would cause the Contractor to question the adequacy of the existing systems.
  - b. When the existing units use electric baseboard heat and conversion to another heat system has been determined to be infeasible. To justify this exception, the Contractor must consider any comments about unit heating received from inquiring of the site property management and of any tenants encountered during the inspection of units and state why conversion to another source is infeasible.
- (iii) Evidence that the contractor analyzed the existing size of hot water heaters and analyzed the appropriate efficient replacement size using First Hour Rating (primarily for individual tenant hot water heaters) or other professionally recognized sizing tools with a goal of providing sufficient but not excess capacity.
  - (iv) Evidence that the contractor inspected the ductwork for leakage and recommended and priced appropriate repairs. HUD's objective is to identify energy-saving opportunities and is relying on the contractor's professional judgment as to the extent of inspection, testing, cleaning and repair that is warranted for the specific property. If the ducts are accessible, the contractor is to conduct a visual inspection and make recommendations for repair of any loose/ broken connections or other leaks. If the ducts are not accessible, the contractor is to provide an opinion on the likely cost-benefit analysis of repairing the ducts and the approach recommended to do so (including use of an aerosol-based product).
  - (v) Completed "Utility Types and Rates" worksheet in the RPCA model provided by the Lender/Owner.
  - (vi) Completed "Utility Savings" worksheet in the RPCA model provided by the Lender/Owner.



(vii) Completed “Water Savers” worksheet with **at least cell D28** being populated (otherwise this worksheet is an optional approach to estimating water savings);

(viii) Prioritized list of recommended energy efficiency improvements. At a minimum, in evaluating recommended improvements, the contractor evaluates and comments on:

- a. Wall, ceiling and basement (if applicable) insulation – describe existing, cite the local code for new construction
- b. Exterior doors – weather stripping, caulking, insulation characteristics, possible needed replacement and standards
- c. Storm doors (where they currently exist) – weather stripping, caulking, insulation characteristics, possible needed replacement and standards
- d. Dishwashers (where they currently exist) – efficiency standard, age, replacement options
- e. Windows/sliding glass doors – considering age, weather stripping, caulking, air conditioning sleeves
- f. HVAC – age, size and rated efficiency of units, age and type of thermostat
- g. DHW – age, size and rated efficiency of units, insulation, temperature setting and set-backs, appropriate efficiency and size for replacement units
- h. Refrigerators – age, size, rated efficiency of units, potential replacements
- i. Water – flow rate of shower and faucets, hot water temp at tap, hot water pipe insulation, toilet tank size
- j. Ventilation – kitchen and bath ventilation (recirculating or outside), appropriate size for replacement units
- k. Apartment lighting – existing lighting methods, over-lighted conditions, conversion to CFL bulbs or fixtures
- l. Lobby, common area, corridor – exterior doors (see above), existing lighting methods, lighting (sufficiency/excess, conversion to CFL bulbs and/or fixtures, T-8 (or smaller) electronic ballast fluorescent, LED exit light and automatic control potential)
- m. Exterior lighting (including parking area) – existing number, type, sufficiency/ excess illumination levels and efficiency of lighting type, conversion potential to more efficient lighting type, automatic controls
- n. Central Plant Boilers/Hot water - efficiency, age, potential for combined heat and power (CHP), set backs
- o. Laundry Area – identify if leased or owned, number and type of appliances, size, age, efficiency rating
- p. Other commercial or office space – same evaluation
- q. Possibility of cost effective change in fuel/ heating system type

- r. Evaluation of rate options, if any, with the utility companies for different site uses, e.g., residential/ commercial rates, peak load management rates.
- (ix) An initial assessment of the potential feasibility of installing alternative technologies for electricity, heating and cooling systems, and hot water heating (collectively called Green Energy Technologies) at the property. The auditor is to comment specifically on each of the following:
- a. Photovoltaic for electricity
  - b. Solar thermal for hot water heating
  - c. Wind turbine
  - d. Combined heat and power
  - e. Geothermal heat pumps, and
  - f. Fuel cells.

As an initial assessment of potential feasibility, the auditor's comments are to conclude and justify, for each of the six technologies, whether further study is recommended. Specifically, the auditor is to state that the property: is a potentially viable candidate and a feasibility study is recommended or is not a viable candidate and further study is not recommended.

NOTE: HUD expects a few sentences of discussion for each of the six technologies. For example, "Combined heat and power: The property has less than 80 units (a rule of thumb for minimum number of units for feasibility) and does not have a central power source. Further study is not recommended." Another example, "Geothermal heat pumps: The property has sufficient acreage to drill wells and uses enough energy for heating and cooling that this technology may be feasible. Further study is recommended."

- (x) Installed cost estimates for recommended energy and water efficiency measures.
- (xi) Expected useful life of recommended energy and water conservation measures.
- (xii) Annual energy and water saving estimates (consumption and cost reductions). In considering cumulative savings, the auditor should consider how measures may interact and be realistic about the overall portion of existing utility use that might be conserved.<sup>4</sup> The utility savings estimates will be contained in the Utility Savings worksheet of the RPCA model (note that the auditor may use the optional "Water Savers" worksheet of the model but **must complete** cell D28 of that worksheet for the total estimate of water savings).
- (xiii) Simple payback period in years for each evaluated measure, whether recommended or not. If more than one measure was evaluated, include a brief discussion of all measures evaluated and a justification for the one recommended in the narrative report. Include the recommended measure in the Cap Needs Input worksheet of the RPCA model.

<sup>4</sup> The installation of individual components, taken individually, may support a certain level of utility savings that will not be realized when all the recommended components are installed as a package. In addition, some components (e.g., the first-time installation of air conditioning) will serve to increase utility usage.

G. The RPCA should also include acknowledgments (who prepared report, the preparer's qualifications or a certification that the preparer meets the qualifications required in Part 2.1, when report was prepared, who received report and when report was reviewed).

H. In addition to the above, the auditor shall:

(i) Recommend any additional professional reports needed (including, for example alternate energy system feasibility studies, air infiltration tests for energy loss and ventilation needs, blower door tests, infrared imaging, duct blasting, etc.). The Lender/Owner will be responsible for obtaining such reports.

(ii) If the services of a subcontractor were secured to perform the RPCA, the Contractor shall review the inspection for quality, consistency and agreed upon format and conformance with the report requirements.

(iii) If requested by the Lender/Owner, attend a formal kick-off meeting to clarify the requirements and scope of the work to be performed.

### **3. Deliverables**

The report and completed worksheets of the RPCA model are made a part of the overall RPCA deliverables submitted by the RPCA contractor. See Part 1, paragraph 3 for instructions on delivering the draft and final narrative reports and RPCA model to the Lender/Owner.

## **PART 3. UTILITY CONSUMPTION BASELINE**

### **1. Introduction**

A. Overview: The goal of this statement of work is to establish a twelve month consumption baseline for normalized heating, cooling, lighting, and other electric, gas and water usage (not cost) by property.

B. Consumption Period for Demonstration Due Diligence: The contractor, in consultation with the owner, will establish a twelve-month consumption period, generally ending just prior to the application to the RAD program and maximizing availability of actual data. The twelve month period covered should be recent and similar for each utility and should conclude prior to any rehabilitation beginning at the property.

C. Consumption Data Collection: The result will be to understand and document what types of utilities are used, from what sources, how they are used and in what amounts they are used. Information on how utilities are used will come from the owner and RAD Physical Condition Assessment (RPCA) through the Energy Audit. In order to obtain the data, the contractor will receive releases from the owner, including releases the owner has

obtained from tenants for tenant accounts so that the contractor can obtain consumption data directly from each utility provider. The owner may also provide actual billing data.

(i) For each property paid utility, the releases will be executed by the owner and obtained from the owner by the Contractor.

(ii) For tenant paid utilities, the releases will be executed by tenants, obtained from the tenants by the owner, and obtained from the owner by the Contractor. Releases will be requested from tenants who have been in residence 12 months or more and new entrants. For non-metered fuel sources, such as propane or heating oil, the Contractor will obtain releases from the owner to obtain 14 months of billing history from the supplier(s), or if suppliers are not willing/ capable of providing histories, the Contractor will obtain copies of bills from the owner.

D. Data Ownership: All energy usage data and analysis is the property of HUD.

**2. Qualifications:** The contractor shall

A. Have experience in collecting utility consumption data and in using industry-recognized methods for estimating missing data and normalizing it for weather occurrences and property vacancies.

B. Not be under suspension or debarment by HUD, or involved as a defendant in criminal or civil action with HUD.

C. Produce baselines that are well regarded in the marketplace in terms of content, timeliness and responsiveness.

D. Have the capacity to complete the project inspection and prepare the report in a time frame acceptable to the Lender/ Owner.

**3. Statement of Work:** A contractor shall construct a Consumption Narrative Report containing at a minimum:

A. Project identifiers -PIC Number , property name, property location, name of contractor, ownership name and contact information, management agent contact information, if any, etc.

B. For all utilities associated with the property:

(i) Identify vendors/sources.

(ii) Identify use for residential: heat, hot water, lighting, a/c.

(iii) Identify use (generally on separate meters) for non-residential: common/exterior lighting, laundry, office, maintenance shop, commercial (some projects have commercial leases).

(iv) Identify how the utility is used, for example, central steam boiler, forced air furnaces, heat pumps, window type air conditioners, central air, electric baseboard heat, common area lighting (incandescent or fluorescent, other) exterior lighting (type of lighting device).

- (v) Identify party responsible for payment, owner or tenant.
- (vi) Note any non-metered fuel source usage such as heating oil or propane.
- (vii) Note any observed anomalies regarding rate structure, metering, on-site generating via solar panels, wind turbines, etc.; and
- (viii) To the extent possible and applicable, estimate the commercial and nonresidential portion of the use versus the residential use.

C. The Narrative is submitted as a PDF file.

D. Completed Utility Baseline – Summary and Utility Baseline – Monthly worksheets in the RPCA model, including:

- (i) General property information, utility provider information, and a property profile that includes the number of buildings, square footage, vacancy, and number of units.
- (ii) An overall summary of annual utility consumption across the entire property by utility type.
- (iii) An overall summary of annual utility consumption for each utility type and each meter at the property.
- (iv) Monthly utility consumption for each meter at the property.
- (v) For non-metered fuel sources such as heating oil or propane, attach detail for 14 months of consumption, and document how the estimate of twelve month consumption was reached.
- (vi) Adjust the actual consumption (usage) to produce weather-normalized summary consumption (usage). Use appropriate localized weather pattern data. Document the weather-normalization calculation in the Narrative. Note that HUD requires both raw and weather-normalized data.
- (vii) Adjust usage, based on available data, to a pro-forma 100 % occupancy by estimating additional use for unoccupied units. (This is in addition to, and complements, estimation for data gaps on occupied units.) This may affect some utilities, like water or electric, more than others, for example if heat is centrally provided.
- (viii) Establish an optional pro-forma adjustment factor to the consumption for cases where the RAD transaction involves changes in services provided at the property, for example the addition of air conditioning. If requested, supply estimate of utility consumption for the added service.
- (ix) Supply the completed RAD Utility Consumption workbook in Microsoft Excel, in the format required by HUD.

**NOTE:** The RPCA model also includes instructions for completion of the two utility consumption worksheets in a third worksheet titled, Utility Baseline – Instructions.

#### **4. Deliverables**

The narrative report and completed Utility Consumption – Summary and Utility Consumption – Monthly worksheets in the RPCA model are made a part of the overall RPCA deliverables submitted by the RPCA contractor. See Part 1, paragraph 3 for instructions on delivering the draft and final narrative report and the EXCEL workbook to the Lender/Owner.

**Exhibits (available on the RAD website at [www.hud.gov/RAD](http://www.hud.gov/RAD)):**

- 1 Fannie Mae Physical Needs Assessment Guidance
- 2 Form 4.4 Environmental Restrictions Checklist
- 3 Accessibility Law Compliance