

REQUEST FOR QUALIFICATIONS

RFQ NO. 2020 – REDEVELOPMENT

PARTNERS FOR
Neptune Court
1130 Heck Avenue
Neptune Township, NJ 07753

The Neptune Township Housing Authority
Executive Director Bart Cook, Esq. PHM

Advertisement Date: October 9, 2020

Pre-Submission Conference: October 20, 2020

Due Date: November 23, 2020

**ALL POTENTIAL RESPONDERS ARE ENCOURAGE TO PARTNER WITH
LOCAL MINORITY DEVELOPMENT FIRMS**

**RFQ NO. 2020 - REDEVELOPMENT DEVELOPMENT PARTNER
for Neptune Court: 1130 Heck Avenue**

The Township of Neptune Housing Authority (TNHA) is soliciting qualifications and proposals from private development teams (the "Respondent") to act as the developer, in partnership with TNHA and various other stakeholders, for 1130 Heck Avenue (Neptune Court). Developers should have broad experience in the development of affordable/public housing, mixed-finance development, market rate development, mixed-use and commercial development.

The Redevelopment Agreement (the "Contract") term is for a period of two (2) years with an option to extend for two (2) additional one-year terms at the sole discretion of the Township of Neptune Housing Authority.

A non-mandatory pre-submission meeting will be held October 20, 2020 at 11 am at the Township of Neptune Housing Authority's property Almerth Battle Homes located at 2100 Wells Ave Neptune NJ 07753 and site tour.

All questions pertaining to this solicitation must be submitted by October 23, 2020 to Bart Cook, Esq. PHM via email bcook1@tnha.org.

Submission to include, one original, three copies and a CD or flash drive of the response to this RFQ must be received no later than 3:00 p.m. on November 23, 2020 submitted to:

**The Neptune Township Housing Authority
Attn: Bart Cook, Esq. PHM, Executive Director
1810 Alberta Avenue
Neptune, New Jersey 07753**

Respondents are required to comply with the requirements of NJSA 10:5-31 et seq. and NJAC 17:27 (PL 1975 c 127 Affirmative Action). All respondents must also comply with 2 CFR 200.317-326.

The TNHA reserves the right to accept any and all proposals, or to waive any informality on the proposals and the right to reject proposals. The TNHA also reserves the right to select one (1) or more responsive and responsible Proposals.

No Proposal shall be withdrawn by a Respondent for a period of 60 days following the due date without the express written consent of the TNHA.

BACKGROUND

The Neptune Township Housing Authority (TNHA) is a tax-exempt governmental entity established under State Law and formed under the United States Housing Act of 1938. The agency's portfolio consists of 6 properties containing 345 public housing rental units scattered throughout Neptune Township (the "Township"). TNHA also administers over 318 Housing Choice Vouchers (Section 8).

The TNHA is governed by a six-person board of commissioners and is subject to the requirements of Federal Regulations, and the regulations and the laws of the State of New Jersey. All proposals submitted in response to this solicitation must conform to all of the requirements outlined in this specification in its entirety.

The purpose of the RFQ is to secure qualified development partners or firms ("Development Team") to acquire a ground lease from the TNHA, demolish and develop Neptune Court. The site currently contains 60 family units. PLEASE NOTE Neptune Court is subject to a "HUD Declaration of Trust" ("DOT") and will require HUD Final Disposition Approval of same. The development opportunity may include a combination of Mixed-Use, Public Housing/Affordable & Market Rate-Rental, Retail & Commercial. Qualified Developers MUST determine the Highest and Best Use for Neptune Court. The Developers must research and be familiar with the Township's Zoning and Redevelopment Area requirements.

ALL POTENTIAL RESPONDERS ARE ENCOURAGED TO PARTNER WITH LOCAL MINORITY DEVELOPMENT FIRMS

GENERAL INFORMATION

TNHA'S RESERVATION OF RIGHTS

- The TNHA reserves the right to reject any or all proposals/qualifications, to waive any informality in the RFQ process, or to terminate the RFQ process at any time, if deemed by the TNHA to be in its best interests.
- The TNHA reserves the right not to select a Development Team pursuant to this RFQ.
- The TNHA reserves the right to select a Development Team consisting of one or more respondents pursuant to this RFQ.
- The TNHA reserves the right to terminate discussions with a Respondent with or without cause .
- The TNHA reserves the right to reject and not consider any proposal that does not meet the requirements of this RFQ, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.
- The TNHA shall have no obligation to compensate any the Respondent for any costs incurred in responding to this RFQ.
- The TNHA shall reserve the right to at any time during the RFQ process to prohibit any further participation by a Respondent or reject any proposal submitted that does not conform to any of the requirements detailed herein.

- The TNHA reserves the right to retain and not permit withdrawal of all proposals for sixty (60) days after the due date.

NON-CURABLE ITEMS

The following requirements shall be considered mandatory items to be submitted at the time specified by the contracting unit for receipt of the proposal; the failure to submit any one of the mandatory items shall be deemed a fatal defect that shall render the proposal submission unresponsive and that cannot be cured by the governing body.

1. Stockholders Disclosure Certification pursuant to NJSA 52:25-24.2
2. A listing of sub-consultants AND sub-consultant certification as required by NJSA 40A:11-16
3. A document for the respondent to acknowledge receipt of any notice or revisions or addenda to the advertisement or proposal documents, or if applicable, the respondent acknowledges same pursuant to NJSA 40A:11-23.2e

Each proposal/qualifications form must give the full business address, business phone, fax, e-mail (if available), the contact person of the Respondent, and be signed by an authorized representative as follows:

- Partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing.
- Corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the president, secretary or other person authorized to bind the corporation in the matter.
- Sole proprietorship shall be signed by the proprietor.
- When requested, satisfactory evidence of the authority of the officer signing shall be furnished.
- Each Respondent must provide evidence of "good standing" in New Jersey with its submission.

PROOF OF BUSINESS REGISTRATION

Each Respondent shall submit proof of business registration in accordance with N.J.S.A. 52:32-44. Proof of registration shall be a copy of the respondent's Business Registration Certificate ("BRC"). A BRC is obtained from the New Jersey Division of Revenue. Information on obtaining a BRC is available on the internet at www.nj.gov/njbgs or by phone at (609) 292-1730.

N.J.S.A. 52:32-44 imposes the following requirements on Respondents and all sub-consultants that knowingly provide goods or perform services for a Respondent fulfilling this contract. The Respondent shall provide written notice to its sub-consultants and suppliers to submit proof of business registration to the respondent. If the proposal includes the use of named sub-consultants, the Business Registration Certificates for those sub-consultants must also adhere to the requirements of N.J.S.A 52:32-44. During the term of this contract, the Respondent and its affiliates

shall collect and remit, and shall notify all sub-consultants and their affiliates that they must collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into this State .

A Respondent, sub-consultants or supplier who provides false business registration information or post award, fails to provide proof of business registration for added sub-consultants shall be liable to a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration not properly provided or maintained under a contract with a contracting agency. Information on the law and its requirements is available by calling (609) 292-1730.

METHOD OF CONTRACT AWARD

1. The length of the contract shall be stated in the public notice and specifications. Pursuant to requirements of N.J.A.C. 5:30-5.1 et seq., any contract resulting from this proposal shall be subject to the availability and appropriation of sufficient funds annually
2. The form of Contract shall be submitted by the TNHA to the successful Respondent(s). Terms of the specifications/proposal package prevail. The successful Respondent must take written exception to provisions in the Contract to which it objects within 15 days after the receipt of the Contract by successful Respondent. The Respondent may also provide additional terms which must be accepted by the TNHA. Respondent exceptions must be formally accepted by the TNHA.

INTENT AND SCOPE OF SERVICES

DEVELOPMENT LOCATION AND DESCRIPTION

The TNHA proposes to develop Neptune Court:

Neptune Court currently comprises 60 family units of federally subsidized public housing in 3 three-story walk-up buildings, a management office, and a community room all of brick and concrete construction. The management office is located at 1810 Alberts Avenue, Neptune Township, NJ 07753. The entire site occupies approximately 1.9 acres.

The development of Neptune Court is anticipated to involve the demolition of the entire site. Due to the existence of the DOT and public housing dollars allocated to this site all agreements are subject to HUD review and approval prior to final execution and additional review and approval requirements may apply. TNHA will be submitting a Demolition and Disposition Application for the entire property and will require HUD approval. Respondent must acknowledge the requirements of HUD approval in its Proposal.

MINIMUM PROGRAM REQUIREMENTS

This development is subject to the following minimum program requirements (the "Program"):

Mixed-income and/or non-residential developments. Create at least 60 new units of affordable housing to reflect a new, economically viable mixed-income community that includes residential and/or non-residential uses.

High quality design. Create a sustainable new community consistent with the aesthetics of the

neighborhood of high-quality design that meets and exceeds industry standards and incorporates state-of-the-art energy conservation and green building practices where possible. The Development Team will be responsible to retain, provide and fund all architectural and engineering services for the proposed development.

Leverage resources. Pursue funding sources appropriate and available for the development and leverage TNHA-owned land. Work collaboratively with TNHA, state, federal and local agencies to identify a variety of resources to support housing and non-residential components, including the acquisition of additional real property as needed. These resources may include, but are not limited, to taxable and tax-exempt bond financing, Community Development Block Grant/Home Investment Partnerships Act ("CDBG/HOME") Program funds, Federal Home Loan Bank (AHP), debt and equity financing, HUD Multifamily Insurance Programs, Opportunity Zone Equity Investment, NMTC, Low Income Housing Tax Credit ("LIHTC"), and commercial and mezzanine financing.

Neighborhood integration. Create a diverse community that connects the site to the surrounding neighborhoods, strengthens the economic vitality of the area, and supports the functions of daily life including education, recreation, retail, and community facilities.

Public engagement. Actively engage the participation of the neighborhood, residents, public agencies and institutions, community-based organizations, and businesses in the planning and implementation efforts for the Project.

ROLES AND RESPONSIBILITIES

A. The Development Team's Role

The primary role of the Development Team will be to develop a proposed development plan for the designated site that meets the needs and desires of TNHA, the Township of Neptune and local stakeholders.

Phase 1: Development Planning

The primary role of the Development Team is to develop a plan for Neptune Court, which meets the needs and desires of TNHA, the residents, and the surrounding community. It is expected that the following items be developed:

- Site Existing Conditions
- Market Study
- Site Plan and Supporting Land Use, Development Recommendations
- Site Design Recommendations
- Sustainability Plan
- Financial Feasibility Analysis
- Total Development Cost (TDC)
- Schedule of Major Activities

Phase 2: Predevelopment and Site Development

Following the successful completion and approval of a Development Plan, the Development Team will be responsible for conducting any additional pre-development work, participating in any community planning meetings and securing private and public financing commitments. If a determination is made to apply for federal funding, the Development Team will be responsible for securing firm commitments for the necessary private financing to ensure that the project earns maximum points for leveraging funding, as applicable.

B. The Neptune Township Housing Authority's Role

1. HUD Contact - TNHA will manage and take responsibility for all communication with HUD relative to the Declaration of Trust.
2. Funds – TNHA does not have funding or subsidies available to invest.
3. Land Owner – Subject to HUD authorization (where applicable), TNHA will lease and/or sell (whichever scenario is determined to be the most economically advantageous to TNHA) the parcel to the Developer Team who will be responsible for developing the physical improvements.
4. Real Estate Structure – It is TNHA's intent to enter into a financial and real-estate structure with the Development Team that maximizes financial benefit to the TNHA.
5. Post Construction Management of the site with the Development Team with cost sharing including management fees.

DEVELOPMENT TEAM

List of Qualified Firms - Through the RFQ process described herein, the TNHA will create a prequalified list of professionals that can provide the listed services.

Interested Development Teams shall submit information concerning the Development Teams' capacity, qualifications, and experience as outlined in this RFQ. The RFQ responses will be reviewed by an evaluation committee ("Evaluation Committee") comprised of representatives internal to the Neptune Township Housing Authority.

TNHA seeks RFQ responses from Developers that provide the following information, including specific examples thereof :

- Highly qualified planning and development team members;
- Strong track record serving as lead developer planning and executing a mixed-income and/or mixed-use commercial development plans;
- Proven ability to work with several stakeholders whose interests and redevelopment objectives may differ;
- Proven ability to identify, secure and maximize private and public sector participation in the financing of complex residential and/or commercial projects;
- Strong financial capacity to carry forward and complete the components of this Program;
- Demonstrated examples of innovative and creative planning and design proposals;
- Demonstrated examples of completed projects, designed by a master planner proposed as part of the Development Team, with attractive and creative planning and design;
- Strong track record in partnering with residents, community and neighborhood groups and local agencies with diverse interests to achieve locally determined goals;
- Demonstrated commitment to employ low-income residents and to utilize minority and women-owned businesses;
- Experience and knowledge of the local housing market, regulations and codes, familiarity with federal and local affordable housing programs and the local agencies that administer these programs (including Low Income Housing Tax Credits, Tax Exempt Bonds and related public agencies); and
- Experience working with HUD mixed finance program (if applicable).
- Experience with Opportunity Zones.

- Address: Developer long term, plan for housing asset after end of 15-year compliance period.

Note: The Evaluation Committee reserves the right to consult with professional consultants, advisors, and other stakeholders for technical assistance; as well as request interviews of the Development Teams to obtain clarity with respect to qualifications if such is deemed to be in the best interest of the TNHA.

At the conclusion of the evaluation, a short list will be developed. The short list will be composed of Development Teams with proposals that align most closely with the goals of the TNHA and are responsive to the RFQ. TNHA will contact all Development Teams to inform them of the RFQ results.

QUALIFICATIONS FORMAT

The purpose of the RFQ is to allow the Respondent to demonstrate its: qualifications, experience, and competitive differentiators; understanding of the Authority's Program objectives, applicable regulatory requirements, and limitations; and ability to provide/raise the requisite financing. The response should address all the points outlined herein.

QUALIFICATIONS OF EACH RESPONDENT

1. Response submission deadline is by November 23, 2020 .

ADDITIONALLY, one original, three copies and a CD or flash drive of the response to this RFQ must be received no later than 3:00 pm and shall be submitted to:

**NEPTUNE TOWNSHIP HOUSING AUTHORITY
Attn: Bart Cook, Esq. PHM, Executive Director
1810 Alberta Avenue
Neptune, NJ 07753**

Request for Qualifications / Proposal responses shall be submitted in sealed envelopes marked "**TNHA RFQ No. 2020 – REDEVELOPMENT**"

2. The qualification response shall not contain any pricing information.

A pre-submission conference will be held on October 20, 2020 at 11 am at Neptune Township Housing Authority's property Almerth Battle Homes located at 2100 Wells Ave Neptune NJ 07753 and site tour.

Purpose of Conference: discussions of scope of work, Project and respond to questions regarding the RFQ; for clarification purposes any responses to the RFQ will be communicated in writing through an addendum.

REQUEST FOR QUALIFICATIONS SUBMISSION FORMAT

Table of Contents - Provision of a comprehensive listing and location of all written pages, exhibits and other materials.

3. Letter of Interest - The letter of interest should include an affirmative statement of your understanding of, and interest in this RFQ, the name of the Respondent, the location of the principal place of business, the type of business entity (e.g., corporation, partnership, etc.),

and the state of incorporation. The name of the primary contact person must accompany the submission, along with direct contact information.

4. Non-Curable Documents

- a) *Stockholders Disclosure Certification* - N.J.S.A. 52:25-24.2 provides that no corporation or partnership shall be awarded any contract for the performance of any work or the furnishing of any goods and services, unless, prior to the receipt of the bid or accompanying the bid of said corporation or partnership, the bidders shall submit a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own ten percent or more of its stock of any class, or of all individual partners in the partnership who own a ten percent or greater interest therein.
- b) *Listing of sub-consultants and sub-consultant's certification forms* – A signed listing of all sub-consultants to be used and completion of certification form.
- c) *Acknowledgement of Receipt of Addenda/Clarifications* – Return as required the document provided by the contracting agent in the plans, specifications or bid proposal documents for the bidder to acknowledge the bidder's receipt of any notice, revisions, addenda or clarifications to the advertisement or proposal documents.

5. Statement of Qualifications

- a) *Description of the Development Team* - Provide a description of the Development Team or partnership, which proposes to undertake the development. This description should highlight the history of the firm and/or partners, its organization, and the principals. The submission should demonstrate the Development Team's capacity to undertake all aspects of a project of the same scale and scope as the proposed development. The Development Team should demonstrate capacity and experience in all phases of development, including planning, design, financing, construction, construction management, and property management.

The specific Development Team assigned to the Project should be described in detail, including respective roles, responsibilities, and percentage of each person's working time likely to be dedicated to the project. Developer must include a building architect. Resumes of key personnel and principals must be included in the submission.

Participation by minority and women-owned business enterprises ("MWBE") is an important goal of the TNHA development program. Additionally, participation with certified disadvantaged business enterprises ("DBE") is strongly encouraged and will receive additional points in scoring for evaluation purposes.

- b) *Experience of the Development Team in Planning and Development of Mixed-Income Housing including Low-Income and Market Rate Housing along with Commercial Development experience* - Provide a narrative description of the Development Team's experience in planning and developing low-income, mixed-income, and market rate housing. Narrative should include any experience in planning and developing retail and commercial development as part of a mixed-use, mixed-income development. Please include any experience planning and attracting retailers and services to the site.

The narrative should describe the Developer's experience in developing a mixed-

income housing neighborhood that includes a vision statement, development goals, and implementation strategies. The Development Team is expected to produce an existing conditions analysis, economic development and market analysis, transportation analysis, financial feasibility, urban design framework, zoning analysis, schematic renderings and site plans for development, and associated plan recommendations (land uses, zoning, relocation, circulation, sustainability, supportive services, budget, total development cost, schedule of major activities, etc.).

The narrative should describe Developer's experience and should list up to 5 comparable projects substantially complete or completed within the last ten years and provide the following: name and location of the project; a financial description of the project (first mortgage, equity, private contributions, federal grants, local contributions); unit type/unit mix description (single family, townhouse, multi-family, public housing rental, for sale); income mix of the residential units; total number of dwelling units; total square footage of commercial/non-residential use property, if applicable; total development cost; date completed; whether project was completed within budget and on schedule; development partner or joint venture party, if applicable; sponsoring agency, if applicable; and location of the final planning document (website address if available online or contact name/organization/ mailing address/phone number if not available online). This information should be provided in a matrix format.

- c) Experience in Development of Site Plans and Designs of Mixed-Income Housing - The Development Team's experience (or experience of Development Team members) in developing site plans and designs for mixed-income housing and mixed use developments, including working with residents, neighborhood and community interests, and local public agencies to achieve locally determined goals. Outline the Development Team's experience in sustainability and developing and implementing development and management plans utilizing green building standards.
- d) Experience in Financing - Describe the Development Team's experience in financing mixed-income, retail, and commercial developments. The description should include the Development Team's experience utilizing varied forms of financing instruments including LIHTC, NMTC, bond financing, first and soft-second mortgage financing, Opportunity Zone Equity Investment etc. and experience leveraging both private and public funding within a development. The description of experience utilizing the LIHTC program should outline the equity raised and number of units built by project. Provide a detailed description of the Development Team's recent experience in obtaining private financing, including combining the use of any federal or state tax credit financing with same. Development Teams should submit clear information concerning any available credit and a narrative about their experience with a variety of the above-mentioned financing methods. Summary information on the operating status and financing terms (i.e. positive cash flow, adequate operating and replacement reserve levels, and physical condition) of all of the Development Team's projects identified in b), above, must also be provided. For those that are not performing successfully, the Development Team should explain the circumstances for non- performance.
- e) Experience with MWBE and HUD Section 3 - Describe the Development Team's experience with MWBE's, hiring of local, low income residents and the Development Team's experience in compliance with HUD Section 3 requirements and the results achieved. Development Teams should indicate any experience in providing minority equity participation in prior development projects. Development Teams should submit information about its policies, plans, activities, and accomplishments in creating

a diverse workforce. The narrative should also indicate any experience in hiring residents or utilizing MWBE/DBEs and to what extent MWBE/DBEs are included in the Development Team. The narrative should clearly describe the results achieved in the Development Team's experience in hiring and training Section 3 residents.

- f) Experience in Construction and Construction Management - The Development Team's experience in managing complex residential, mixed-income and mixed-use commercial construction projects in a timely manner and within budgetary constraints. Development Teams should submit clear information on the number of construction sites managed at one time and the size of each. The narrative should indicate what type of construction and management methods were used; what portion of the projects have been completed on time and, if not, an explanation of the causes of delay; whether the project was completed within budget and, if not, an explanation of the reason for the cost overruns; number and description of change orders; and, an explanation of any defaults occurring on the project and whether the Development Team had any financial interest in a defaulted project.
- g) Property Management Experience - Describe the property management experience of the Development Team, including a list of all properties under management now or in the last five (5) years, including name, owner, location, type of site, type of construction, income and subsidy mix, number and size of units and operating and mortgage status. Please indicate whether any management contract has been terminated within the past five (5) years and, if so, the date of termination and the reasons for termination. Describe in detail the property(ies) with management challenges similar to those of this redevelopment project, including mixed-income projects, mixed-use projects, and retail/commercial projects.
- h) State and local government knowledge and experience - Describe the Development Team's knowledge and experience with the State of New Jersey, NJHMFA and local building codes, regulations, zoning and laws, sources of funding and financing for low-income and mixed income developments as well as mixed use commercial developments.
- i) Experience in partnering with neighborhood groups - Describe the Development Team's experience in working with neighborhood groups to achieve locally determined goals developed by residents.
- j) Experience with service providers and supportive and community service programs - Describe the Development Team's experience with incorporating a supportive and community service component into the redevelopment process. This includes, but is not limited to, Family Self-Sufficiency, Community and Supportive Service programs, neighborhood economic development, and educational training and employment programs.
- k) Legal Experience - Describe the experience of the key legal personnel in structuring and negotiating complex real estate projects including bond finance, HUD grants or guarantees and experience in federal, state and local tax credit financing and incentive programs.
- l) Experience in Preparing HUD Proposals, including Mixed-Finance Applications - Development Teams should submit a clear narrative demonstrating any prior experience working with local housing authorities and the public housing program, including LIHTC, bond financing, first and soft-second mortgage financing.

Respondent should detail any experience with preparing and submitting Demolition/Disposition, HOPE VI, CHOICE, Rental Term Sheets, Homeownership Term Sheets and Mixed-Finance Applications to HUD.

6. Organization Hierarchy - Organization chart for all entities comprising the Development's Team, in diagram and list formats.
7. Financial Information - Provide a current financial statement of the development entity, prepared by a Certified Public Accountant, along with the most recent audit (included as an exhibit). The statement should show the assets, liabilities and net worth of the entity.
8. References - Provide a list of at least three (3) but no more than six (6) past or current partners, to include a resident partner or participant, in projects where the proposed Development Team (and/or references for each member of the Development Team as appropriate) has demonstrated capacity in all or some of the areas and programs enumerated above. The list must include the name and location of the project; the role of the Development Team (or development team member) in the project; and the name, email telephone and fax number and addresses of the person most familiar with the work performed.
9. Statement Regarding Debarments, Suspension, Bankruptcy, or Loan Defaults - Development Teams shall provide a statement regarding any debarments, suspensions, bankruptcy, or loan defaults on real estate development projects and/or government contracts of any of the Development Team's entities or affiliates.
10. Evidence Regarding Tax Liabilities - Development Teams shall provide a statement regarding any tax liabilities and other government impositions that are not current for any of the Development Team's entities.
11. Current or Threatened Litigation - Development Teams shall provide a statement regarding any current or threatened litigation that relates to any development team member, affiliate or to any other entity or individual having a controlling interest in the entity (or entities) that comprise the Development Team. If such litigation exists, Development Teams shall provide the name and civil or criminal action number of such litigation and a description of the subject matter of such litigation.

OTHER CONSIDERATIONS

Conflicts of Interest - Respondent also acknowledges that it is informed that the Charter of the TNHA and its Ethics Code prohibit a TNHA officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the TNHA or any TNHA agency such as TNHA-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the TNHA or in the sale to TNHA of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the TNHA officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a TNHA contract, a partner or a parent or subsidiary business entity.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the TNHA.

Independent Contractor - Respondent agrees and understands that if engaged to provide services, it and all persons designated by it to provide services in connection with a contract, shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that TNHA shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority, except by express consent of the TNHA.

Insurance - Respondent acknowledges and agrees that, if engaged to provide services, TNHA may require, that Respondent will provide proof of insurance in amounts acceptable to TNHA, including, but not limited to, the following categories of insurance: Professional Liability, General Liability, General Commercial Liability, Automobile Liability, and Worker's Compensation, if deemed necessary by the TNHA's Risk Manager.

OTHER REQUIRED SUBMISSION DOCUMENTS:

- A. Each respondent is required to submit, the documents included in the *Submission Documents* package. These include:
1. Acknowledgment of Addenda (if addenda are issued) *(Non-Curable Document)*
 2. Affidavit of Disadvantaged Business Enterprise (DBE) Participation
 3. Affidavit of Non-Collusion - Services
 4. Affidavit of Non-Default
 5. Affirmative Action Compliance Notice Goods & Services
 6. Drug Free Work Place Certification
 7. HUD Form 50071 - Certification of Payments to Influence Federal Transactions
 8. HUD Form 5369 A - Certifications and Representations of Offerors
 9. HUD FORM 5370 C-1 General Conditions for Non-Construction Contracts
 10. W-9 Taxpayer Identification Number and Certification
 11. Section 3 – Schedule D
 12. Subcontractor Listing *(Non-Curable Document)*
 13. Subcontractor Certification *(Non-Curable Document)*
 14. Stockholders Disclosure *(Non-Curable Document)*

Respondent is expected to examine this RFQ carefully, understand the terms and conditions for providing the services listed herein and respond completely.

- B. Complete Responses - Complete responses will be evaluated in accordance with the evaluation criteria contained herein. Responses should set for the full, accurate, and complete information as required by this RFQ.

- C. Consent to Subcontract - The prior, written consent of TNHA must be obtained to subcontract any portion of the work contained in this RFQ. Failure to disclose subcontractors with a proposal response may lead to proposal rejection in accordance with N.J.S.A. 40A: 11-23.2.
- D. Unnecessarily Elaborate Responses - Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the Development Team's lack of cost consciousness. Elaborate artwork, expensive paper bindings, and expensive visual and other presentation aides are neither necessary nor desired. General marketing or promotional materials are not desired.
- E. Proprietary and Confidential Information - Proprietary and confidential information contained in Respondents' proposals must be clearly marked as such on the face of the proprietary or confidential document(s). TNHA will not disclose or use such proprietary and confidential information for any purpose other than to evaluate the proposal, except as required under applicable law. TNHA reserves the right, in the event of a contract award, to use such confidential and proprietary information in furtherance of the requirements and objectives contained in this solicitation.
- F. Best and Final Offers - Each initial proposal should contain the Development Team's best terms. However, if discussions are warranted and are held with the Development Teams, all Development Teams will be notified regarding the holding of discussions and will be provided an opportunity to submit written best and final offers (BAFOs) at the designated date and time. If any modification is submitted, it must be received by the date and time specified and is subject to the "Late Submissions, Modification and Withdrawals of Responses" provisions of this solicitation.

After receipt of BAFOs, no discussions will be reopened unless the Contracting Officer determines that it is clearly in TNHA's best interest to do so. If discussions are opened, the Contracting Officer shall issue an additional request for best and final offers to all Development Teams still within the competitive range.

G. Late Responses, Modifications and Withdrawals of Responses

- a) Responses and modifications to responses that are received in the designated TNHA office after the exact time specified in the RFQ are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:
 - 1. the response or modification was sent by registered or certified mail not later than the fifth (5th) calendar day before the date specified for receipt of Development Teams;
 - 2. the response or modification was sent by mail and it is determined by the Contracting Officer that the late receipt at the location specified in the RFQ/RFP was caused by mishandling by TNHA after receipt; or
 - 3. the response is the only response received.
- b) The only acceptable evidence to establish the date of a late response, late modification or late withdrawal sent either by registered or certified mail shall be a U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the response, modification, or withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown.

If no date is shown in the postmark, the response shall be considered late unless the Development Team can furnish evidence from the postal authority of timely mailing.

- c) Any request for withdrawal or request for modification received after the time and date set for submission of responses at the place designated for submission shall be considered "late."
 - d) A late response, late request for modification, or late request for withdrawal shall not be considered, except as provided by this section.
 - e) A late modification of a successful response, which makes its terms more favorable to TNHA, shall be considered at any time it is received and may be accepted.
- H. Acknowledgement of Addenda - The Development Teams shall acknowledge receipt of any amendment(s) or addendum to this solicitation. Failure to acknowledge and amendment or addendum shall be cause for rejection in accordance with N.J.S.A. 40A:11- 23.2e.
- I. Signing of Responses - The Development Team shall sign and print or type its name on the response. Erasures or other changes must be initialed by the person signing the response. Responses signed by an agent shall be accompanied by evidence of the agent's authority to bind the Development Team.

Responses by a partnership must be signed with the partnership name by one of the partners of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Responses by a limited liability company shall be signed by a member or manager of the company, followed by the signature and designation of the person signing. Corporations must be signed with the name of the corporation, followed by the signature and designation of the President or Vice President and attested to by the Secretary of the Corporation or other persons authorized to bind the Corporation. The Corporate Seal must be affixed thereto. If the response is signed by other than the President or Vice President, evidence of authority to so sign must be furnished by resolution of the Board of Directors meeting or extract of by-laws certified by the Corporate Secretary with Corporate Seal affixed thereto.

The names of all persons signing shall be typed or printed below the signatures. Any response by an individual who affixes to his signature the word "President," "Vice President," "Secretary," "Agent," or other designation, without disclosing his principal, may be held personally to the response. Responses submitted by a joint venture must be signed by all authorized venture personnel.

- J. Selection Non-Binding - The selection by TNHA of a Development Team indicates only TNHA intent to negotiate with the Development Team, and the selection does not constitute a commitment by TNHA to execute a developers I agreement or contract with the Development Team. Development Teams therefore agree and acknowledge that they are barred from claiming to have detrimentally relied on TNHA for any costs or liabilities incurred as a result of responding to this RFQ.

Failure to complete and provide any of these documents may result in your Respondent not being placed on the qualified list.

GENERAL INSTRUCTIONS

Submission deadline is by November 23, 2020. It is the Respondent's responsibility that proposals are submitted by the due. TNHA is not responsible for any delays with the US Postal Service or other courier service.

QUESTIONS

The deadline for receipt of questions pertaining to this RFP shall be by October 23, 2020.

During the RFQ solicitation process, the TNHA will NOT conduct any ex parte (a substantive conversation—“substantive” meaning, when decisions pertaining to the RFQ are made—between the TNHA and a prospective proposer when other prospective Respondents are not present) conversations that may give one prospective proposer an advantage over other prospective Respondents.

INTERPRETATION AND ADDENDA:

The Respondent should rely only on representations, statements or explanations, contained in this RFQ, any documents that the Authority has provided the Respondent, which are referred to in this RFQ, and in such formal written addenda as are issued by the Authority prior to the Proposal submission deadline.

DISCREPANCIES IN PROPOSALS

If the amount shown in words and its equivalent in figures do not agree, the written words shall be binding. Ditto marks are not considered writing or printing and shall not be used.

EVALUATION AND SELECTION CRITERIA

All qualifications will be evaluated through consideration of several evaluation factors. The Respondents will be scored on a one hundred (100) point scale. An evaluation committee will review and score Respondents' proposals in accordance with the evaluation criteria as set below.

EVALUATION CRITERIA - REQUEST FOR QUALIFICATIONS	MAXIMUM POINTS
Experience and Capacity Developers will provide evidence of development team experience, financial capacity, prior history of providing community benefits, and detailed information of at least five recent developments completed by the developer.	30
Development Strategy Developers will create for Neptune Court an affordable housing strategy. The Development Strategy will include one or more of the following types of affordable, market rate or mixed used housing: <ul style="list-style-type: none">• Public Housing• Affordable Multifamily Rental Housing (Senior & Family)• Mixed-income Housing Market Rate & Affordable• Innovative Housing Types such as Micro Housing, Stacked Modular Housing and other types of Manufactured Housing• Mixed Use / Commercial	30

<p>Financial Capacity Document stable income and net income over a three-year period; provide detailed explanations of any interruptions in that stability; provide any explanations of any extraordinary expenses; and include a summary</p>	<p>30</p>
<p>schedule that presents side-by-side columns of the three years of audited income statements for comparative purposes.</p> <ul style="list-style-type: none"> • Document stable and adequate cash and cash equivalent assets as equity resources and consistent avoidance of an over-leveraged financial position; include a summary schedule that presents three years of balance sheets in side- by-side columns for comparative purposes • Explain any material contingent liabilities and relevant financial arrangements whether noted or not in "Notes to Audited Financial Statements" that are reasonably important to judging financial capability. • Show the ability to access capital appropriate to the size and type of developments that could be proposed. • Include the documentation, explanations, summary schedules and audited financial statements for the last three (3) audits of the developer. 	
<p>Community Benefits Describe the participation of MWBE/DBE, Small Businesses, Emerging Businesses, and Disabled Veterans Businesses. Also describe participation in local hiring programs, if any. When describing previous engagement efforts, list specific percentages of engagement achieved for each example project. In the narrative, include the developer's track record in addressing TNHA's goals, sources of contractors, the Developer's plan to meet the minimum targets, the desired outcomes and who is accountable for achieving the desired goals</p>	<p>10</p>
<p style="text-align: center;">TOTAL AVAILABLE POINTS - RFQ</p>	<p>100</p>

The TNHA will make an award to the responsible Respondent (s) whose qualifications conforms to the solicitation and is most advantageous to the TNHA.

ADDITIONAL INFORMATION

INSURANCE REQUIREMENTS

Before commencing of services under this project, the Respondent shall furnish to the Authority certificates of insurance showing that the following insurance is in force, stating policy numbers, dates of expiration, limits of liability, deductibles, and aggregate amounts payable hereunder. Certificates of insurance must contain a 30-day cancellation clause and a brief description of the work to be performed. The Authority shall be named as an Additional Insured on the

Comprehensive General Liability and Automobile Liability Insurance policies, which shall be properly endorsed.

- a. Worker's Compensation and Employer's Liability Insurance according to the laws of the state in which the Development Team's services are to be performed.
- b. Professional Liability Insurance covering claims made at any time prior, during, or subsequent to completion of the Respondent's services with a limit of not less than \$5,000,000.
- c. Comprehensive General Liability Insurance (bodily injury and property damage coverage) covering claims made at any time prior, during, or subsequent to completion of the Respondent's services with a limit of not less than \$2,000,000.
- d. Comprehensive Automobile Liability Insurance covering non owned and hired vehicles, as well as for owned vehicles for bodily injury and property damage with a combined single limit of no less than \$1,000,000.00 (each accident) per occurrence.

Where an amendment to the policies is required as a result of a contract with the Authority, the amendment shall be made prior to the signing of said contract.

EQUAL EMPLOYMENT OPPORTUNITY, AFFIRMATIVE ACTION STATEMENT

The goal of the Affirmative Action Program is thirty percent (30%) of the dollar value of the total contract awards and purchases during the fiscal year. The Respondent's commitment to Affirmative Action and Minority Business Enterprises shall be demonstrated by submittal of evidence indicating:

1. An active Affirmative Action Program, hiring practices, minorities in upper management positions and/or minority ownership.
2. The utilization of minority owned businesses as subcontractors or Joint Venture partners.

MANDATORY AFFIRMATIVE ACTION STATEMENT CERTIFICATION

The goal of the Affirmative Action initiative is for consultants to offer thirty percent (30%) of the dollar value of the total contract awards and purchases for construction requirements (twenty percent (20%) for non-construction requirements) to qualified minority- and women-owned business enterprises. The Respondent's commitment to Affirmative Action shall be demonstrated by submittal of evidence indicating the utilization of minority and women-owned businesses as sub-consultants or Joint Venture partners.

Goods and Services Contracts: No firm may be issued a contract unless it complies with the affirmative action provisions of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1 et seq.

Each contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- i. A photocopy of a valid letter that the contractor is operating under an existing Federally approved or sanctioned affirmative action program (good for one year from the date of the letter); or
- ii. A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4; or
- iii. A photocopy of an Employee Information Report (Form AA 302) provided by the Division and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

The Respondent's submission will be rejected as non-responsive if either one of the required documents is not submitted in the specified time frame

SECTION 3 CLAUSES:

- 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 Respondents to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As the Respondent will certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Respondent 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.
- D. The Respondent 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.
- E. 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.

AMERICANS WITH DISABILITIES ACT OF 1990

Discrimination on the basis of disability in contracting for the purchase of goods and services is prohibited. Respondents are required to read Americans with Disabilities language that is included as Appendix A of the sample contract and agree that the provisions of Title II of the Act are made a part of the contract. The Developer is obligated to comply with the Act and to hold the owner harmless.

TRUTH IN CONTRACTING

Respondents should be aware of the following statutes that represent "Truth in Contracting" laws:

- N.J.S.A. 2C:21-34, et seq. governs false claims and representations by Respondents. It is a serious crime for the Respondent to knowingly submit a false claim and/or knowingly make material misrepresentation.
- N.J.S.A. 2C:27-10 provides that a person commits a crime if said person offers a benefit to a public servant for an official act performed or to be performed by a public servant, which is a violation of official duty.
- N.J.S.A. 2C:27-11 provides that a Respondent commits a crime if said person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant. Respondents should consult the statutes or legal counsel for further information.

TERMINATION

1. If, through any cause, the Respondent shall fail to fulfill in a timely and proper manner obligations set forth herein or a developer's agreement or partnership agreement, or if the Respondent shall violate any of the requirements of the Contract, the TNHA shall there upon have the right to terminate the Contract upon ten (10) days written notice to the Respondent of such termination and specifying the effective date of termination..
2. Notwithstanding the above, the Respondent shall not be relieved of liability to the TNHA for damages sustained by the owner by virtue of any breach of the Contract by the Respondent.
3. The Respondent agrees to save, defend, indemnify and hold the owner harmless from any liability to sub-consultants/suppliers concerning payment for work performed or goods supplied arising out of the lawful termination of the Contract by the TNHA under this provision.
4. In case of default by the Respondent, the TNHA may procure the goods or services from other sources and hold the Respondent responsible for any excess cost.
5. ACQUISITION, MERGER, SALE AND/OR TRANSFER OF BUSINESS, ETC. It is understood by all parties that if, during the life of the contract, the Respondent disposes of his/her business concern by acquisition, merger, sale and or/transfer or by any means convey his/her interest(s) to another party; all obligations are transferred to that new party

upon the consent and approval of the TNHA. In this event, the new owner(s) will be required to submit all documentation/legal instruments that were required in the original proposal/contract. Any change hereunder shall be approved by the TNHA. The Respondent will not assign any interest in the contract and shall not transfer any interest in the same without the prior written consent of the TNHA.

6. The TNHA may terminate its relationship or negotiations with the Respondent or the Contract for convenience by providing ten (10) calendar days written notice to the Respondent.

PAY TO PLAY

Starting in January 2007, business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of \$50,000 from public entities in a calendar year.

Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

STANDARD DOCUMENTS INDEX DOWNLOAD DOCUMENTS FROM THE INDICATED WEBSITE LINK:

INSTRUCTIONS TO OFFERORS NON-CONSTRUCTION (HUD 5369-B)

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud5a

GENERAL CONTRACT CONDITIONS NON-CONSTRUCTION (HUD 5370-C)

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud5a

2 CFR 200.317-326 (CODE OF FEDERAL REGULATIONS)

<http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1.4.31&rgn=div7>

HUD SECTION 3 PROGRAM

https://www.hud.gov/program_offices/fair_housing_equal_opportunity/section3/section3

ATTACHMENT A – Section 3 Business Concern Listing

ATTACHMENT B - Minority Co-Developer List

Certification of Payments to Influence Federal Transactions

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

Applicant Name

Program/Activity Receiving Federal Grant Funding

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

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

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

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

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

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

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

Name of Authorized Official

Title

Signature

Date (mm/dd/yyyy)

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

**Representations, Certifications,
and Other Statements of Bidders**
Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

Table of Contents

Clause	Page
1. Certificate of Independent Price Determination	1
2. Contingent Fee Representation and Agreement	1
3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	1
4. Organizational Conflicts of Interest Certification	2
5. Bidder's Certification of Eligibility	2
6. Minimum Bid Acceptance Period	2
7. Small, Minority, Women-Owned Business Concern Representation	2
8. Indian-Owned Economic Enterprise and Indian Organization Representation	2
9. Certification of Eligibility Under the Davis-Bacon Act	3
10. Certification of Nonsegregated Facilities	3
11. Clean Air and Water Certification	3
12. Previous Participation Certificate	3
13. Bidder's Signature	3

1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

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

[] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [] is, [] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

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

(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.

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

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

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

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

The bidder 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 business enterprise. "Women-owned business enterprise," as used in this provision, means a 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 business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

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

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [] is, [] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [] is, [] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

11. Clean Air and Water Certification (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [] is, [] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

12. Previous Participation Certificate (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [] is, [] is not included with the bid.

13. Bidder's Signature

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

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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