

**Joseph L. Smith**  
Chairman, Board of Commissioners

**Janet Abrahams**  
President / Chief Executive Officer



**HOUSING  
AUTHORITY of  
BALTIMORE CITY**

**HOUSING AUTHORITY OF BALTIMORE CITY**

**REQUEST FOR PROPOSALS**

**B-1910-20**

**UTILITIES CONSULTANT TO PROVIDE  
PROFESSIONAL SERVICES**

**Housing Authority of Baltimore City  
417 East Fayette Street, Room 414  
Baltimore, Maryland 21202  
John Airey, Senior Contract Manager  
Office: 410-396-3261  
[john.airey@habc.org](mailto:john.airey@habc.org)**

**Issuance Date: Monday,  
March 23, 2020**

**Pre-Proposal Conference:  
Wednesday, April 8, 2020  
at 10:00 a.m.**

**Submission Deadline:  
Friday, April 24, 2020  
by 2:00 p.m. Eastern Time**

**Housing Authority of Baltimore City | 417 East Fayette Street, Baltimore, MD 21202**

**410.396.3232  [www.HABC.org](http://www.HABC.org)    [@BmoreHabc](https://www.instagram.com/BmoreHabc) **

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**RFP NUMBER: B-1910-20**

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Street, Room 414, Baltimore, Maryland 21202**

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**RESPONSES DUE: by 2:00 p.m. on Friday, April 24, 2020, at 417 East Fayette Street,  
Room 414, Baltimore, Maryland 21202**

**1. SOLICITATION**

**1.1 Invitation**

Electricity, natural gas, district steam, water, sewer and oil ("Utility/Utilities") are being provided to HABC dwelling units at a cost of approximately \$22 million per year. HABC has always applied good engineering practices, within the bounds of Federal Department of Housing and Urban Development, State and local regulations, to keep its Utility costs as low as possible. As a commitment to this effort HABC has employed a number of tools to mitigate rising costs to include Energy Performance Contracting, stricter energy management and energy efficiency mandates. However, aging infrastructure and increased utility prices coupled still present HABC with numerous technical challenges to continuously reduce energy and utility costs. Therefore, through this Request for Proposals ("RFP"), HABC is seeking to engage for up to five (5) years, the services of individuals, companies or firms who are qualified to assist HABC to cost effectively manage, maintain, operate, develop, and procure all Utilities for its residents.

**1.2 Agency Background**

HABC is a large public housing authority, established by the State of Maryland, which administers public and affordable housing programs to eligible families in Baltimore City. As a recipient of funding primarily from the United States Department of Housing and Urban Development ("HUD"), HABC owns and operates approximately 8,400 conventional public housing dwelling units located in approximately 12 public housing developments and over 1,000 scattered site dwelling units throughout Baltimore City. HABC provides housing to approximately 20,400 public housing residents. HABC's Housing Choice Voucher Program provides an additional 16,000 plus families with rental housing subsidies each year.

**1.3 Scope of Services**

General Scope of Services: The Consultant shall provide all labor, material, equipment, reports and all incidentals necessary in connection with the activities relating to Energy, Engineering & Utilities Management. The Consultant shall have specific recommendations, reporting requirements and assessments as it pertains to evaluation and execution of any Energy Auditing and subsequent Energy Performance Contracting program undertaken by HABC. The Consultant shall have a mastery of HUD guidelines and/or regulations regarding developing and implementing utility allowances and excessive consumption charges for Residents. The Consultant shall have expertise in developing the basis and methodology for utility allowances, surcharges and excessive consumption charges. The Consultant shall maintain familiarity with all applicable Federal, State and local energy laws, regulations and ordinances applicable to HABC's responsibilities in regards to Utilities. The Consultant should be experienced in developing and/or evaluating budgets and cost estimates for major electrical or mechanical projects. The



Consultant shall be responsible for the professional quality and coordination of all services furnished by the Consultant under the proposed Contract. The Consultant will provide itemized invoices by development for each assigned task in accordance with policies and procedures set forth by HABC. The responsibilities of the Consultant shall include, but not be limited to, the following:

- 1.3.1 Review the validity of HABC's Energy Performance Contract's (EPC) projected energy savings and all aspects of financial, managerial, commissioning, and services proposed by HABC and /or by any Energy Services Company (ESCO) or energy/utility auditing firm.
- 1.3.2 Prepare Utility Allowances and Utility excessive consumption charges
- 1.3.3 Provide EPC support to recommend a scope of work, analyze contractors' proposals and provide, as needed, project management oversight.
- 1.3.4 Recommend viable strategies in managing the historical and required energy related capital needs of HABC with the energy audit recommendations of the EPC.
- 1.3.5 Meet with HABC personnel and participate in, coordinate, and communicate with various HABC groups regarding utility issues. Participate in the monthly utility meetings with HABC divisions as required.
- 1.3.6 Attend meetings as required by various HABC divisions, residents and outside agencies to address energy systems engineering and/or utility issues.
- 1.3.7 Monitor and advise HABC on utility technology trends, developments and construction materials/methods, suppliers, etc.
- 1.3.8 Analyze and assess energy consumption patterns and trends, and advise HABC on energy conservation strategies. Analyze consolidation-billing data.
- 1.3.9 Understand HUD guidelines concerning EPC and Utility Allowances regulations
- 1.3.10 Monitor and advise HABC on City, State, and Federal energy and utility codes, standards, laws and regulation. Review HABC operating orders and procedures for compliance with such codes, standards, laws and regulations.
- 1.3.11 Review and advise HABC on energy conservation and utility contracts.
- 1.3.12 Periodically review and update existing HABC utility allowances; develop new utility allowances for new or renovated HABC properties.
- 1.3.13 Inspect and recommend upgrades (to include design services) or replacements of HABC utility infrastructure and equipment.
- 1.3.14 Work closely and coordinate with HABC-hired ESCOs, building and energy consultants and/or utility providers.

- 1.3.15 Assist HABC in EPC/ESCo- related analysis and other matters.
- 1.3.16 Provide guidance and direction as it relates to emerging Green Building trends and LEED certification
- 1.3.17 Provide training and/or input to develop an energy conservation program for HABC residents.
- 1.3.18 Provide training and/or expertise support to HABC staff and special crews in energy management systems, strategy and/or design.

## **2. PROPOSAL SUBMISSION INSTRUCTIONS**

### **2.1. Procurement Standards**

All matters and issues related to this RFP and any contract resulting from the RFP shall be governed by the procurement principles set forth in 2 CFR Part 200, the HUD Handbook on Procurement for Public Housing Agencies, Handbook 7460.8, REV-2 (3/2007); and the Statement on Procurement Policy for the Housing Authority of Baltimore City, and its implementing procedures. In the event of a conflict between this RFP, 2 CFR Part 200 and Handbook 7460.8, REV-2 or HABC procurement policy or procedures, the provisions of 2 CFR Part 200 and Handbook 7460.8, REV-2 shall govern.

### **2.2. Estimated Selection Timetable**

HABC shall utilize the following estimated schedule to review proposals, select a firm and award a contract. However, Responders are advised that any failure on the part of HABC to complete the procurement within the estimated schedule shall not be grounds for a protest or claim by any Responder.

<b>Action</b>	<b>Estimated Date of Completion</b>
RFP issued and made available	Monday, March 23, 2020
Pre-Proposal Conference	Wednesday, April 8, 2020
Deadline for submitting questions	Tuesday, April 14, 2020
Issue responses to questions	Thursday, April 16, 2020
Proposal submission deadline	Friday, April 24, 2020
HABC completes initial review and rating of Proposals and competitive range established	Tuesday, May 5, 2020
Oral interviews, if necessary, completed	Wednesday, May 13, 2020
Best and Final Offer submission deadline	Wednesday, May 20, 2020
BAFO evaluation meeting	Tuesday, May 26, 2020
Contract Award	Tuesday, June 2, 2020

### **2.3. Submission of Proposal**

Any party interested in being considered for award must submit a proposal in response to this RFP in accordance with the instructions and terms hereunder. By submitting a proposal, the Responder agrees to be bound by the terms and conditions of this RFP.

#### **2.4. Proposal Submission Deadline**

HABC must receive the Responder's proposal by **2:00 p.m., Eastern Time on Friday, April 24, 2020** at the location designated in Section 2.5. below. It is the Responder's responsibility to ensure that the proposal is delivered by the designated time and date. Proposals which for any reason are not delivered within the deadline will not be considered and will be returned unopened to the Responder.

#### **2.5. Place of Submission**

An original and five (5) copies of the typewritten and executed proposal, including all required information and certifications, must be submitted in a sealed envelope at the address below. The face of the envelope must contain, in addition to the address below, the RFP title and number stated above. Offers by telegram, telephone, or facsimile, and handwritten proposals will not be accepted by HABC. All proposals must be delivered to:

Housing Authority of Baltimore City  
417 East Fayette Street, Suite 414  
Baltimore, Maryland 21202  
Attention: John Airey, Senior Contract Manager  
(410) 396-3261  
[john.airey@habc.org](mailto:john.airey@habc.org)

#### **2.6. Pre-proposal Conference**

A non-mandatory pre-proposal conference will be held on **Wednesday, April 8, 2020 at 10:00 a.m. Eastern Time**, in the Charles L. Benton Building, 417 E. Fayette Street, Room 416, Baltimore, Maryland 21202, during which prospective Responders have an opportunity to ask questions concerning the RFP. HABC strongly recommends that prospective Responders attend this pre-proposal conference.

#### **2.7. Questions and Interpretations**

Any requests for interpretation or questions concerning this RFP must be submitted in writing to the address noted in Section 2.5 above and must be received no later than **4:30 p.m. Tuesday, April 14, 2020**. Inquiries must reference the RFP number and title, and the deadline for receipt of proposals. No interpretations shall be considered binding unless provided in writing by HABC.

#### **2.8. Preparation of Proposal**

Responders are expected to examine all elements of the RFP including the Scope of Services, submission requirements, evaluation criteria, equal opportunity compliance requirements, the contract terms and conditions attached hereto as Attachments 6 and 7, and all instructions prior to preparing the proposal. Failure to do so will be at the Responder's risk. Offers for services other than those specified will not be considered. All costs incurred, directly or indirectly, by the Responder including, travel, preparation, submission and miscellaneous expenses, in response to this RFP shall be the sole responsibility of the Responder and shall be borne by the Responder. Responders should make provisions for any and all costs and expenses related to the performance of the contract in their price proposal, and should identify all such costs and expenses in the itemized breakdown of costs.

## **2.9. Execution of Proposal**

The original proposal and five (5) duplicates must each contain a manual original signature of an authorized representative of the Responder. All corrections made on the proposal must be initialed by the authorized representative of the Responder. The company name must appear on the cover sheet. The proposal must include all documents, materials and information required herein.

## **2.10. Mistakes in Proposals**

If a mistake in a proposal is suspected or alleged, the proposal may be corrected, at the sole discretion of HABC, or withdrawn during any negotiations that are held. If negotiations are not held, or if the best and final offer has been received, the Responder may be permitted to correct a mistake in its proposal and the intended correct offer may be considered if: the mistake and the intended correct offer are clearly evident on the face of the proposal; or the mistake is not clearly evident on the face of the proposal, but the Responder submits written evidence which clearly and convincingly demonstrates both the existence of a mistake and the intended offer, and such correction would not be contrary to the fair and equal treatment of other Responders. Mistakes discovered after award shall not be corrected unless the Contracting Officer makes a written determination that it would be disadvantageous to HABC not to allow the mistake to be corrected.

## **2.11. Attachments**

Each writing or other document referred to in this RFP as being attached hereto as an attachment or otherwise designated herein as an attachment hereto is hereby made a part of this RFP. The Responder is required to complete the certifications and representations attached hereto as part of the proposal package and shall be subject to the requirements therein.

## **2.12. Confidentiality**

There will be no public opening of proposals. All proposals and information concerning same shall remain confidential until all negotiations are completed and the Notice of Award is issued. Responders are hereby notified that all proposals received by HABC shall be included as part of the official contract file. Therefore, any part of the proposal that is not considered confidential, privileged or proprietary under any applicable Federal, State or local law shall be available for public inspection upon completion of the procurement process. Notwithstanding the foregoing, the applicable provisions of Federal, State and local laws shall govern the confidentiality of proposals despite anything contrary to this provision stated in the proposal.

## **3. EQUAL OPPORTUNITY REQUIREMENTS**

### **3.1. SUBCONTRACTING WITH MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES:**

**3.1.1. Statement of Policy:** It is the policy of HABC to ensure that Minority Business Enterprises ("MBEs"), and Women-owned Businesses ("WBEs"), as defined in Subsection 3.1.4 below, are provided maximum opportunity to participate in contracts administered by HABC. In accordance with Executive Orders 11625 and 12138 and 2 CFR §200.321. HABC encourages, and takes all necessary affirmative steps to, promote the use of MBEs and WBEs in HABC contracts.



- 3.1.2. Definition of MBE:** For these purposes, an MBE is defined as: (a) any legal entity other than a joint venture, organized to engage in business transactions, that is at least fifty-one percent (51%) owned and controlled by one or more minority persons; and (b) has been certified as an MBE in accordance with Subsection 3.1.4 below. For these purposes, a minority person is defined as a member of a socially or economically disadvantaged minority group, which includes African-Americans, Hispanic-Americans, Native-Americans, and Asian-Americans. Notwithstanding the certification of a firm as an MBE, the ownership and control of such firm must be by one or more persons who meet the definition of minority persons hereinabove, in order for such firm to be considered an MBE.
- 3.1.3 Definition of WBE:** For these purposes, an WBE is defined as: (a) any legal entity other than a joint venture, organized to engage in business transactions, that is at least fifty-one percent (51%) owned by a woman or women who are U.S. citizens and who control or operate the business.
- 3.14. MBE and WBE Certification:** Any MBE or WBE proposed by the Responder to be utilized in the proposed contract must be certified as an MBE or WBE by an authorized public body or agency of a Federal, State, or local jurisdiction authorized under the applicable Federal, State, or local laws to make such certifications, in order for participation of such MBE or WBE to be applied toward the proposed MBE or WBE utilization. HABC does not certify MBEs or WBEs but will accept certifications from other authorized jurisdictions which meet the requirements herein stated. All certifications must be current as of the date of the proposal submission deadlines. Notwithstanding evidence of the certification of any firm as an MBE or WBE, HABC reserves the right to: (1) independently verify the status of such firm as an MBE or WBE; (2) review and make a final determination as to the appropriateness of the proposed utilization of a MBE or WBE, based on the a trade or profession for which the MBE or WBE has been certified; (3) reject the proposed use of a MBE or WBE based on non-compliance with the requirements of this Section 3.1; and (4) request additional information from the Responder necessary for HABC's review.
- 3.1.5. Affiliated Entities.** Subject to 3.1.8, a Responder may not use an affiliated entity towards its MBE or WBE utilization without the prior approval of HABC. For these purposes, business concerns are considered affiliates of each other when, either directly or indirectly, (a) one concern controls or has the power to control the other, or (b) a third-party control or has the power to control both.
- 3.1.6. Award Considerations:**
- A Responder that does not document its best efforts to subcontract with minority-owned business and women-owned business enterprises ("M/WBE(s)") shall be considered non-responsive and ineligible for an award absent clear and concise documentation which describes M/WBE outreach efforts. For purposes of scoring a response to a competitive procurement, the fact that the response documents the Responder's best efforts to subcontract with M/WBEs shall not, alone, result in any points being awarded to the Responder in the M/WBE scoring category (or otherwise).

If a Responder to a competitive proposal is an MBE or WBE, as defined in Subsection 3.1.4, the Responder's proposal will be awarded a minimum of ten percent of the total points available for the scoring of the respective proposal. Responders may also obtain points in the M/WBE scoring category for a respective procurement if their proposal reflects that a minority owned business or women-owned business enterprise is a firmly committed partner of, or subcontractor to the responder. If a Responder's proposal reflects no firm commitments with M/WBEs, either through a partnership or subcontracting, and the Responder is not itself a M/WBE, no points shall be awarded to the Responder in the M/WBE scoring category (a Responder's commitment to use its best efforts to subcontract with M/WBEs shall not alone entitle the Responder to points during the scoring of proposals).

**3.1.7 M/WBE Utilization Plan:** The Responder must include the Responder's M/WBE utilization plan ("M/WBE Utilization Plan") describing the Responder's strategy for achieving the M/WBE participation requirements if awarded a contract. The M/WBE Utilization Plan shall include the following:

- (a) A fully completed and executed Prime Contractor M/WBE Statement of Intent attached hereto as Attachment 8, completed for each M/WBE to be utilized in the proposed contract. The Responder shall ensure that the Prime Contractor M/WBE Statement of Intent contains all information therein requested including:
  - (i) The names, addresses, telephone numbers and contact person for each M/WBE that will be performing work on this project.
  - (ii) A specific description of the work to be performed by each M/WBE and the proposed schedule for delivery of services.
  - (iii) The fee structure showing the dollar amount to be awarded to each M/WBE to be utilized, and the total value of each proposed M/WBE subcontract.
- (b) A current and valid M/WBE certification for each M/WBE to be utilized.

**3.1.8. Affiliated Entity:** For any affiliated entity of the Responder proposed to be used towards the M/WBE utilization, a statement by the Responder disclosing:

- (a) The names and addresses of all persons or concerns exercising control or ownership of the Responder and each affiliated entity;
- (b) Whether or not such persons or concerns exercise such control or ownership as common officers, directors, stockholders holding controlling interest:
- (c) The date each such interest was acquired; and
- (d) The date of formation of such affiliated entity.

**3.1.9. Price Reasonableness:** HABC will not award a contract to any Responder whose price is deemed by the Contracting Officer to be unreasonable based on accepted government cost principles, irrespective of the Responder's success in meeting the proposed M/WBE utilization for the proposed contract.

**3.1.10. Request for Waiver of M/WBE Utilization Plan:** A waiver of the M/WBE participation requirements may be granted by HABC, in whole or in part, only upon a reasonable demonstration based upon documentary evidence submitted by the Responder that M/WBE participation was unable to be obtained or was unable to be obtained at a reasonable price. Any actual or prospective Responder that seeks a waiver of the M/WBE utilization must submit a written request for a waiver to HABC on or before the deadline for submitting proposals, with documentary evidence to support such waiver request. Such documentary evidence shall include, at the least:

- (a) Correspondence, records, and other documents showing efforts made to contact and negotiate with M/WBEs;
- (b) A description of the specifications plans, bonding requirements, anticipated schedule of delivery and other pertinent information provided by the Responder to M/WBEs;
- (c) A list of M/WBEs that responded to solicitations or inquiries by the Responder including contact information of each M/WBE and quotes or proposals submitted by M/WBEs;
- (d) A list of M/WBEs contacted by the Responder and found to be unavailable including addresses and phone numbers of each M/WBE and dates of each such contact; and
- (e) A list of M/WBE directories, trade associations, local minority assistance organizations, and Federal, State and local government small business agencies contacted by the Responder for assistance in locating M/WBEs.

**3.1.11. Deadline for Submission of Request for Waiver of MBE or WBE Utilization:**

All requests for a waiver of the M/WBE utilization, in whole or in part, and required supporting documentation must be received in writing by HABC no later than deadline for submission of proposals. Any request for a waiver received after the deadline for submission of proposals will not be considered and may render the proposal subject to rejection.

**3.1.12. Additional Efforts:** In addition to the foregoing requirements, Responders should take the following steps to ensure that whenever possible, subcontracts are awarded to MBEs and WBEs such as the following:

- (a) Placing qualified MBEs, WBEs and small businesses on solicitation lists;
- (b) Dividing the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MBEs, WBEs and small businesses;

- (c) Establishing delivery schedules where possible, in a manner, which encourages participation by MBEs, WBEs and small businesses;
- (e) Using the services and assistance of the United States Small Business Administration, the Minority Business Development Agency of the United States Department of Commerce, the Housing Authority of Baltimore City Office of Fair Housing and Equal Opportunity ("FH&EO"), the City of Baltimore Office of Minority and Women's Business Opportunity Office ("M/WBOO"), the local minority assistance organizations, and the various State and local government small business agencies. FH&EO is located at 417 East Fayette Street, Suite 401, Baltimore, Maryland 21202 and may be contacted by phone at 410-396-3246. M/WBOO is located at 100 N. Holliday Street, 1st Floor, Room, Baltimore, Maryland 21202 and may be contacted by phone at 410-396-4355.

### **3.2. Compliance with Section 3 of the Housing and Urban Development Act of 1968**

**3.2.1. Section 3 Requirements:** The successful Responder shall be required to comply with all applicable provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, and the regulations issued pursuant thereto, as set forth in 24 C.F.R. Part 135, and all applicable rules, directives and orders issued by HUD thereunder. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment generated by a Section 3 covered contract be given to public housing residents and other low income persons residing in the metropolitan area, and subcontracts in connection with such contracts be awarded to Section 3 covered business concerns which are located in, or owned in substantial part by persons residing in the areas of the project. The successful Responder shall be required to insert the Section 3 clause set forth in Section 21 of Form HUD-5370-C - General Conditions for Non-Construction Contracts - Section I, attached hereto as Attachment 6, in any subcontract resulting from the proposed contract.

**3.2.2. Section 3 Compliance Strategy:** The proposal must include the Responder's plan for complying with the requirements of Section 3 ("**Section 3 Compliance Plan**") if awarded the contract, as described in Section 11.2 (f) of this RFP below.

**3.2.3. Using PACE to Satisfy Section 3:** To assist the Responder in its effort to comply with the Section 3 requirements, Responders are to contact the HABC Office of Resident Services, People Accessing Continued Employment Program (P.A.C.E.); and use other employee recruitment services only if P.A.C.E. has no qualified referrals that meet the Responder's employment, training or subcontracting needs. P.A.C.E. is an employment initiative funded by HABC to provide direct job placement, support services, and post placement support, skills training opportunities, job replacement and job retention services. (See Attachment 9B to be completed by the Responder.)

## **4. INSURANCE REQUIREMENTS**

### **4.1. Required Coverage**

The proposal package must include evidence of the Responder's ability to provide Worker's Compensation Insurance; General Liability Insurance; Comprehensive Automobile Liability Insurance; and if applicable to the services requested hereunder, Professional Liability (Errors and



Omissions) Insurance coverage, as set forth in Section 19 of the Attached General Contract Terms and Conditions, Attachment 7 hereto. Such insurance shall be procured from a company licensed to do business in the State of Maryland and placed with a carrier possessing an A.M. Best's Rating of B+VI or better, and maintained for the entire duration of the proposed contract. Deductible levels shall not exceed \$1,000 per occurrence on any policy. HABC must be named as an additional insured on all policies and the policy must provide that coverage cannot be canceled without notice to HABC at least thirty (30) days before the effective date of such cancellation. HABC reserves the right in its sole discretion, to raise, waive or reduce in limits, any insurance coverage required under the proposed contract.

#### **4.2. Proof of Insurance Upon Notice of Award**

Within ten (10) days of the date of the Notice of Award, the successful Responder shall furnish to HABC a certified copy of the Certificate of Insurance for the policy or policies covering all work or services under the proposed contract as evidence that the required insurance is maintained and in force for the entire duration of the contract. HABC may, at its sole discretion, immediately cancel the contract award without prior notice to a successful Responder upon any failure to submit timely any or all of the required Certificates of Insurance and any and all other documents required under the proposed contract. In such case, any and all existing agreements between HABC and the successful Responder shall immediately become null and void upon such cancellation.

### **5. CONTRACTOR RESPONSIBILITY REVIEW**

#### **5.1. Review Standards**

HABC shall award contracts only to responsible contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. Therefore, following proposal evaluations, HABC shall assess the responsibility of the highest rated firm prior to award of the contract. HABC's determination of contractor responsibility shall include, but not be limited to, consideration of the following:

- (a) Integrity;
- (b) Compliance with public policy, including compliance with State and local laws, regulations, codes and ordinances;
- (c) Record of past performance;
- (d) Financial and technical resources (including computer and technical equipment); and
- (e) Eligibility for award of a federally assisted contract (e.g., debarment).

#### **5.2. Request for Additional Information**

In assessing the Responder's responsibility, HABC may request the Responder being considered for award to submit additional information, statements, and/or other documentation regarding any of the factors enumerated above. Failure of such Responder to provide such additional information within the time requested by HABC may render the Responder ineligible for award.

### **6. CONTRACT AWARD**

#### **6.1. Form of Award**

By submitting a proposal, the Responder agrees if it is issued a written Notice of Award to be bound by a contract whose provisions shall be substantially the same as (i) the terms and conditions

of the RFP including all attachments, and (ii) the terms and conditions of the proposal acceptable to HABC. Acceptance of the Responder's proposal to perform the services specified in this RFP will be made by written Notice of Award from HABC to the successful Responder. Responders are not entitled to rely on any representations by any employee, member, officer, or representative of HABC concerning the contract award until written Notice of Award is provided by HABC. Responders are advised that the contract documents may include any and all terms and conditions required by HUD and/or HABC for a contract of this type and nature.

#### **6.2. Reservation of Rights as to Negotiation of All Elements of the Proposal**

HABC reserves the right to negotiate all elements of the proposal including price, with Responders in the competitive range, subject to the prior approval of HUD.

#### **6.3. Basis of Contract Award**

Following the evaluation of proposals, HABC shall award indefinite-quantity contract(s) with combined not-to-exceed amount of \$500,000.00 to the responsible Responder(s) whose proposal(s) will be most advantageous to HABC, considering price and any other factors specified in this RFP. This will be a contract for services as requested by HABC during the term of the proposed contract. The services shall be provided to HABC, when and if ordered by HABC pursuant to a Task Order. The selected firm(s) shall provide the requested services for each Task Order for a firm fixed price to be negotiated by the parties based on the hourly rates in Attachment 1. HABC shall issue a minimum of one (1) Task Order to each selected firm during the contract period, with an estimated value of \$10,000.00 for each Task Order.

#### **6.4. Reservation of Rights as To Contract Award**

HABC does not guarantee (i) any minimum amount of a contract awarded hereunder; nor (ii) the extent, quantity or portion of any services to be performed or items to be provided pursuant to an award to the successful Responder(s). Further, HABC may: (a) reject any and all proposals received; (b) accept other than the lowest priced proposal; (c) waive any minor irregularities or technicalities in proposals received; (d) make a single award or multiple awards under this RFP for the performance of any, all or any combination of the items delineated under the Scope of Services; (e) accept any item or combination of items proposed unless precluded elsewhere in this RFP; (f) amend this RFP as permitted by applicable law; or (g) cancel this RFP in its entirety or any portion thereof.

#### **6.5. Rejection of Materially Unbalanced Proposals**

HABC may reject any proposal as unacceptable if it is materially unbalanced as to the prices for the various items of work to be performed. A proposal is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

#### **6.6. No Effect of Reservation of Rights on Contract Formation**

HABC's reservation of rights shall in no way affect the formation of a contract upon written notice of award by HABC to the successful Responder(s). If multiple awards are made, the intent shall

be to make awards which, at the sole determination of HABC, are in its best interest, based on the factors stated in this RFP. HABC makes no guarantees as to amount of award, if any.

## **7. TASK ORDER FIXED FEE**

### **7.1. Task Order Fixed Fee**

The successful Responder(s) will be paid a firm fixed fee for each negotiated Task Order, based upon the hourly rates proposed by the Responder in Attachment 1, plus reimbursable expenses, for all services required, performed and accepted by HABC. The reimbursable expenses, which are in addition to the hourly rates, include the following:

- (i) Travel costs for the reasonable expense incurred by the Consultant when requested under the proposed contract to travel to a location that lies outside of a 45 mile radius of either the project site or the Consultant's office;
- (ii) Delivery costs for courier services and overnight delivery; or
- (iii) Reproduction and postage costs for the Energy Engineering & Utilities Management assessment and related documentation.

All anticipated reimbursable expenses, directly related to the performance of the contract, must be itemized in the Responder's Fee Proposal.

## **8. CONTRACT TERM**

### **8.1. Contract Term**

The contracts resulting from this RFP shall provide for a term of not to exceed one (1) calendar years, except that HABC shall have a unilateral option to renew the contract(s) upon the same terms, conditions, and prices for up to four (4) additional one (1) year periods, subject to all necessary HUD approvals. Unless otherwise stated in the contract, the contract term shall commence on the date specified in the Notice to Proceed or Purchase Order issued by HABC.

### **8.2. Time and Order of Work**

The successful Responder shall be readily available and capable of immediately assuming all duties involved in the representation of HABC upon award, and shall be capable of meeting any and all deadlines. HABC shall issue a Notice to Proceed to the selected Responder before work may commence.

## **9. HUD APPROVAL**

The Responder is advised that fee, contract award, contract documents, notice of award, Notice-to-Proceed, and payment for services may be subject to HUD approval, and withholding of contract approval by HUD shall immediately nullify the contract without liability by either party, irrespective of whether the contract was executed by any one or both parties. Prior to contract nullification, the successful Responder shall be equitably compensated for any work performed and accepted by HABC pursuant to such Notice to Proceed up to the date of contract nullification.

## 10. SELECTION CRITERIA

### 10.1 General

Selection of a firm or firms to render services pursuant to this RFP will be made in accordance with HUD and HABC procurement regulations. All responsive proposals received by the time and date specified in this RFP shall be evaluated by the RFP Evaluation Panel based on the following criteria and weights:

<b>Evaluation Criteria</b>	<b>Maximum Points</b>
a. Organizational Structure and Staff Qualifications	20
b. Past Performance Relating to Energy Engineering, Including But Not Limited to Cost Control Mechanisms, Energy Performance Contracting, Utility Cost and Consumption Tracking, Utility Allowance Development and Ability to Meeting Performance Schedules	35
c. Description of Methodology to Complete RFP Requirements	15
d. MBE / WBE Utilization Plan	10
e. Section 3 of the Housing and Urban Development Act of 1968 ("Section 3") Compliance Strategy	10
f. Fee Proposal	10
<b>TOTAL</b> <b>Section 3 Preference: A firm that qualifies as a Section 3 Business Concern may be awarded additional preference points prior to award of the contract.</b>  (See Attachment 10 "Certification for Business Concerns Seeking Section 3 Preference" for explanation of how Section 3 Preference bonus points are determined.) Category 1 Business – 20 pts; Category 2 Business – 15 pts; Category 3 Business – 10 pts.; Category 4 Business – 5 pts.	100

## 11. SUBMISSION REQUIREMENTS

**11.1 Summary of Submission Requirements:** An original and five (5) copies of the typewritten, executed proposal must be properly executed and submitted in a sealed envelope. Responders are requested to provide a definitive plan for carrying out the tasks as provided in the above scope of work and general selection criteria. The proposal shall include the information requested in the following section.

### 11.2 Contents of Proposal:

(a) **Organizational Structure and Staff Qualifications (20 Points)** - Provide an organizational chart of the members of your team that will be dedicated to this project. List all key members of your staff, whether permanent employees, contracted or subcontracted employees who will be committed to this project. Indicate the level of effort and function of each member of your team participating in the project. Include individual resumes for the team members identified. The resumes should include 1) name of individual; 2) a description of the functions such individual will perform and his/her title or position; 3) the individual's relevant educational background; 4) the



individual's relevant work experience; 5) the individual's familiarity with energy issues; 6) specialized skills, licenses, training, registrations, certifications, credentials or accomplishments of the individual that are relevant to the required services. Designate who will be the representative of the firm or team with decision-making authority.

(b) **Past Performance Relating to the Work, Including But Not Limited To, Mechanisms of Cost Controls and Ability to Meet Performance Schedules (35 Points)** - Provide the performance information regarding the Responder's consultant work pertaining to Utilities and Energy Engineering with particular reference to the following areas:

- Development and Evaluation of Utility Allowances for Public Housing Residents
- Energy Savings documentation, tracking and development
- Monitoring, Measurement and Verification Techniques/Strategy
- Energy Management Concepts (especially utility metering) in Public Housing
- Energy Performance Contracting program design and maintenance to include the following:

- Economic Evaluation of Energy Projects
  - Financing Energy Management Projects
  - Verification and Measurement of Savings in Performance Contracting

- Improving Development of Energy Systems and Maximizing Performance of Distributed Heating Systems
- Preventative Maintenance
- Green Building
- Housing LEED Certification (or comparable rating designations)
- Public Housing Renewable Energy Applications and Opportunities
- Energy Strategy Planning and Implementation
- Energy Legislation: Local, State, and Federal
- Identifying Opportunities for the following:
  - Organizing Energy Management Programs
  - Demand Side Management
  - Cogeneration and its Management
- Utilities Metering and Monitoring System
- Purchasing Energy in a Deregulated Market
- Price Risk Management
- Engineering Inspections
- General Utilities Technical Support

Provide the names, addresses, and telephone numbers of and contact persons for three governmental/private entities for whom you have performed work of the above nature. HABC reserves the right to request information from any source so named.

(c) **Description of Proposed Methodology to Complete RFP Requirements (15 Points)** - Provide at a minimum, the following information with regard to the firm's experience in the type of services required by this RFP:

- (i) Provide information to demonstrate a thorough knowledge of Federal, State, and local Regulations for public housing authorities that are relevant to this procurement.

- (ii) Provide an outline description of the services that you propose to provide and a detailed description of the team's approach to, and methodology for performing the services described.
  - (iii) Describe the resources available to you and your method of ensuring the soundness and accuracy of the services you will render to HABC.
- (d) **MBE and WBE Utilization in the Project (10 Points)**
- (i) Responders are advised to review in its entirety, the M/WBE utilization policy set forth in Section 3 above and in this Section before preparing and submitting their proposals. Proposals that do not address the M/WBE participation or waiver requirements set forth in this RFP may be deemed unacceptable.
  - (ii) Responders shall provide the information requested in Subsection (iii) (A) below, or if the Responder is unable to meet the M/WBE utilization goals in part or in whole, the Responder shall submit with its proposal, a request for a waiver in the manner described in Subsection (iii) (B) below:
  - (iii) **Minimum Proposal Contents for MBE/WBE Utilization:**
    - (A) **MBE/WBE Utilization Plan.** The Responder shall provide its plan for achieving M/WBE utilization for the proposed contract ("**M/WBE Utilization Plan**"), which shall include, at a minimum, the following information:
      - (1) The names, addresses, telephone numbers and contact person for each M/WBE that will be performing work on this project. **Further review Section 3 to ensure that proposed M/WBE subcontractors will meet the standards necessary to be counted towards the M/WBE utilization.;**
      - (2) A specific description of the work to be performed by each MBE/WBE and the proposed schedule for delivery of services;
      - (3) The fee structure showing the dollar amount to be awarded to each M/WBE to be utilized, and the total value of each proposed M/WBE subcontract towards the M/WBE utilization;
      - (4) A letter of intent between the Responder and each M/WBE agreeing to enter into a contract in the event that the contract proposed hereunder is awarded to the Responder; and
      - (5) A current and valid M/WBE certification for each M/WBE to be utilized.
    - (B) **Request for Waiver:** If the Responder is unable to meet all or part of the M/WBE utilization for the proposed contract for the grounds set forth in Section 3 above, the Responder may request a waiver of the M/WBE participation by submitting a written request for a waiver with supporting documentary evidence, all of which must be submitted by the Responder with its proposal on or before the deadline for proposal

submission. The documentary evidence must reasonably demonstrate that M/WBE participation was unable to be obtained or was unable to be obtained at a reasonable price, as discussed in Section 3 above. Such evidence shall include, at the least:

- (1) Correspondence, records, and other documents showing efforts made to contact and negotiate with M/WBEs;
  - (2) A description of the specifications, plans, bonding requirements, anticipated schedule of delivery and other pertinent information provided by the Responder to M/WBEs;
  - (3) A list of M/WBEs that responded to solicitations or inquiries by the Responder including contact information of each M/WBE and quotes or proposals submitted by M/WBEs;
  - (4) A list of M/WBEs contacted by the Responder and found to be unavailable including addresses and phone numbers of each M/WBE and dates of each such contact; and
  - (5) A list of M/WBE directories, trade associations, local minority assistance organizations, and Federal, State and local government small business agencies contacted by the Responder for assistance in locating M/WBEs.
- (e) **Section 3 Compliance Plan (10 Points)** - Provide a description of your strategy for complying with the Section 3 requirements ("**Section 3 Compliance Plan**"). (See Attachment 9B to be completed by Responder). Responders may comply with Section 3 by providing employment and/or training opportunities to residents of HABC public housing and/or other low-income persons for the performance of this contract, subcontracting with resident-owned businesses and/or other Section 3 businesses, or a combination of employment, training and/or subcontracting as described above. This requirement applies to Section 3 and non-Section 3 businesses. Section 3 is a HUD requirement that cannot be waived by HABC. Therefore, Responders are advised to review the following information in preparing and submitting their proposals:
- (i) If you plan to comply with Section 3 by providing employment and/or training opportunities to residents of HABC public housing and/or other Section 3 persons, your Section 3 Compliance Plan must provide all information regarding any hiring/training you will be conducting including a description of the employment/training duties, work hours, and salaries. Responders are required to submit, with their proposals, their workforce requirements for performing the proposed contract regardless of whether additional hiring will be done. If additional hiring will not be done, the Responder must, to the greatest extent feasible and consistent with all applicable laws, provide training to Section 3 persons.
  - (ii) If you plan to meet Section 3 requirements by subcontracting with Section 3 businesses, your Section 3 Compliance Plan must provide the names, addresses and telephone numbers of all Section 3 businesses that will be performing work on this project. Provide a description of the work to be performed by such firms and a proposed percentage of the total contract dollar amount that will be awarded to each firm. You must include a letter of intent between your firm and each Section 3 business with

which you will subcontract if you are awarded the contract. It is the Responder's responsibility to provide proof that such firms meet the definition of Section 3 business concern as established by HUD. See 24 CFR Part 135.5 for definitions of Section 3 business concerns or contact the HABC Office of Fair Housing and Equal Opportunity (FH&EO) at (410) 396-3246 for additional information.

(iii) If you are claiming preference as a Section 3 business concern, your Section 3 Compliance Plan must include an explanation for your claim to be a Section 3 business concern along with proof of your firm's eligibility for preference as a Section 3 business concern. See 24 CFR Part 135.5 for definitions of Section 3 business concerns or contact FH&EO for additional information. Firms claiming eligibility for Section 3 preference must also submit a Section 3 compliance strategy.

(iv) In the event that you determine that it is not feasible to comply with Section 3, you must state with specificity, in your Section 3 Compliance Plan, the reasons why you cannot comply with Section 3. Any Responder that has determined that it is not feasible to comply with Section 3 assumes the risk that its claim of non-feasibility will be deemed unacceptable by HABC. (See Attachment 9B to be completed by Responder).

**(f) Fee Proposal (10 points):**

(a) The fee proposal must include the hourly billing rate of each individual who will be committed to the projects, relative to the Scope of Services.

(b) The quoted hourly billing rates must be reasonable. After the initial three (3) calendar years term of the Contract, the Consultant's hourly rates may be increased over its initial hourly rates by an amount not to exceed three percent (3%) annually. The contract and any amendments thereto are subject to HUD approval.

(c) The principles set forth in 48 C.F.R. Chapter 1 and HUD Handbook 2210.18 will be used to determine price reasonableness. HABC is not obligated under this RFP to award a contract based solely on the lowest proposed hourly billing rates. In the event that two proposals are considered technically equivalent, the evaluated price will be of primary importance in determining the proposal most advantageous to HABC. Proposals need not have received identical numerical scores to be considered technically equivalent.

**12. PROPOSAL EVALUATION AND SELECTION PROCESS**

**12.1. General**

HABC will use the following procedure to evaluate the proposals and select a finalist. All proposals received by HABC within the established deadline will be evaluated by the RFP Evaluation Panel.

**12.2. RFP Evaluation Panel**

An RFP Evaluation Panel consisting of at least three (3) voting members will be established. The RFP Evaluation Panel shall consist of HABC employees and may also include HABC residents and consultants, and Baltimore City personnel and consultants. HABC may also identify non-voting technical advisors to the Panel.



### **12.3. Proposal Evaluation**

The Contracting Officer will forward proposals that comply with the submission requirements to the RFP Evaluation Panel. Each such proposal will be evaluated by the RFP Evaluation Panel using the selection criteria set forth in Section 10 of this RFP and scored on the basis of the information contained in the proposal. Factors not specified in the RFP shall not be considered. Each Proposal will be considered on its own individual merit and not analyzed in comparison with other proposals. Each panel member assigning points shall be asked to provide a written narrative justification to support the rating given. The sum of the points assigned to each proposal by an individual panel member shall be known as the Responder's "Raw Score." The evaluation panel chairperson shall fill out a composite worksheet displaying each panel member's Raw Score for each proposal. The chairperson shall then average all the panel members' Raw Scores for each Responder and post these numbers as the "Final Score" for each Responder. Each proposal shall be rated acceptable, potentially acceptable, or unacceptable based on the Final Score received.

### **12.4. Competitive Range**

A competitive range will be established based on the rankings of the Responders and the proposals will be classified as acceptable, potentially acceptable or unacceptable. Proposals determined to be acceptable or potentially acceptable and that have a reasonable chance of award shall be included in the competitive range. HABC reserves the right to limit the number of Responders to be included in the competitive range based on the number of proposals received, total scores of proposals, and relative rankings of proposals. Further, HABC reserves the right to establish a minimum score for the competitive range. Responders whose proposals are classified as unacceptable shall be excluded from the remainder of the selection process and notified accordingly.

### **12.5. Oral Presentations/Interviews**

At the sole discretion of HABC, Responders who are considered by the evaluation panel to be competitive based on the total scores received and relative rankings of Responders, may be asked to make a presentation of the proposal during any negotiations that may be held. The purpose of the presentation will be to provide an opportunity to the Responder to clarify its proposal, respond to questions from HABC, and substantiate representations in the proposal. No comments about other Responders or other proposals will be permitted and Responders shall not be permitted to attend presentations by other Responders. A time limit for presentations shall be imposed. Responders invited to make presentations shall be informed of the date and time of the presentation and the time limit for completing such presentation. Evaluations may be revised based upon information provided by the Responders in the oral presentation.

### **12.6. Negotiations**

Negotiations, oral and/or written, may be conducted by HABC or its authorized representatives with all responsible Responders whose offers are within the competitive range. HABC reserves the right to conduct negotiations, oral and/or written, on any element of the contract including price, with all responsible Responders whose offers are within the competitive range.

## **12.7. Best and Final Offers**

Responders in the competitive range may be provided an opportunity to change or revise their proposals to reflect any changes resulting from the negotiations, if any, in the form of a written "Best and Final Offer" ("BAFO"). The BAFO will be evaluated by the RFP Evaluation Panel based on the evaluation criteria stated in the RFP. Such BAFO will be treated as a firm proposal in place of the proposal originally submitted. If no revised proposal is received from any such Responders in the competitive range within the deadline provided for submitting the BAFO, the originally submitted proposal will be treated as the BAFO.

**If your company qualifies as a Section 3 Business Concern, and your proposal is deemed to be in the competitive range, you may qualify for additional points prior to the award of the contract. See, also, Attachment 9C: "Certification for Business Concerns Seeking Section 3 Preference in Contracting," for designation of four categories upon which preference points may be awarded.**

## **12.8. Standard for Contract Award**

Any contract awarded pursuant to this RFP shall be made to the responsible Responder whose proposal is determined to be the most advantageous to HABC, price and technical factors considered. Award will not necessarily be made to the Responder submitting the lowest price.

## **12.9. Award Without Discussions**

Notwithstanding the foregoing, HABC reserves the right to make an award without discussions based solely on original proposal scores. HABC will make an award to the responsible Responder whose offer conforms to the solicitation and is the most advantageous to HABC (i.e., that which represents the best value to HABC), price and evaluation factors considered.

## **13. PROTEST PROCEDURES**

### **13.1. Protest of Procurement Action:**

**13.1.1 Who May File:** Any actual or prospective bidder/responder to an HABC solicitation whose direct economic interest would be directly affected by the award of the contract, may protest a solicitation or a contract award only for alleged material violations of the principles of this policy; HUD procurement regulations; and applicable Federal, State and local laws.

**13.1.2 Filing Deadline:** A protest against a solicitation must be received from the prospective bidder/responder before the due date for receipt of bids or proposals. A protest against the award of a contract or cancellation of a solicitation must be received within ten (10) calendar days after notice of contract award or notice of cancellation of a solicitation, or the protest will not be considered.

**13.1.3 Filing Procedure:** All protests shall be in writing, submitted to the Contracting Officer.

**13.1.4 Contracting Officer's Decision:** The Contracting Officer shall conduct an investigation as appropriate, and shall issue a written decision on the matter expeditiously after reviewing all relevant information. The Contracting Officer's decision shall inform the protester of any appeal

rights within HABC. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented. The filing of a protest shall not prevent HABC from entering into a contract with the successful bidder/responder.

### **13.2. Appeal Rights:**

**13.2.1 Appeal to HABC Board:** The decision of the Contracting Officer in a protest may only be appealed to the HABC Board if the decision involves a protest of a solicitation or contract award in excess of \$500,000.

**13.2.2 Deadline for Appeal:** All such appeals must be submitted to the HABC Board by the protester in writing within fourteen (14) calendar days from the date of the Contracting Officer's decision.

**13.2.3 HABC Board's Consideration of Appeal:** The Board may consider a properly and timely filed appeal by public hearing, or by appointment of a hearing officer who shall hear the appeal, make findings of fact, and recommend a decision to the Board on the appeal.

**13.2.4 Final Determination of the Board:** The Board shall have the sole authority to enter a final decision on the appeal, based on the recommendation of the hearing officer or based on a hearing of the Board. The decision of the Board shall be the final HABC consideration of the appeal. Notwithstanding any clause contained in any solicitation or contract document, a protest or appeal shall not be referred to a mediator or arbitrator unless HABC expressly gives written consent to such mediation or arbitration at the time the protest or appeal arises. For purposes of this Policy, HUD shall not be considered a mediator or arbitrator.

**HOUSING AUTHORITY OF BALTIMORE CITY  
REQUEST FOR PROPOSALS  
UTILITIES CONSULTANT TO PROVIDE PROFESSIONAL SERVICES**

**RFP NUMBER: B-1910-20**

**LIST OF ATTACHMENTS**

Attachment 1	Fee Schedule Certification and Affidavit of Non-Collusion
Attachment 2	HABC Conflict of Interest Statement
Attachment 3	Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transactions
Attachment 4	Authorization of Responder for Verification of References
Attachment 5	HUD Certifications
Attachment 6	Form HUD-5370-C General Conditions for Non-Construction Contracts – Section I
Attachment 7	HABC Contract Terms and Conditions
Attachment 8	Prime Contractor MBE Statement of Intent
Attachment 9A	Section 3 Obligations of Contactor
Attachment 9B	Section 3 Compliance Plan
Attachment 9C	First Source Hiring Agreement
Attachment 10	Certification for Business Concerns Seeking Section 3 Preference in Contracting
Attachment 11	Form HUD-5369-B Instructions to Offerors Non-Construction
Attachment 12	Form HUD-5369-C Certifications and Representations of Offerors

**Responders must complete and submit with the proposal Attachments 1,2,3,4,5,8,9B,9C and 12.**

## ATTACHMENT 1- FEE SCHEDULE CERTIFICATION AND AFFIDAVIT OF NON-COLLUSION

The Responder must provide the hourly fee for all services proposed based upon the Scope of Services of the RFP. The hourly fee should include overhead and profit. If additional space is required, please record such additional information on a separate sheet, which must be signed and attached to this form. The requirements of this Fee Schedule Certification and Affidavit of Non-Collusion shall be applicable to all information provided by the Responder on any attached separate sheet.

By signing below, the undersigned official of the Responder hereby certifies and affirms under penalties of perjury that: (a) costs and/or fees and services stated below are made without prior agreement, understanding, or connection with any corporation, firm or person submitting a proposal for the same services, and are fair and without fraud; (b) that the Responder has not colluded, conspired, connived or agreed, directly or indirectly with any other Responder or person to put in a sham proposal or to refrain from submitting a proposal, and has not in any manner, directly or indirectly, sought by agreement, collusion, or communication with any person to fix the proposal price or any element of the proposal, or to secure any advantage against HABC or any person; (c) that the Responder agrees to be bound by all conditions of this proposal; and (d) that this official is authorized to sign this Fee Certification for the Responder.

NAME OF ASSIGNED STAFF	POSITION	HOURLY FEE	ASSIGNED ROLE AND PERCENTAGE OF WORK

HUD regulations require a cost analysis prior to an award of contract. Please supply the information requested below as to how the fee proposal was calculated.

**Direct Costs:**

Direct Labor (Personnel) \$ \_\_\_\_\_

**Indirect Costs:**

Overhead: \$ \_\_\_\_\_

General and Administrative Expenses \$ \_\_\_\_\_

**Profit or Fee:** \$ \_\_\_\_\_



\_\_\_\_\_  
Printed Name of Offeror

\_\_\_\_\_  
Name and Title of Authorized  
Representative or Official of Offeror

\_\_\_\_\_  
Signature of Authorized      Date  
Representative or Official of Offeror

**[End Attachment 1]**

## **ATTACHMENT 2: CONFLICT OF INTEREST STATEMENT**

*The terms "Contractor" or "Offeror" or "Bidder" shall have the same meaning, and shall refer to the selected firm(s) under the bid.*

### **PART I. CONFLICT OF INTEREST**

1. Neither the Housing Authority of Baltimore City (HABC) nor any of its contractors or their subcontractors may enter into any contract or arrangement in connection with a project in which any of the following classes of people has an interest, direct or indirect, during his or her tenure or for one year thereafter:

a. Any present or former member or officer of the governing body of HABC or any member of the immediate family of such member or officer. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policy-making position with the resident corporation, HABC or a business entity.

b. Any employee of HABC who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.

c. Any public official, member of the local governing body, or State or local legislator, or any member of such individual's immediate family, who exercises functions or responsibilities with respect to the project(s) or HABC.

2. Any member of these classes of persons must disclose the member's interest or prospective interest to HABC and the United States Department of Housing and Urban Development (HUD).

3. Any bidder/offeror who submits a proposal or bid in response to an HABC solicitation must disclose in its proposal or bid, the interest, direct or indirect, of any member of these classes of persons in such bidder/offeror, and shall also make the disclosures required in Parts II and III below. "Offeror" as used in Parts II and III below, refers to bidders in sealed bidding, and offerors/responders in competitive proposals, and "offer" shall refer to bids and proposals.

4. For purposes of this section, the term, "immediate family member" means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative, or as a "half" or "step" relative, e.g. a half-brother or stepchild).

5. No member of or delegate to the Congress of the United States of America or any representative of HABC shall be admitted to any share or part of any contract or to any benefits which may arise from it.

### **PART II. ORGANIZATIONAL CONFLICTS OF INTEREST NOTIFICATION**

1. It is HABC's policy to avoid situations which place an offeror in a position where its judgment may be biased if awarded the contract because of any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed pursuant to the proposed contract or where the offeror receives an unfair competitive advantage in submitting a proposal or bid for the proposed contract, such as, for example, an offeror who

submits a proposal or bid after acting as a consultant to HABC in preparing the specifications or performing a study for the proposed contract. Such situations which may either impair the offeror's objectivity in performing the proposed contract work or result in an unfair competitive advantage to the offeror are considered organizational conflicts of interest.

2. Where an offeror is aware of, or has reason to be aware of an organizational conflict of interest, whether an actual or apparent conflict, the offeror shall provide a statement which describes in a concise manner all relevant facts concerning any past, present, or currently planned interest, financial, contractual, organizational, or otherwise, relating to the work to be performed hereunder and bearing on whether the offeror has a possible organizational conflict of interest with respect to:

- a. being able to render impartial, technically sound, and objective assistance or advice, or
- b. being given an unfair competitive advantage.

2.1. During the term of the contract resulting from this solicitation, the contractor and all principals and partners of any joint venture awarded a contract under this solicitation (collectively referred to herein as the "Contractor"), shall be prohibited from providing services for or on behalf of any person, firm or company, which is in a position that is adverse to the interests of HABC. A position adverse to the interests of HABC shall include, but not be limited to, a person, firm or company that has a claim for damages against HABC in any judicial or administrative tribunal. Further, the Contractor shall not engage any subcontractor for the performance of any services under the proposed contract if such subcontractor has, at any time within the twelve (12) consecutive month period preceding the commencement of its engagement with the Contractor under the proposed contract, provided any services for or on behalf of any person, firm or company, which is in a position that is adverse to the interests of HABC. The Contractor shall insert and enforce a similar provision in its contract documents with each subcontractor. From time to time, during the term of the proposed contract HABC may require (a) the Contractor to submit a certification and affidavit as to the Contractor's compliance with the terms of this subsection 2.1; and (b) the Contractor to submit to HABC a certification and affidavit from any or all subcontractors as to their compliance with such substantially similar provision as shall be enforced by the Contractor. The Contractor shall immediately terminate any subcontractor in violation of the terms of this subsection 2.1. Failure of the Contractor to comply with the requirements of this subsection 2.1., or to terminate immediately any subcontractor in violation of such provision, shall constitute a default under the proposed contract and grounds for termination of the contract for cause, without liability to HABC.

3. The Offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions of the organization and how that structure or system would avoid or mitigate such organizational conflict.

4. In the absence of any relevant interests referred to above, or any conflict of interest, financial, organizational, contractual or otherwise, offerors shall complete the certification in Part III below, titled Conflict of Interest Certification of Offeror.

5. No award shall be made until the disclosure or certification has been evaluated by the Contracting Officer. Failure to provide the disclosure or certification will be deemed to be a minor infraction and the offeror will be permitted to correct the omission within a time frame established by the Contracting Officer.



6. Refusal to provide the disclosure or certification and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant information shall disqualify the offeror.

7. If the Contracting Officer determines that a potential conflict exists, the selected offeror shall not receive an award unless the conflict can be avoided or otherwise resolved as determined by the Contracting Officer.

8. In the event the Offeror is aware of an organizational conflict of interest and intentionally does not disclose the existence of such conflict to the Contracting Officer before the award of this contract, HABC may terminate the contract for default.

9. The term "Affiliated Entities" shall include any parent, subsidiary, partner and/or joint venturer of or with the Offeror and any person or entity that shares in the profits of the Offeror or in the proceeds or profits resulting from the proposed contract. The Offeror shall not contract with any Affiliated Entity without obtaining HABC's written approval of such contract. The Offeror shall disclose to HABC all contracts that it has with any Affiliated Entities to provide goods, materials, equipment, supplies or services, of any nature or kind, with respect to the proposed contract.

### **PART III. CONFLICT OF INTEREST CERTIFICATION OF OFFEROR**

1. The Offeror certifies that to the best of its knowledge and belief and except as otherwise disclosed, no member of the classes of persons listed in Part I above has an interest or prospective interest, direct or indirect, financial, contractual, organizational or otherwise, in the Offeror.

2. The Offeror certifies that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any actual or apparent 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 Offeror's organizational, financial, contractual or other interests may:

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

3. The Offeror agrees that if the contract is awarded to the Offeror, and after award it discovers an actual or apparent conflict of interest, financial, contractual, organizational or otherwise, with respect to this contract, it shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Offeror has taken or intends to take to eliminate or resolve the conflict. HABC may, however, terminate the contract for the convenience of HUD and/or HABC.

4. The Offeror agrees that if the contract is awarded to the Offeror, the terms of this conflict of interest clause and any necessary provisions to eliminate conflicts of interest shall be included in all subcontracts and consulting agreements resulting from the proposed contract.

5. In the absence of any interest in the Offeror held by any member of the classes of persons referred to above and in the absence of any actual or apparent conflict, I, hereby certify and affirm under penalties of perjury, that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of the proposed contract. The

undersigned official certifies that he/she is authorized to sign this proposal form for the firm.

---

Printed Name and Title  
Of Authorized Official of Responder

---

Signature of Authorized Official of Responder

Date

**[End Attachment 2]**

### ATTACHMENT 3

#### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS**

SOURCE: 24 C.F.R. PART 24, APPENDIX B TO PART 24;  
FEDERAL REGISTER, VOL. 60, NO. 122, JUNE 26, 1995

#### **INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definitions and Coverage sections or rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by The department or agency's.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the "List of Parties Excluded from Federal Procurement and Non-procurement Programs."
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and

information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment,  
Suspension, Ineligibility and Voluntary  
Exclusion-Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective lower-tier participant must provide the information requested in section (3) below, and shall attach an explanation to this proposal.

(3) The names listed below, represent all owners and principals (including project managers) of the prospective lower-tier participant and their titles or nature of interest in the firm.

Name

Title or Interest

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

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

(Use additional sheets if more space is needed)

\_\_\_\_\_  
PROSPECTIVE PARTICIPANT  
(Printed Name and Title of Official)

\_\_\_\_\_  
PROSPECTIVE PARTICIPANT  
(Signature of Official)

\_\_\_\_\_  
DATE

[End Attachment 3]

**ATTACHMENT 4: AUTHORIZATION OF RESPONDER FOR VERIFICATION OF REFERENCES**

The undersigned Responder has submitted a proposal to the Housing Authority of Baltimore City ("HABC") in response to RFP No. B-1910-20. The undersigned hereby authorizes and requests any and all persons, firms, corporations and/or government entities to furnish any information requested by HABC in verification of the references provided, for determination of the quality and timeliness of the services provided by Responder, and all other legal purposes. A copy of this document, after execution by the Responder, presented by HABC to any such person, firm, corporation and/or government entity shall be as valid as the original.

---

Printed Name and Address of Responder

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Printed Name and Title of Authorized Representative  
or Official of Responder

---

Signature of Authorized Representative or Official of Responder

---

Date

**[End Attachment 4]**



**ATTACHMENT 5 - SUBGRANTEE/CONTRACTOR/SUBCONTRACTOR  
CERTIFICATIONS AND ASSURANCES (HUD CERTIFICATIONS)**

The following certifications must be made by the Enhanced Leasing Assistance ("ELA") Program Administrator and shall be a part of the proposed contract.

ELA Program Administrator executing this certification hereby assures and certifies that:

1.     a.     It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), which states, in part, that no person in the United States, on the ground of race, color or national origin, will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance; will comply with the regulations pursuant thereto (24 CFR part 1); and will immediately take any measures necessary to effectuate this agreement.
- b.     It will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and with implementing regulations at 24 CFR part 8, which prohibit discrimination based on handicap in Federally-assisted and conducted programs and activities.
- c.     It will comply with the Americans with Disabilities Act (Public Law 101-336) and its implementing regulations at 28 CFR part 36.
- d.     It will comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR part 146, which prohibit discrimination because of age in projects and activities receiving Federal financial assistance.
- e.     It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), and regulations pursuant thereto (24 CFR part 135), which require that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the unit of local government and contracts for work in connection with the project be awarded to businesses located in the same metropolitan area as the project.
- f.     It will comply with Executive Order 11246 of September 24, 1965 as amended, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60), and Executive Order 12138, and consistent with HUD's responsibilities under these orders, will make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.
2.     It will provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701), and HUD's implementing regulations at 24 CFR part 24, subpart F by, among other things:
  - a.     publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's

workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. establishing an on-going drug-free awareness program to inform employees about:

- (i) the dangers of drug abuse in the workplace;
- (ii) the grantee's policy of maintaining a drug-free workplace;
- (iii) any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subparagraph (a);

d. notifying the employee in the statement required by subparagraph (a) that, as a condition of employment under the grant, the employee will:

- (i) abide by the terms of the statement; and
- (ii) notify the employer, in writing, of his or her conviction for a violation of a criminal drug statute occurring in the workplace not later than five calendar days after such conviction;

e. notifying HUD, in writing, within ten calendar days after receiving notice under subparagraph d.(ii) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless HUD has designated a central point for the receipt of such notices. Notice shall include the identification number of each affected grant;

f. taking one of the following actions, within 30 calendar days after receiving notice under subparagraph d.(ii), with respect to any employee who is so convicted:

- (i) taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (ii) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency;

g. making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs a, b, c, d, e and f;

h. providing the street address, city, county, state, and zip code for the site or sites where the performance of work in connection with the grant will take place. For some applicants who have functions carried out by employees in several department or offices, more than one location may need to be specified. It is further recognized that States and other applicants who become grantees may add or change sites as a result of changes to program activities during the course of grant-funded activities. Grantees, in such cases, are required to advise the HUD Field Office by submitting a revised "Place of Performance" form. The period covered by the certification extends until all funds under the specific grant have been expended.

3. It will comply with the provisions of 24 CFR part 24 which apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

4. It will comply with, and be subject to, the requirements, policies and standards, to the extent applicable, of CMB Circuit Nos. A-87 (Cost Principles Applicable to Grants, Contracts, and Other Agreements with State and Local Governments); A-102 (as described in 2 CFR part 200, Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); A-110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations); and A-122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions), as they apply to the acceptance and use of assistance under the program by recipients of Mixed Finance Grant Agreement funds, except where inconsistent with the provisions of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, or other Federal statutes or regulations applicable to the activities under the Comprehensive Grant Program. Further, it will be subject to the audit requirements of OMB Circular A-128 implemented at 24 CFR part 44 and A-133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions).

5. a. That, in addition to the conflict of interest requirements in 24 CFR part 85, no person who is in an employee, agent, consultant, officer, or elected or appointed official of the recipient of Comprehensive Grant Program funds and who exercises or has exercised any functions or responsibilities with respect to activities assisted under Comprehensive Grant Program funds, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

b. If any conflict of interest exists, an opinion of legal counsel indicating that such interest does not violate State or Local laws must be provided, together with a certification containing the following information, in order for HUD to decide whether an exception to the conflict of interest provisions should be approved: (i) disclosure of the nature of the conflict, (ii)



an assurance that there has been public disclosure of the conflict, and (iii) a description of how the public disclosure was made.

c. In determining whether to grant a requested exception, HUD will consider the cumulative effect of the following factors, where applicable:

(i) whether the exception would provide a significant cost benefit or an essential degree of expertise to the Revitalization Plan that would otherwise not be available;

(ii) whether an opportunity was provided for open competitive bidding or negotiation;

(iii) whether the person affected is a member of a group or class intended to be the beneficiaries of the Revitalization Plan and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;

(v) whether the interest or benefit was present before the affected person was in a position as described in subparagraph 5.a above;

(vi) whether undue hardship will result either to the grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) any other relevant considerations.

6. It and its principals (see 24 CFR 24.105(p)):

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (see 24 CFR 24.100) by any Federal department or agency;

b. have not been convicted of, or had a civil judgment rendered against them for, commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated in subparagraph b; and

d. have not, within a three-year period preceding the execution of this certification, had one or more public transactions (Federal, State or local) terminated for cause or default.

7. With respect to contracts of amounts in excess of \$10,000, it will comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

8. It will comply with applicable mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

9. It certifies that the information contained in this certification is true and accurate, to the best of its knowledge, information and belief.

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Signature of Authorized Certifying Representative or Official      Title

---

Name of Party Under Contract      Date

#### WARNING

Section 1001 of the Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) applies to this certification. 18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing knowing the same to contain any false, fictitious or fraudulent statement or entry, in any matter within jurisdiction of any department or agency of the United States, shall be fined no more than \$10,000 or imprisoned for not more than five years, or both.

#### SUBGRANTEE'S OR SUBCONTRACTOR'S ANTI-LOBBYING CERTIFICATION

Each subgrantee or subcontractor for must sign this anti-lobbying certification indicating that no Federally appropriated funds have been or will be spent on lobbying activities in connection with the subgrant or subcontract agreement. Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants, and loans for using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a Notice published June 15, 1990 (55 FR 24540). The rule requires applicants for and recipients of assistance exceeding \$100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from recipients if non-appropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

If lobbying activities were conducted on behalf of the Comprehensive Grant Program funds or the Mixed Finance Grant Agreement, such activities must be disclosed on Standard Form-LLL, "Disclosure of Lobbying Activities". This form may be obtained from the local HUD State or Area Office.

Attached is the appropriate anti-lobbying certification.

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS  
AND COOPERATION AGREEMENTS**

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 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, that undersigned shall be complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," 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, loan, and cooperative agreements and that all subrecipients 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.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title, if any)

**[End Attachment 5]**

**Attachment 6**

**HUD-5370-C General Conditions for Non-Construction Contracts – Section I**



# General Conditions for Non-Construction Contracts

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

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

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

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

#### 3. Termination for Convenience and Default

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

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

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

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:

- (i) appeals under the clause titled Disputes;
- (ii) litigation or settlement of claims arising from the performance of this contract; or,
- (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

#### 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

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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.

## Attachment 7

### HABC Contract Terms and Conditions

#### 1. STATEMENT OF WORK:

(a) The Consultant shall furnish all services, labor, materials, equipment, warranties, guarantees, and transportation necessary for timely supply and delivery to the Housing Authority of Baltimore City ("HABC") of the goods and products and services itemized in this Contract, and shall perform and complete all work required under the Contract as specified in, and in strict accordance with the Contract documents, applicable laws and regulations, and acceptable industry professional standards. Unless otherwise indicated by HABC, the Contract shall consist of: the following documents that comprise the Contract ("Contract Documents") (i) a purchase order or master contract document; (ii) the underlying Request for Proposals Number: B-1910-20, including and any and all attachments, exhibits, appendices, amendments and addenda thereto (hereinafter referred to collectively as the "RFP"); (iii) Form HUD-5370-C - General Conditions for Non-Construction Contracts - Section I, if not included in the RFP; and (iv) the Consultant's proposal submitted in response to the RFP, including accepted by HABC prior to contract award (hereinafter referred to as the "Proposal"). Provided, however, that the Contract shall not include: (i) any term or condition contained in the Proposal which may be contradictory to any term or condition of the purchase order/master contract or the RFP; (ii) any correspondence between HABC and the Consultant which may be contradictory to the purchase order/master contract or the RFP, or (iii) any term or condition in the Proposal deemed by HABC as unacceptable. All documents referenced in this Paragraph 1 are incorporated by reference as if fully set forth in the Contract and a made part of the Contract.

(b) In the event of any ambiguity or conflict between or among the Contract Documents, the resolution of such ambiguity or conflict shall be that which most benefits HABC, as determined by HABC in its sole discretion. Provided, however, that the Consultant shall be equitably compensated in accordance with applicable law and regulations for any increased costs in performing the work directly resulting from the resolution of such ambiguity if HABC's determination of such conflict or ambiguity is not a reasonable determination.

(c) The Consultant shall be responsible for the professional quality and technical accuracy of all services required and all work provided under this Contract. At all times during performance of this Contract and until the work is completed and accepted, the Consultant shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Consultant.

#### 2. CONSULTANT'S CERTIFICATION OF UNDERSTANDING OF WORK:

(a) By submitting a proposal, the Consultant has represented, warranted and certified that it possesses sufficient expertise in the services requested, and the requisite corporate, technical and staff capabilities necessary to competently perform services hereunder. The Consultant assures that it will utilize such competence, knowledge, expertise, capabilities, skills and qualifications to

render all necessary services. The Consultant shall adhere to such standards until final acceptance of work is made by HABC hereunder.

(b) The Consultant represents, warrants and certifies that the Consultant, its employees, consultants, partners, technical resources, and subcontractors, if any, who will perform any functions in connection with the Contract possess competent knowledge, skills, training, background, licenses, permits, education and experience in their respective duties to successfully render services and perform all requirements of the Contract.

(c) The Consultant represents, warrants and certifies that it understands that HABC is not capable of independently verifying all representations made by the Consultant as to its expertise, and knowledge of acceptable industry standards and further understands that HABC relies upon its expertise as represented.

(d) The Consultant agrees to perform work in a manner that will not cause damage to any property or equipment owned, used, leased or otherwise acquired by HABC. The Consultant shall be responsible for all damages to persons or property that occur as a result of the fault or negligence of the Consultant, its subcontractors, employees, invitees or agents, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Consultant shall hold and save the HABC, its officers and agents, free and harmless from liability of any nature occasioned by the Consultant's performance. The Consultant shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Contract.

(e) The Consultant shall confine all operations (including storage of materials) on HABC premises to areas authorized or approved by the Contracting Officer.

(f) The Consultant's responsibility will terminate when all work has been completed, the final review or inspection made, and the work accepted by the Contracting Officer. The Consultant will then be released from further obligation except as required by the guaranty, if any, except that the Consultant remains liable for any defects or hazardous conditions caused or created by the Consultant including those that do not immediately manifest upon completion of contract work.

(g) Nothing stated in this Section 2 or Section 1 above shall serve to increase the maximum cost for the Contract.

3. TERM OF CONTRACT: The contracts resulting from this RFP shall provide for a term not to exceed three (3) calendar years, unless terminated as provided under the proposed contract, subject to any earlier termination by HABC for cause or convenience as set forth in Section 18 below, and in Section 3 of "Form HUD-5370-C - General Conditions for Non-Construction Contracts - Section I". The Consultant grants HABC a unilateral option to renew the contract(s) upon the same terms, conditions, and prices for up to two (2) additional one (1) year periods, subject to all necessary HUD approvals, upon the same terms, conditions and price. HABC may



exercise its option within (90) days after the expiration of the initial contract term. The work commencement date shall be as indicated in the Notice-To-Proceed.

4. CONTRACT PRICE AND COMPENSATION:

(a) MAXIMUM CONTRACT PRICE: As consideration for the services to be provided by the Consultant hereunder, HABC shall pay the Consultant the Contract price specified in the purchase order/master contract document, which shall be the maximum amount payable for all services provided by the Consultant hereunder. HABC shall not be liable to the Consultant for any increased costs incurred by the Consultant in completing the services required under the Contract. The Consultant shall pass through to HABC any and all discounts, markdowns, price-cuts, rebates, concessions, and fee/tax waivers received by the Consultant in connection with the Contract during the Contract term and any renewal(s) thereof. The Consultant agrees to amend the Contract price or fees charged by the Contract to reflect the reduction resulting from such discounts, markdowns, price-cuts, rebates, concessions, and fee/tax waivers.

(b) MONTHLY STATEMENT/INVOICE: As a condition precedent to any payment to the Consultant hereunder, the Consultant shall submit to HABC in duplicate, a monthly statement of account or an invoice in the form approved by HABC. The invoice must clearly identify the name and address of the Consultant; the invoice date; the Contract number; an itemization of all charges included in the total invoice amount; a detailed description of the designated services performed and products supplied; by whom performed and dates performed, and milestones reached, if any. The Consultant hereby agrees that HUD or any funding source for this Contract may require its approval of such statement, prior to any payment thereunder. The Consultant agrees to include its Federal Tax Identification Number in all invoices submitted to HABC. HABC may withhold payment for failure to comply with this provision. Submit invoices to: Chief of Accounting Operations, Housing Authority of Baltimore City, 417 East Fayette Street, Room 431, Baltimore, Maryland 21202.

(c) METHOD OF PAYMENT: Payments by HABC shall be made to the Consultant within thirty (30) days after receipt of each approved invoice from the Consultant less \_\_\_\_ (\_\_\_\_) percent retainage. [*Retainage applicable only if percentage is provided*] No interest shall accrue on any unpaid balance due.

(d) FINAL PAYMENT: HABC shall make the final payment due the Consultant under this Contract after: (i) completion and acceptance of all work; and (ii) presentation of release of all claims against HABC arising by virtue of this Contract, other than claims, in stated amounts, that the Consultant has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Consultant's claim to amounts payable under this Contract has been assigned. Consultant of the final payment made under. Acceptance of final payment with or without a signed release shall operate as and be a release of HABC by the Consultant from all claims and liabilities for compensation to the Consultant in connection with this Contract.

(e) DISALLOWANCE OF COSTS: HABC reserves the right to disallow Consultant charges for hours and/or services and/or any item of cost which it deems to be unreasonable and/or unnecessary. Any dispute between the parties over such disallowed charges and/or items of cost shall be resolved in accordance with the dispute provisions set forth in the contract general terms and conditions set forth in Section 7, titled Disputes, of "Form HUD-5370-C - General Conditions for Non-Construction Contracts - Section I".

5. EXPENSES: HABC shall not be responsible for any costs or expenses incurred by the Consultant not expressly provided for in the Contract, including travel and out-of-pocket expenses.

6. ACCOUNTING: The Consultant shall maintain a separate record of the Consultant's expenses and payments pertaining to the Contract on a generally recognized accounting basis. HABC, the Comptroller General of the United States, HUD or any funding source for this project or their authorized representatives, shall have full and free access to such records, including the right to audit, and to make copies and transcripts from such records.

7. EMPLOYEES:

(a) All personnel, staff, employees, consultants and subcontractors of the Consultant performing under the Contract shall be employees and/or subcontractors of the Consultant and shall neither be employees, subcontractors nor agents of HABC. The Consultant's employees shall be hired, paid, generally supervised, and discharged by the Consultant. The Consultant shall be responsible and liable for all Federal and State payroll and Social Security taxes, insurance premiums, and any and all payments, disbursements, or reimbursements to its employees, subcontractors or agents. The Consultant shall indemnify and hold harmless, HABC in every respect against same.

(b) The Consultant warrants that any and all employees, subcontractors, partners and consultants of the Consultant assigned to perform work under the Contract shall be qualified to perform such services and shall possess all requisite qualifications, skills, education, training, experience, licenses and certifications to perform the functions and services required by HABC hereunder.

(c) Any and all Consultant's employees, subcontractors, consultants, partners or agents identified in any part of the Contract to perform services in connection with the Contract are considered to be essential to the Contract work effort. The Consultant shall not reassign, withdraw, or substitute any individual or firm designated to perform services in connection with the Contract without the prior written consent of HABC. Any such reassignment, withdrawal or substitution without prior written consent of HABC, or failure of the Consultant to assign any such individual or party as designated in the Contract shall be a material breach of the Contract, which shall constitute grounds for withholding of payment and/or immediate termination of the Contract by HABC with or without notice.

(d) If this Contract requires the Consultant to provide any service to youth and children, it shall be the sole duty and responsibility of the Consultant to ensure that only persons eligible to work with children and youth under applicable Federal, State and local laws and regulations shall

be hired or otherwise retained to perform such services. The Consultant shall take all necessary steps to hire only eligible persons including checking an appropriate number of references and conducting background investigations as may be permitted or required by law, prior to hiring such staff. HABC shall in no way be responsible for improper or negligent hiring of staff expected to work with youth and children or the acts or omissions of such staff, irrespective of whether the Consultant gave notice to HABC prior to or after such hiring and the Consultant shall indemnify and hold HABC harmless in every respect against same.

8. SUPERVISION: For performance of services under the Contract the Consultant and its employees, subcontractors and agents shall report to and be under the general direction and guidance of the HABC Office of the Comptroller, Procurement Division.

9. STANDARDS OF CONDUCT:

(a) The Consultant shall be responsible for imposing exemplary standards for the conduct, competency, professionalism, appearance, honesty, courtesy, and integrity of its employees, subcontractors and agents performing on the Contract, and shall take such disciplinary action necessary to maintain those standards for the duration of the Contract. The Consultant shall ensure that its employees, consultants, agents and subcontractors performing on the Contract shall comply with all applicable laws and industry standards governing the Contract, and that such persons shall not engage in any activity or enterprise which is in conflict with HABC's interests or the public interest.

(b) If the Consultant has any contact or dealings with HABC residents or other residents of the community during the performance of this Contract, the Consultant shall at all times conduct itself and cause its employees, subcontractors, and agents to conduct themselves in such a manner as not to disturb such residents' use and quiet enjoyment of their residences or contract activities. In any dealing or contact with HABC residents or other residents of the community during the performance of this Contract, the Consultant, its employees, subcontractors and agents shall not: (i) engage in conduct that is harassing, abusive, verbally or physically threatening, or discourteous to such residents; (ii) engage in conduct towards, with or against any resident that is criminal or generally considered by the public as immoral, improper or inappropriate; and (iii) use their position or this Contract to gain any benefit from or advantage against any resident.

(c) Violation of any part of this Section 9 shall be grounds for immediate termination of the Contract by HABC without liability to the Consultant.

10. PERFORMANCE EVALUATION MEETINGS: The Consultant understands that HABC expects, at a minimum, to meet any and all stated objectives, goals and requirements of the Contract, therefore, the Consultant agrees to perform the services in a manner that promotes the achievement of said objectives, goals and requirements, including an analysis effort by contractor which may or may not lead to specific vendor alternatives. HABC has the sole discretion to accept, select or reject any alternatives offered by the Consultant. To that end, the Consultant shall promptly attend and participate in regular consultation meetings as determined by HABC. The assigned representatives of the Consultant for the Contract and one or more alternates shall be designated in writing to HABC prior to the Contract start with the addresses and telephone numbers



where such representative(s) can be reached. The assigned representatives of the Consultant shall be readily available as needed to meet with representatives of HABC in connection with matters related to the performance of the Contract. A mutual effort will be made to resolve any problems identified at these meetings. The performance evaluation meetings are required for the administration of the Contract, therefore, there shall be no additional fees paid to the Consultant, its subcontractors, employee or agents for attending such meetings. The Consultant understands and agrees that failure to regularly and promptly attend performance evaluation meetings shall be a material breach of contract and grounds for withholding payment or termination of the Contract by HABC.

11. REMOVAL FROM ASSIGNMENT: Neither the Consultant, nor its employees, subcontractors or agents may engage in conduct that is unethical, indecent, immoral, criminal and/or generally contrary to the public's interest. Such behavior shall be grounds for immediate termination of the Contract by HABC without liability to the Consultant. In lieu of termination, HABC may, at its sole discretion, request the Consultant to remove immediately from this assignment any employee, subcontractor or agent rendering services hereunder who is found unfit to perform duties due specifically to neglect of duty, unsatisfactory job performance, ethical violations, disorderly conduct, use of abusive or offensive language, quarreling, fighting, or intimidation by words or actions, theft, vandalism, immoral conduct or any other criminal action; and/or selling, consuming, possessing, or being under the influence of intoxicants, including alcohol, or illegal substances while on assignment to HABC. In such event, the Consultant shall, upon request by HABC, promptly provide, qualified substitute personnel at no additional cost to HABC to complete the Contract.

12. DELAYS AND EXTENSIONS OF TIME: The Consultant shall agree to perform the Contract continuously, faithfully and diligently. No charges or claims for damages shall be made by the Consultant against HABC for any delays or hindrances, regardless of cause, in the performance of services under the Contract, except that the Consultant may be reimbursed within legally allowable limits for any reasonable costs incurred as a direct result of a delay caused solely by the negligence of HABC, if any. Time extensions may be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including but not restricted to, acts of God, acts of the public enemy, acts of the Federal or State government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or other delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Consultant.

13. SUSPENSION OF WORK: HABC unilaterally may order the Consultant in writing to suspend, delay, or interrupt all or any part of its performance of services under the Contract for such period of time as HABC may determine to be appropriate for the convenience of HABC or the grantor of funds for this project without any liability by HABC, HUD or any grantor of funds for this project to the Consultant except that the Consultant shall be reasonably compensated within legally allowable limits for time expended and proportion of the analysis and conclusions completed for all assignments at the time of such suspension, and for reasonable, authorized and allowable costs incurred at the time of such suspension.



14. WARRANTY: Any equipment provided under this Contract shall have a warranty of one (1) year.

15. SUBCONTRACTING, "MBE", "WBE" AND "SECTION 3" COMPLIANCE:

(a) The Consultant shall not subcontract any portion of the services required under the Contract without obtaining prior written approval from HABC.

(b) If the Consultant has identified any subcontractor prior to the execution of this Contract, including but not limited to minority business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), the Consultant shall not remove or reassign such identified subcontractors without prior written authorization of HABC. Violation of this provision is a material breach of the Contract which shall be grounds for terminating the Contract by HABC. Any HABC approved subcontract or shall be subject to any terms and conditions that HABC deems necessary to protect the interest of HABC and/or the grantor of funds for this project.

(c) The Consultant shall comply with its MBE/WBE Utilization Plan and its plan for providing subcontracting opportunities to "Section 3 Businesses" in accordance with Section of the Housing and Urban Development Act of 1968. It shall be a material breach of the Contract for the Consultant to remove any MBE WBE or Section 3 business identified to be utilized in the Contract prior to execution of the Contract, without prior written approval of HABC, or to fail to utilize MBEs, WBEs and Section 3 businesses in accordance with the percentages set forth in the Consultant's MBE/WBE Utilization Plan.

(d) The Consultant shall be as fully responsible for the acts or omissions of any subcontractors, or assignees, and of persons either directly or indirectly employed by them, as for the acts or omissions of persons directly employed by the Consultant. HABC shall not be responsible for the fulfillment of the Consultant's obligation to subcontractors or assignees in the event of any subcontract or assignment of the Contract. The Consultant shall ensure that all subcontractors performing on this Contract are paid timely.

16. CONSULTANTS: The Consultant shall not use any funds provided pursuant to the Contract to hire consultants or experts unless HABC gives prior approval of any such arrangement and the proposed work plan of the consultants or experts involved.

17. LIQUIDATED DAMAGES: [*Applicable only if amount is provided*] If the Consultant fails to complete the work within the time specified in the Contract, or any extension granted by HABC, the Consultant shall pay to HABC as liquidated damages, the sum of \$\_\_\_\_\_ for each day of delay. To the extent that the Consultant's delay or nonperformance is excused under another clause in this Contract, liquidated damages shall not be due HABC. The Consultant remains liable for damages caused other than by delay.

18. TERMINATION FOR CONVENIENCE: The performance of work under the Contract may be terminated by HABC in accordance with this clause in whole, or from time to time in part, whenever HABC shall determine that such termination is in the best interest of HABC, HUD or any funding source for this project. HABC shall pay the Consultant all reasonable costs directly

relating to the Contract that the Consultant may have reasonably incurred and is entitled to under applicable laws and regulations up to the date of termination, and all reasonable costs associated with the termination of the Contract; however, the Consultant shall not be reimbursed for any anticipatory profits which have not been earned up to the date of termination. Any such termination shall be effected by delivery to the Consultant of a Notice of Termination specifying the extent to which the performance of the work under the Contract is terminated and the date upon which such termination becomes effective. Upon any termination of the Contract for convenience or for cause, the entire contract file(s) maintained by the Consultant in connection with the Contract, including but not limited to all finished documents, projects, services, supplies, reports, audio visual recordings, shall become the property of HABC.

19. INSURANCE:

(a) The Consultant shall maintain for the entire duration of the Contract and until formally terminated by HABC, the required insurance coverage as set forth in Section (b) below. All insurance shall be procured from a company licensed to do business in the State of Maryland and placed with a carrier possessing an A.M. Best's Rating of B+VI or better. Deductible levels shall not exceed \$1,000 per occurrence on any policy. HABC must be named as an additional insured on all policies and the policy must provide that coverage cannot be canceled without notice to HABC at least thirty (30) days before the effective date of such cancellation. HABC may, at its sole discretion, raise, waive or reduce in limits, any insurance coverage required under the Contract.

(b) Coverage Requirements.

(i) Worker's Compensation Insurance - The Consultant including subcontractors shall obtain and maintain during the term of the Contract, Worker's Compensation Insurance including Employers Liability and shall apply and be in accordance with all Maryland Statutory requirements.

(ii) General Liability Insurance - The Consultant including subcontractors shall obtain and maintain during the term of the Contract, coverage for "bodily injury" (including death, public liability & personal injury) and "property damage" with a Combined Single Limit in an amount not less than \$1,000,000 per occurrence, and \$1,000,000 in the aggregate for the year

(iii) Automobile Liability Insurance - The Consultant including subcontractors shall obtain and maintain during the term of the Contract, coverage on all motor vehicles owned and non- owned, hired, leased or otherwise used in connection with this Contract. This insurance shall provide coverage for "bodily injury" (including death) and "property damage" with a Combined Single Limit in an amount not less than \$1,000,000 per occurrence and shall be in accordance with all Maryland Statutory requirements.

(iv) Professional Liability (Errors and Omissions) Insurance - The Consultant including subcontractors shall obtain and maintain Professional Liability/Malpractice Insurance during the term of this Contract for protection against claims for damages which

may arise from operations or activities performed under the Contract, whether such operations or activities be performed by the Consultant or by any employees, agents or representatives of the Consultant (including subcontractors). Limits for this coverage shall not be less than \$1,000,000 per occurrence and shall be in accordance with all Maryland Statutory requirements.

(c) Proof of Insurance:

(i) Contract Start: The Consultant including subcontractors shall furnish to HABC prior to start of the Contract, a certified copy of the policy or policies covering all work/services as required in the Contract agreement evidencing that the insurance required is maintained and in force for the entire duration of the Contract agreement. The Consultant including subcontractors must also notify HABC within thirty (30) days prior to any termination of the required insurance. Any lapse in insurance coverage is cause for the immediate termination of this Contract.

(ii) During Contract Term: From time to time during the Contract term HABC may require, and the Consultant agrees to provide HABC with a certified copy of the policy or policies covering all work as required in the Contract, as evidence that the insurance required is maintained and in force for the entire duration of the Contract. The Consultant must also notify HABC immediately should any of the required insurance be terminated. Any insurance lapse is cause for the immediate termination of this Contract.

(d) No Insurance Limit on Indemnification Requirements: The Consultant shall also agree to save and hold HABC, its officers, agents and employees, harmless from any and all claims against HABC's officers, agents and employees which arise out of any action or omission of the Consultant or any of the officers, employees or agents of the Consultant, relating to the operations or activities required under this Contract. The agreement to save and hold HABC, its officers, agents and employees harmless shall not be limited by or to the level of liability insurance required under the provisions of this Contract, or by any provision, document or instrument which may be contained in, incorporated in, or attached, or otherwise made a part of this Contract or underlying solicitation.

(e) City and State Coverage Allowance. If this agreement is with the Mayor and City Council of Baltimore (City) and/or the State of Maryland (State), HABC will accept the City's/State's Self-Insurance program(s) as applied to Workers Compensation, Commercial General Liability, Automobile Liability, Professional Liability and Fire & Extended Coverage. However, it is agreed that the City's/State's coverage limits shall reflect and provide total compensation for any and all losses suffered as a result of the City's/State's performance of the Contract.

20. INDEMNIFICATION:

(a) The Consultant shall, to the fullest extent allowable under applicable laws and regulations, indemnify, save defend, and hold harmless HABC, its divisions, departments, officials, employees and agents from and against liability for any suits, actions, judgments, injuries,

damages, expenses, losses, penalties, fines or claims of any character, including attorney's fees, attributable to, arising from, or caused by the conduct, acts or omissions of the Consultant, its employees, agents, subcontractors or assignees, in connection with the Contract and services under this RFP.

(b) HABC has no obligation or duty to defend, and shall not defend, provide legal counsel to, or pay for legal services procured by the Consultant, its subcontractors, consultants, employees, and agents in the event that a suit, claim or action of any kind is brought against the Consultant, its subcontractors, assignees, employees and agents as a result of, or relating to their conduct, acts or omissions in connection with the Contract or services under this RFP.

(c) HABC has no obligation or duty for the payment of any judgments, liens, settlements, damages, expenses, losses or claims, including litigation and attorney's fees by or against the Consultant, its subcontractors, assignees, employees, consultants, and agents as a result of, or relating to their actions or conduct in connection with the Contract.

(d) The Consultant shall immediately notify HABC of any claim or suit made or filed against the Consultant, its subcontractors, assignees, employees, consultants and agents regarding any matter related to the Contract, and shall indemnify, cooperate, assist, and consult with HABC in the defense or investigation of any claim, suit, charge or action made or filed against HABC in connection with the Contract.

21. NON-DISCRIMINATION AND EQUAL OPPORTUNITY REQUIREMENTS: In addition to the requirements set forth in Section 16, titled Equal Employment Opportunity, of "Form HUD-5370-C - General Conditions for Non-Construction Contracts - Section I", the Consultant shall comply with, and shall also ensure that subcontractors performing on the Contract, if any are approved by HABC, shall comply with all State and local equal opportunity requirements and the following Federal equal opportunity requirements:

(a) Pursuant to Title VI, of the Civil Rights Act of 1964: Discrimination on the grounds of race, color, or national origin shall be prohibited. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) Pursuant to Title II, Section 109 of the Housing and Community Development Act of 1974, as amended: No person shall, on the grounds of race, color, national origin or sex be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Title.

(c) Pursuant to the Fair Housing Act of 1988, which amends Title VIII of the Civil Rights Act of 1968: Discrimination on the basis of race, color, sex or national origin in the sale, rental and financing of dwellings shall be prohibited. The Fair Housing Act of 1988 also covers persons with disabilities and families with children.

(d) Pursuant to the Age Discrimination Act of 1975 as amended: Discrimination on the basis of age in programs or activities receiving Federal financial assistance shall be prohibited.



(e) Pursuant to Section 504 of the Rehabilitation Act of 1973, as amended: Discrimination on the basis of handicap in all programs and activities receiving Federal financial assistance shall be prohibited.

(f) Pursuant to the Americans with Disabilities Act of 1990: Discrimination against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training and other terms, conditions, and privileges of employment shall be prohibited.

(g) Pursuant to Executive Order 11246: Executive Order 11246 prohibits discrimination against any employee or applicant for employment on the basis of race, color, religion, sex or national origin. The Consultant shall take affirmative action to ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, or national origin. Such action will include, but not be limited to, employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates or pay, or other forms of compensation and selection for training, including apprenticeship programs.

(h) Pursuant to Executive Order 11625: The Consultant agrees that in connection with the performance of services under the Contract, the Consultant shall comply with any applicable HABC's policies concerning Minority Business Enterprises (MBE), Women-owned Businesses (WBE) and/or Small Disadvantaged Businesses, as such policies may be adopted, amended and/or implemented by HABC.

(i) Pursuant to Executive Order 12138: A national women's business enterprise policy is created and arrangements for developing, coordinating and implementing a national program for women's business enterprise are prescribed.

(j) Pursuant to Executive Order 11063: Equal opportunity in housing and related facilities provided by Federal financial assistance is required.

22. ORDER OF PRECEDENCE: In the event of a conflict between the Contract and any applicable Federal law or regulation, the Federal local law or regulation shall prevail. In the event of a conflict between the Contract and any applicable State or local law or regulation, the State or local law or regulation shall prevail provided that such is not in conflict with an applicable Federal local law or regulation.

23. PURCHASE AND TREATMENT OF ASSETS: If the Contract prescribes that the Consultant shall utilize HABC property for the performance of the Contract there shall be an appendix to the Contract listing all HABC property expected to be used. HABC property is defined as property acquired by HABC and furnished to the Consultant for the performance of the Contract, or property to be acquired directly by the Consultant with funds paid under the Contract, for the performance of the Contract.

(a) Title to all property furnished to the Consultant by HABC shall remain with HABC. Title to all property acquired by the Consultant shall immediately vest in HABC upon purchase of such property.

(b) The property shall be used solely for the performance of the Contract unless otherwise directed by HABC. The Consultant is responsible and accountable for property used for the Contract, and is required to keep separate records of, and furnish reports to HABC concerning all property used for this Contract.

(c) The Consultant must submit written notification to the Contracting Officer of any purchase of property within twenty-four (24) hours of such purchase. This notification must include a complete description of each item purchased, date acquired, vendor of the property, cost, manufacturer's serial number or other identification number, location of the equipment, and proposed disposition of equipment at the completion of the Contract. All property acquired by the Consultant must be clearly identified and labeled as the property of HABC. The Consultant must contact HABC to obtain such labels. The Consultant must submit a monthly report to the Contracting Officer, accounting for the location and condition of the property. This report must account for all property listed on the initial and subsequent notification forms. The Consultant must make the property available for review or inspection by the Contracting Officer or his/her designee(s) without prior notice to the Consultant, irrespective of whether such property is in the actual possession of the Consultant. The Consultant shall not dispose of such property without prior written approval of HABC.

(d) The Consultant is liable for any loss of or damage to the property including any such property furnished by the Consultant to its subcontractors. The Consultant shall maintain adequate insurance coverage on the property and shall safely maintain, use and protect the property. If the Consultant is indemnified, reimbursed, or otherwise compensated for any loss or destruction of, or damage to the property, written notification of such action must be sent to the Contracting Officer. At HABC's direction, the proceeds shall be used to repair, renovate or replace the property involved, or shall be credited or reimbursed to HABC against the cost of the work covered by the Contract.

(e) At the conclusion of the term of the Contract and prior to completion of final payment, the Consultant shall deliver to HABC an updated listing of property furnished to, or acquired by the Consultant, showing as to each property item, the description, location, and condition of the property. Upon termination of the Contract, HABC may require the Consultant, and the Consultant agrees to either deliver to HABC, any and all property furnished to, or acquired by the Consultant for the performance of the Contract or otherwise dispose of such property as directed by HABC.

24. RECORDS AND REPORTS: The Consultant shall establish and maintain a comprehensive system of records, books, and accounts related to the performance of the Contract in a manner conforming to the directives of the funding source for this project, and otherwise satisfactory to HABC.

25. ADVERTISING LIMITATION: The Consultant agrees not to use the award of the Contract as a part of any commercial advertising without the prior written permission of HABC.

26. COMPLIANCE WITH APPLICABLE LAWS: The Consultant warrants that it shall comply and require its employees, subcontractors agents to comply with all Federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under the Contract including all workplace and occupational safety laws. The Consultant hereby represents that it is a legal entity qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified. The Consultant further represents and warrants that it is not in arrears with respect to the payment of moneys due and owing the State of Maryland, or any subdivision, department or unit thereof, including, but not limited to, the maintenance of required worker's compensation and occupational liability insurance, and the payment of taxes and employee benefits, and that it shall not become in arrears during the term of the Contract.

27. CONTRACT ADMINISTRATION: The work to be accomplished under the Contract shall be performed under the direction of the Contracting Officer who shall be the Executive Director of HABC or his designee. All matters relating to the administration and performance of the Contract shall be referred to the Contracting Officer for determination. The Consultant shall submit all information required under the Contract to the Contracting Officer at 417 East Fayette Street, Room 1346, Baltimore, Maryland 21202, unless otherwise designated in writing by HABC. The Contracting Officer shall have full responsibility for monitoring all contract activities and the Consultant's progress hereunder.

28. CONTINGENT FEE PROHIBITION: The Consultant, warrants that it has not employed, or retained for a fee or other consideration, any person, partnership, corporation, or other entity, other than a *bona fide* employee or agent working for the Consultant, to solicit or secure the Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a *bona fide* employee or agent, any fee or any other consideration contingent on the making of the Contract. For breach or violation of this warranty, HABC shall have the right to annul the Contract without liability on the part of HABC or, in its discretion, to deduct from the consideration otherwise payable to the Consultant the full amount of such fee or other consideration.

29. COST CERTIFICATION: By submitting fees, costs, prices, expenses or such other billing information, the Consultant shall certify that, to the best of its knowledge, the information submitted shall be accurate, complete and current as of the date of submission and that such fee is not contingent upon, or a result of preconceived or prearranged value considerations.

30. LIABILITY FOR LOSS OF DATA: In the event of loss of any data or records necessary for the performance of the Contract where such loss is due to the error or negligence of the Consultant, the Consultant shall be responsible for recreating such lost data or records irrespective of the cost, and such cost shall be borne by the Consultant.

31. PATENTS AND ROYALTIES: The Consultant shall, to the extent allowable by applicable laws and regulations, indemnify and save harmless HABC and its employees from liability of any nature or kind, including costs and expenses for or on account of any copyrighted, patented, or non-patented invention, process or article manufactured or used in the performance of the Contract, including its use by HABC if supplied by the Consultant. If the Consultant uses any design, device

or materials covered by letters, patents or copyrights, it is mutually agreed and understood that HABC shall not be responsible for payment of any royalties or costs arising from the use of such design, devise, or materials involved in the work.

32. PERMITS AND LICENSES: The Consultant shall obtain, at its expense, all permits and licenses that are required for performing the work by all laws, ordinances, rules and regulations or order of any officer and/or body lawfully empowered to make or issue the same and having jurisdiction. The Consultant shall give all notices necessary in connection with such permits and licenses, and shall pay all fees and costs relating to the maintenance of such permits and licenses for the duration of the Contract.

33. AVAILABILITY OF FUNDS: In the event funds necessary to finance the Contract are not available, HABC may cancel the award and the Contract and any and all binding agreements pursuant hereto will become null and void upon no less than twenty-four (24) hours notice in writing to the Consultant. Such notice shall be delivered by certified mail, return receipt requested. HABC shall be the final authority as to the determination of the availability of funds. In such event the Consultant shall be entitled to receive equitable compensation for all work completed and accepted prior to such termination or cancellation as allowed for in the Contract.

34. GOVERNMENT RESTRICTIONS: In the event any governmental restriction may be imposed which would necessitate alteration of the performance of services offered, it shall be the responsibility of the Consultant to notify HABC immediately in writing and specify the regulation which required an alteration. HABC reserves the right to accept any such alteration, including any reasonable price adjustments occasioned thereby, or cancel the Contract at no expense to HABC. In such event the Consultant shall be entitled to receive equitable compensation for all work completed and accepted prior to such termination or cancellation as allowed for in the Contract.

35. CLEAN AIR AND WATER: "Facility" as used herein means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by the Consultant or any subcontractor, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

(a) The Consultant agrees:

(i) To comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR Part 15);

(ii) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of the facility from the listing;



(iii) To use the best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and

(iv) To insert the substance of this Section 35 in all nonexempt subcontracts, including this Paragraph 35(a)(iv).

36. ENVIRONMENTAL PROTECTION: The Consultant shall be responsible to protect the environment of work areas as affected by this Contract, including controlling of lead hazards as more fully set forth in the RFP. The Consultant shall be responsible for the proper disposal of all hazardous solid, liquid, and gaseous contaminants and refuse in accordance with all federal, state and local codes and regulations. All chutes for refuse shall be covered or of such as design to fully confine the material to prevent the dissemination of dust.

37. FACILITIES: HABC reserves the right to inspect the Consultant's facilities at any time with reasonable notice.

38. NOTICE: All notices required to be given by either party under the terms of the Contract shall be in writing and shall be deposited in the U.S. Mail, postage prepaid, or delivered by a recognized national express courier, addressed to the applicable party at the address set forth below. (Telephone number provided for emergencies only.)

If to the Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_

If to HABC:

Housing Authority of Baltimore City  
Fiscal Operations, Procurement Division  
417 East Fayette Street, Suite 401  
Baltimore, Maryland 21202  
Attention: Steve Suit, Senior Vice President of  
Procurement  
Telephone: 443-984-1808

39. WARRANTY OF TITLE: The Consultant warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

40. CONFLICT OF INTEREST: In addition to the provisions of Sections 13 and 14 of "Form HUD-5370-C - General Conditions for Non-Construction Contracts - Section I", concerning conflicts of interest, the following provisions shall apply to this Contract:

(a) Neither HABC nor any of its contractors or their subcontractors may enter into any contract or arrangement in connection with a project in which any of the following classes of people has an interest, direct or indirect, during his or her tenure or for one year thereafter:

(i) Any present or former member or officer of the governing body of HABC or any member of the immediate family of such member or officer. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policy-making position with the resident corporation, HABC or a business entity.

(ii) Any employee of HABC who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.

(ii) Any public official, member of the local governing body, or State or local legislator, or any member of such individual's immediate family, who exercises functions or responsibilities with respect to the project(s) or HABC.

(b) For purposes of this Clause, the term, "immediate family member" means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative, or as a "half" or "step" relative, e.g. a half-brother or stepchild).

(c) No member of or delegate to the Congress of the United States of America or any representative of HABC shall be admitted to any share or part of this Contract or to any benefits which may arise from it.

(d) As provided in the Annotated Code of Maryland, Section 12-310 of the Housing and Community Development Article, a commissioner or employee of HABC may not acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he/she have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.

(e) In addition, the provisions of the Baltimore City Ethics Law Article VII, Section 123 of the Baltimore City Charter (1964 Revision) and Article 8 of the Baltimore City Code (1983 Replacement Volume) shall also apply.

(f) The Consultant must disclose any member of these classes of persons and the member's interest or prospective interest in the Contract to HABC and HUD.

(g) The Consultant has certified in its proposal that to the best of its knowledge and belief, and except as may have been otherwise disclosed, no member of the classes of persons listed above has an interest or prospective interest, direct or indirect, financial, contractual, organizational or otherwise, in the Consultant.

(h) The Consultant has further certified that to the best of its knowledge and belief and except as may have been otherwise disclosed in the certification, it does not have any actual or

apparent organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this Contract and the Consultant's organizational, financial, contractual or other interests may: (i) result in an unfair competitive advantage to the Consultant; or (ii) impair the Consultant's objectivity in performing the Contract work. The Consultant has further certified that it has no affiliated entities, as that term is defined in the conflict of interest disclosure statement form completed by the Consultant and incorporated by reference and made a part hereto, or has otherwise disclosed such affiliated entities to HABC.

(i) The Consultant understands and agrees that HABC has relied upon these certifications to make this contract award. The Consultant agrees that if it discovers an actual or apparent conflict of interest, financial, contractual, organizational or otherwise, with respect to this Contract, it shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Consultant has taken or intends to take to eliminate or resolve the conflict. HABC may, however, terminate the Contract for the convenience of HABC and/or HUD.

(j) The Consultant agrees to include the terms of this conflict of interest clause and any other necessary provisions to eliminate conflicts of interest in all subcontracts and consulting agreements resulting from this Contract.

(k) During the term of the Contract, the Consultant and its subcontractors and their collective principals, member, affiliates and partners, shall be prohibited from providing services for or on behalf of any person, firm or company, which is in a position that is adverse to the interests of HABC, if the services rendered by the Consultant to such person, firm or company may be used against HABC. A position adverse to the interests of HABC shall include, but not be limited to, a person, firm or company that has a claim for damages against HABC in any judicial or administrative tribunal. Further, the Consultant shall not engage any subcontractor for the performance of any services under the proposed contract if such subcontractor has, at any time within the twelve (12) consecutive month period preceding the commencement of its engagement with the Consultant under the proposed contract, provided any services for or on behalf of any person, firm or company, which is in a position that is adverse to the interest of HABC. The Consultant shall insert and enforce a similar provision in its contract documents with each subcontractor. From time to time, during the term of the Contract HABC may require: (i) the Consultant to submit a certification and affidavit as to the Consultant's compliance with the terms of this subsection k; and (ii) the Consultant to submit to HABC a certification and affidavit from any or all subcontractors as to their compliance with such substantially similar provision as shall be enforced by the Consultant. The Consultant shall immediately terminate any subcontractor in violation of the terms of this subsection k. Failure of the Consultant to comply with the requirements of this subsection j, or to terminate immediately any subcontractor in violation of such provision, shall constitute a default under the Contract and grounds for termination of the Contract for cause, without liability to HABC.

41. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY,  
AND VOLUNTARY EXCLUSION:

(a) The Consultant has certified that neither the Consultant nor any of its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by HUD or any other Federal department or agency, and except as may have been otherwise disclosed in the certification. This certification is a material representation of fact upon which reliance was placed to award this Contract. The Consultant understands and agrees that if it is later determined that the Consultant knowingly rendered an erroneous certification, HABC may terminate the Contract without liability to the Contract, and in addition to other remedies available to the Federal Government, HUD may pursue available remedies, including suspension and/or debarment.

(b) The Consultant agrees to provide immediate written notice to HABC if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Consultant agrees to immediately remove and replace any of its principals or subcontractors later found to be ineligible to participate in this Contract, at no additional cost to HABC.

(c) The Consultant agrees to obtain a similar certification regarding debarment, suspension, ineligibility and voluntary exclusion from participation in Federally funded contracts, from its subcontractors, and to include the substance of this Section 41 in all subcontracts resulting from this Contract.

42. CANCELLATION: Irrespective of any default hereunder HABC may also at any time at its discretion cancel the Contract in whole or in part, delete any scheduled item and/or reduce/increase the quantity of any scheduled item as deemed necessary by HABC. In such event the Consultant shall be entitled to receive equitable compensation for all work completed and accepted prior to such termination or cancellation as allowed for in the Contract.

43. NO ARBITRATION: Notwithstanding anything to the contrary stated elsewhere in this Contract including any contract document enumerated above or any other document, there shall be no arbitration or mediation of any matter, claim, or dispute arising from this Contract, without the express written consent of both parties at the time such matter, claim, or dispute arises. No provision for arbitration or mediation without the consent of the parties contained in this document or any other Contract Document or any other document shall be binding upon or enforceable against HABC.

44. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept, or performed after the expiration or termination of the Contract, it shall survive after the expiration or termination of the Contract and remain binding upon and for the benefit of the parties hereto until fully observed, kept, or performed. All representations, warranties, covenants and agreements made by Consultant in connection with this Contract, hereto and all certificates delivered by the Consultant shall survive the expiration or termination of this Contract. Notwithstanding any provision to the contrary elsewhere in the Contract, the Consultant shall remain liable to HABC for damages resulting from conditions created by an act or omission of the Consultant, its subcontractors, employees, and agents, including conditions that may not immediately manifest by the expiration date of the Contract. The Consultant agrees



to indemnify and hold HABC and its officials and employees harmless for any claims or damages resulting from such conditions.

45. PREVAILING WAGES:

(a) In accordance with 42 U.S.C. 1437j, the Consultant shall pay not less than wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state or local law) by the Secretary of HUD, to all professional, technical, executive, supervisory and administrative employees, if required under the RFP. The Consultant shall furnish certifications of compliance with the foregoing prevailing wage requirements, with each invoice or statement of account submitted to HABC for services rendered.

(b) In the event that HABC receives notice of underpayment of wages required to be paid under the requirement above, HABC may withhold from the Consultant, out of the payment due, any or all amounts until Consultant has paid the appropriate wages to such employees.

46. EFFECT OF PROTEST. If HABC receives a notice of protest after award or execution of this Contract, and the protest is considered timely, HABC may, in its sole discretion and without any liability to the successful bidder, rescind the notice of award and cancel the award, or take any other action permitted by law, without liability to Consultant. If the Contract has been executed prior to notice of a protest, the Contracting Officer may by written order to the Consultant, direct the Consultant to stop performance of the work called for by the Contract. The order may be specifically identified as a stop-work order or order for suspension of work. Upon receipt of the order, the Consultant agrees to immediately comply with its terms and take all reasonable steps to minimize incurring of costs allocable to the work covered by the order during the period of work stoppage. Upon the final HABC decision on the protest, or if HABC determines it is in its best interests not to proceed with the Contract during the adjudication of the protest, HABC shall in its sole discretion, either: (i) cancel the stop-work order; (ii) terminate the Contract for convenience of HABC in accordance with the Termination for Convenience Clause provided in Section 18 above and in Section 3 of "Form HUD-5370-C - General Conditions for Non-Construction Contracts - Section I"; or take any other action to protect the interests of HABC and its funding sources for this Contract.

47. SAVING CLAUSE: The Consultant agrees and expressly acknowledges the possibility of changes in Federal and State regulations applicable to the Contract and expressly agrees to amend the Contract as necessary to comply with such changes.

48. GOVERNING LAW: The place of performance of the Contract shall be the State of Maryland. The Contract shall be governed, construed, interpreted, and enforced according to Maryland law.

49. WAIVER: The rights and remedies of HABC provided for under the Contract are in addition to any other rights and remedies which HABC may have as a matter of law. A waiver by HABC of any terms and conditions of the Contract in any instance shall not be deemed or construed to be a waiver of any such term or condition for the future or any subsequent breach or occurrence thereof. Neither HABC's review, approval or acceptance of, nor payment for the services required under the Contract shall be construed to operate as a waiver of any rights or cause of action which HABC may have under the Contract, and the Consultant shall be and remain liable to HABC for all damages to HABC caused by the Consultant in the performance of the services under the Contract.

50. SEVERABILITY: If any particular provision of the Contract is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not be affected by such declaration and shall remain valid and fully enforceable, and the Contract shall be construed as if such invalid or unenforceable provision were omitted.

51. USE OF PLURAL OR SINGULAR: The plural or the singular shall be used or substituted for the singular or plural number, respectively, without intending a change in meaning, in any place or places herein in which the context may require such substitution or substitutions.

52. USE OF MASCULINE OR FEMININE: Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the feminine gender shall be deemed to refer to and include the masculine and neuter

53. LEGAL CONSTRUCTION: This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions and components. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

52. RECITALS: The recitals and/or whereas clauses are hereby incorporated as a part of this Contract.

51. HEADINGS AND CAPTIONS: Headings and captions in this Contract are for convenience only and shall not be used to interpret or construe its provisions.

52. ATTACHMENTS AND EXHIBITS: Each writing or other document referred to in this Contract as being attached hereto as an attachment or otherwise designated as an attachment or exhibit hereto is hereby made a part of this Contract. The following certifications and representations of Consultant submitted with its proposal are attached hereto and incorporated by reference and made a part of this Contract:

53. ENTIRE AGREEMENT: The Contract shall be executed in duplicate original documents and shall constitute the entire agreement between HABC and the Consultant. The Contract shall not become effective until executed by HABC and cannot be amended or modified unless such amendment or modification is signed by HABC. The Contract shall be binding upon the Consultant, its heirs, successors, executors, and at HABC's discretion, its assigns.

**[End Attachment 7]**

**Attachment 8**

**Prime Contractor MBE/WBE Statement of Intent**



Housing Authority of Baltimore City  
Fair Housing and Equal Opportunity  
417 E. Fayette Street, Suite 401  
Baltimore, MD 21202

Prime Contractor MBE/WBE STATEMENT OF INTENT

Date: \_\_\_\_\_

Prime Contractor's Name: \_\_\_\_\_

Prime Contractor's Address: \_\_\_\_\_

Contract Name and Number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ MBE Commitment: \_\_\_\_\_

\_\_\_\_\_ agrees to enter into a contractual agreement  
with \_\_\_\_\_, who will provide the following services in  
connection with the above contract \_\_\_\_\_

Total Dollar Amount of Contract: \$ \_\_\_\_\_  
Total Dollar Amount of MBE Subcontract: \$ \_\_\_\_\_  
Total Dollar Amount of WBE Subcontract: \$ \_\_\_\_\_  
Total MBE Percentage of Total Contract Value: \$ \_\_\_\_\_

\_\_\_\_\_ is currently certified with the \_\_\_\_\_  
(MBE or WBE Subcontractor)  
\_\_\_\_\_ Office to function in the aforementioned  
capacity. \_\_\_\_\_ certification number is \_\_\_\_\_.  
(MBE or WBE Subcontractor)

The undersigned Prime contractor and subcontractor agree to enter into a contract for the work/service indicated above for the dollar amount or percentage indicated, contingent upon the prime contractor's execution of a contract with the Housing Authority of Baltimore City for the above referenced contract number.

\_\_\_\_\_  
Prime Contractor Signature (required)

\_\_\_\_\_  
MBE or WBE Signature (required)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Complete a separate form for each MBE/WBE named in Bid.**

## ATTACHMENT 9A: SECTION 3 OBLIGATIONS OF CONTRACTOR

### SECTION 3 HOUSING AND URBAN DEVELOPMENT (HUD) ACT OF 1968

#### 1. General

The Contract is considered a Section 3 covered contract pursuant to Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C.A. Section 1701u, et seq., and the implementing regulations issued pursuant thereto, 24 C.F.R. part 135 et seq. ("Section 3"). Section 3 requires that each applicant, recipient, contractor, or subcontractor undertaking work on a Section 3 covered project shall assure that, to the greatest extent feasible, contracts for work to be performed in connection with the project are awarded to business concerns located within the Section 3 covered project area or business concerns owned in substantial part by persons residing in the Section 3 covered area. HUD in consultation with the Small Business Administration will establish for the Section 3 covered project area a registry of business concerns which meet the definition contained in Paragraph 135.5 (b) and (c). Each applicant, recipient, Contractor or Subcontractor undertaking work in connection with a Section 3 covered project shall fulfill his/her obligations to utilize business concerns located within or owned in substantial part by persons residing in the Section 3 covered project area by developing and implementing an affirmative action plan.

#### 2. Section 3 – Employment and Training of Lower Income Persons, Subcontracting With Section 3 Businesses --135.20 Assurance of Compliance with Regulations (Section 3 Clause)

The Contractor and its subcontractors shall insert in all contracts for work in connection with the Contract awarded under this RFP, the following clause (referred to as the Section 3 Clause):

- a. The Work to be performed under the Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. Section 3 required that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for Work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.
- b. The parties to the Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135.2B, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract. The parties to the Contract certify and agree that they are under

no contractual or other disability, which would prevent them from complying with these requirements.

- c. The Contractor will send to each labor organization or representative of workers with which he/she has a collective bargaining agreement or other Contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The Contractor will include this Section 3 clause in every subcontract for Work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135.2B. The Contractor will not subcontract with any Subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135.2B and will not let any subcontract unless the Subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135.2B, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Contractors and Subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.2B.135.

### 3. Bidding and Negotiation Requirements

Every applicant and recipient shall require prospective Contractors for Work in connection with Section 3 covered projects to provide, prior to the signing of the Contract, a preliminary statement of work force needs (skilled, semiskilled, unskilled labor and trainees by category) where known; where not known, such information shall be supplied prior to the signing of any Contract between Contractors and their subcontractors.

- 4. Utilization of Businesses Located In Or Owned In Substantial Part By Persons Residing In the Section 3 Area
- 5. 135.70 Development Of An Affirmative Action Plan

In developing an affirmative action plan, each applicant, recipient, Contractor and Subcontractor preparing to undertake work pursuant to a Section 3 covered contract shall:

- a. Set forth the approximate number and dollar value of all contracts proposed to be awarded to all businesses within each category (type or Profession) over the duration of the Section 3 covered project in question.
- b. Analyze the information set forth in paragraph (a) of this section and the availability of eligible business concerns within the project area doing business in professions or occupations identified as needed in paragraph (a) of this section, and set forth a goal or target number and estimated dollar value of contracts to be awarded to the eligible businesses and entrepreneurs within each category over the duration of the Section 3 covered project.
- c. Outline the anticipated program to be used to achieve the goals for each business and/or professional category identified. This program should include, but not be limited to, the following actions:
  - (1). Insertion in the bid documents, if any, of the affirmative action plan of the applicant, recipient, Contractor, or Subcontractor letting the contract; and
  - (2). Identification with the bid documents, if any of the applicable Section 3 project area.
- d. Indicate the anticipated process and steps which have been taken and/or will be taken to secure the cooperation of Contractors, Subcontractors, and unions in meeting the goals and carrying out the affirmative action plan developed pursuant to this subpart.
- e. Take steps to insure that the appropriate business concerns included in the Department's registry for the Section 3 covered project area are notified of pending contractual opportunities either personally or through locally utilized media. All applicants, recipients, contractors, and subcontractors which so notify concerns included in the Department's registry of available contracts and of opportunities to submit bids shall satisfy all requirements of this Part for notification of business concerns located within the Section 3 covered project area and business concerns owned in substantial part by persons residing in the Section 3 covered project area.
- f. Take steps to insure that contracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- g. Where competitive bids are solicited, require the Responders to submit their utilization goals, and their affirmative action plans for accomplishing their goals, and in evaluating each bid, to determine its responsiveness, carefully evaluate the Responders' submission to determine whether the affirmative action plan proposed will accomplish the stated goals.



- h. Where advantageous, seek the assistance of local officials of HUD in preparing and implementing the affirmative action plan.
- i. In implementing its affirmative action plan, each applicant, recipient contractor, or subcontractor shall make a good faith effort to achieve its goal or target number and estimated dollar amount of contracts to be awarded to the eligible businesses and entrepreneurs within each category over the duration of the Section 3 covered project. Each applicant, recipient, Contractor, or Subcontractor seeking to establish that a good faith effort has been made to implement its affirmative action plan, as required by this paragraph, shall as a minimum, set forth evidence acceptable to the Secretary that it has implemented the steps required by paragraphs (C), (D), (E), (F), (G) and (H) of this section and has ascertained from the Department's Regional Administrator, Area Office Director, or FHA Office Director having jurisdiction over the Section 3 covered project, the boundaries of the Section 3 covered project area, if available, and attempted to recruit from the appropriate areas the necessary eligible business concerns through: Local advertising media, signs placed at the proposed site for the project; and community organizations and public or private institutions operating within or serving the project area such as Project Area Committees (PAC), Office of Economic Development (OED), citizen advisory boards, Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, or the U.S. Employment Service, as well as the Chamber of Commerce and any equivalent organizations in the Section 3 covered project area.

#### RESIDENT EMPLOYMENT

- a. It is the policy of HABC that, to the greatest extent feasible, opportunities for training and employment be given by the Contractors and Subcontractors to residents of public housing owned by HABC.
- b. The Contractor agrees to use its best efforts to carry out this policy in accordance with HABC's Affirmative Action Plan and in the awarding of its subcontracts to the fullest extent consistent with the efficient performance of the Contract.
- c. The Resident Employment Goal for the Contract is that 50% of all new hires for Work accomplished under the Contract be current residents of public housing.
- d. Names of residents who would be suitable for this Work may be obtained from HABC. The Contractor shall give primary consideration to those residents equally qualified to perform the Work over non-residents.

#### CONTRACTORS DISCLOSURE OF BEST EFFORTS BEFORE ISSUE OF JOB ORDER:

A Job Order will not be awarded to a Contractor (that intends to offer training and employment opportunities in connection with the Contract) unless the Contractor has disclosed to HABC the best efforts that the Contractor intends to undertake to meet the

Section 3 training and employment preference, and the HABC has approved these efforts in accordance with the following procedures:

The Fair Housing & Equal Opportunity Office (FH&EO) is responsible for implementing the HABC Section 3 Program. Through the HABC Special Conditions contained in Volume I of the Proposal Documents- Proposal Information and Contractual Documents the FH&EO Office has provided notice of the Section 3 requirements.

**SECTION 3 REQUIREMENTS MUST AT A MINIMUM INCLUDE THE FOLLOWING FOR ALL CONTRACTS.**

- a. 50% of all new hires must be project area residents:
  1. Public Housing Project Area Resident
  2. Public Housing Non Project Area Resident
  3. Youth Build Participant
  4. Baltimore Metropolitan Area Resident
  - \* Baltimore Metropolitan Area Resident/Project Area
- b. All Prime Contractors will be responsible for notifying their sub-contractors of the Section 3 requirements.
- c. All prime Contractors must identify to the FH&EO Office a Section 3 plan, which will include:
  1. What steps will be used to implement the hiring of Section 3 residents and to utilize Section 3 business concerns.
  2. Identify proposed Section 3 business trades and/or services needed for each specific purchase order. Also identify the proposed specific job force.
  3. The aforementioned information must be submitted with each Cost Proposal prepared for jobs under the Contract with a copy being provided to FH&EO. Failure to provide the FH&EO the requested Section 3 information set forth above may result in the rejection of the proposal.
  4. Package subcontracts for work to be done in a manner that will provide to the maximum extent feasible, opportunities for Section 3 businesses to participate. Consideration will be given to items such as:
    - i. Size of subcontract (dollar amount), and
    - ii. Scope of work or type of work identified Section # businesses are able to provide.
  5. Termination Because Of Failure To Comply With The Requirement For Training And Employment Of Lower Income Persons.

A breach of any of the Paragraphs contained in the Section 3 Paragraphs of these Special Conditions may be grounds for termination of the Contract and for debarment as provided in 24 CFR 135.

## 6. Examination of Contractor's Records

On all contracts (except those of \$10,000 or less) the Executive Director, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor or Subcontractors which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

The successful Responder for all contracts in excess of \$50,000 will be required to provide prior to the signing of the Contract, a preliminary statement of work force needs (skilled, unskilled labor and trainees by category). The Contractor will be required to maintain a list of all project area residents who train and hire project area residents.

### PROCEDURES FOR EXECUTING SECTION 3 REQUIREMENTS:

The activities described in this section should be undertaken by the prime Contractor and the subcontractors in order to implement Section 3 training and employment initiatives. Prime Contractors and subcontractors are not limited to these actions and are encouraged to develop innovative methods to increase training and employment opportunities for low-income persons. Contractors are especially encouraged to offer certified apprenticeship training available to residents whenever possible.

The following indicates activities which may be taken in any combination, and which may demonstrate affirmative efforts to offer training and employment opportunities to low-income persons:

- a. Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required and where to obtain additional information about the application process).

In order to assist the Contractors, the FH&EO Office, with the assistance of on-site housing management, resident councils, and other resident organizations, and the on-site employment service (when available) will make certain flyers are properly distributed through-out the project area.

- b. Contacting resident councils, resident management corporations, or other resident organizations, and advising them of the opportunities for employment.
- c. Job information meetings will be conducted by the FH&EO Office and the Contractor representative (s) at the development where the work is being done prior to commencing work at the project.
- d. The FH&EO Office will arrange for a location in the housing development where job applications may be delivered to and collected by the Contractor(s) or their representative.

To assist the Contractor with the recruitment of Section 3 residents, the Housing Authority has obtained the assistance of the Department of Economic and Employment Development (DEED). DEED will undertake on behalf of the Contractor, the efforts to match eligible and qualified low-income persons with the training and employment positions that the Contractor intends to fill. The service will also assist the Housing Authority with establishing and maintaining a viable pool of applicants.

A list of DEED Office locations is available at the FH&EO Office. Residents may complete applications at DEED Office locations and arrangements may be made through the DEED Office for Contractors to conduct interviews on-site.

- e. The FH&EO Office will monitor Section 3 residents participating on Section 3 projects. The FH&EO Office must be notified of residents who are terminated within 24 hours of the termination. Additionally the Contractor should replace the terminated resident with another Section 3 employee within 48 hours.
- f. This list of available Section 3 outreach activities may not be inclusive, therefore, any concerns or questions which the Contractors may have regarding implementation of the Section 3 program should be addressed to the:

Fair Housing and Equal Opportunity Office  
417 E. Fayette Street, Suite 922  
Baltimore, Maryland 21202  
ATTN: Felecia Hill, Equal Opportunity Specialist  
**(410) 396-1969**



**Attachment 9B**

**Section 3 Compliance Plan**

**Please submit a Section 3 Compliance Plan see Section 11.2 (e) For Contents of  
Compliance Plan**

**Attachment 9C**

**First Source Hiring Agreement**

**HOUSING AUTHORITY OF BALTIMORE CITY**  
**FAIR HOUSING AND EQUAL OPPORTUNITY**  
417 E. FAYETTE STREET, SUITE 922  
BALTIMORE, MD 21202  
410-396-3246  
410-396-8194 (FAX)

**SECTION 3 OF THE HUD ACT OF 1968, AS AMENDED**  
**FIRST SOURCE HIRING AGREEMENT**

If Section 3 employment or training opportunities will be generated from this contract, Responders shall comply with the First Source Hiring Agreement. In accordance with the First Source Hiring Agreement, Responders agree to solicit applicants from the HABC, Resident Services People Accessing Continued Employment (PACE) Program.

**Instructions**

1. Complete the attached First Source Hiring agreement statement and submit with your proposal.
2. Contact the HABC Office of Resident Services, P.A.C.E. program within ten (10) days of receiving the notice of award for each contract or individual Job Order. P.A.C.E. will assist you with meeting your workforce needs for the contract and assisting you in your efforts to comply with your Section 3 obligations.

HABC Office of Resident Services  
201 N. Aisquith Street  
Baltimore, MD 21202  
410-545-0921

**HOUSING AUTHORITY OF BALTIMORE CITY**  
**FAIR HOUSING AND EQUAL OPPORTUNITY**  
**417 E. FAYETTE STREET, SUITE 922**  
**BALTIMORE, MD 21202**  
**410-396-3246**  
**410-396-8194 (FAX)**

**SECTION 3 OF THE HUD ACT OF 1968, AS AMENDED**  
**FIRST SOURCE HIRING AGREEMENT**

Submission deadline: \_\_\_\_\_  
Contractor's name: \_\_\_\_\_  
Contractor's address: \_\_\_\_\_  
Contractor's telephone number: \_\_\_\_\_  
Contractor's email address: \_\_\_\_\_  
Contract title: \_\_\_\_\_  
Contract number: \_\_\_\_\_

PACE is the recruitment and referral service used by HABC to help Responders comply with the Section 3 requirements. In accordance with the First Source Hiring Agreement, Responders are required to contact PACE within ten (10) days from the date of notice of contract award and advise PACE of the number of jobs or training opportunities generated from the awarded contract; the classification of the available positions; and to discuss potential ways that the recipient of the contract award can perform its obligations under Section 3. Upon receipt of the Responders employment and training needs, PACE will refer qualified HABC residents to the Responders to interview for the available positions. Responders agree to use other referral sources only if PACE cannot refer qualified applicants to Responders within three (3) business days of being notified of Responders employment and/or training needs.

The undersigned Contractor agrees to utilize HABC's PACE program to meet its Section 3 employment, training and Section 3 business needs under this contract with HABC. The undersigned shall comply with the terms of Section 3 of the HUD Act of 1968, as amended as described in the solicitation documents. Under this agreement, contract awardees will complete and submit this certification with the bid package.

I, \_\_\_\_\_, representing \_\_\_\_\_  
(Name and Title) (Name of Responder)  
certify that I will contact the PACE program within ten (10) days of notice of contract award. I agree to interview qualified Section 3 eligible applicants *First* for available positions. I agree to submit a Section 3 Employee Tracking form indicating the number of total workers and number of Section 3 residents on payroll at 25%, 50% 75% and 100% completion of the contract as a condition of release of a final payment or any and all retainage.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Prime Contractor: \_\_\_\_\_ Date: \_\_\_\_\_



**Attachment 10**

**Certification for Business Concerns Seeking Section 3 Preference in Contracting**

Housing Authority of Baltimore City  
Fair Housing and Equal Opportunity Office  
417 E. Fayette Street, Suite 922  
(410) 396-3246 (410) 396-8194 (f)

**CERTIFICATION FOR BUSINESS CONCERNS SEEKING  
SECTION 3 PREFERENCE IN CONTRACTING**

Name of Business: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Project Name & Number \_\_\_\_\_

**Attached is the following documentation as evidence:**

**Type of Business:** ☐ Corporation ☐ Partnership  
☐ Sole Proprietorship ☐ Joint Venture

**For Business claiming status as a HABC Resident-owned Section 3 Business:**

- ☐ Copy of HABC Dwelling Lease
- ☐ Copy of Articles of Incorporation
- ☐ Certificate of Good Standing
- ☐ Other Evidence

**For Business claiming status as a Section 3 Business:**

- ☐ Copy of Articles of Incorporation
- ☐ Certificate of Good Standing
- ☐ Additional documentation

**For business claiming Section 3 status by subcontracting 25 percent of the dollar awarded to qualified Section 3 Business:**

- ☐ List of subcontracted Section 3 Business (es) and subcontract amount

**For business claiming Section 3 status, claiming at least 30 percent of their workforce are currently Section 3 Residents or were Section 3 eligible residents within 3 years of date of first employment with business:**

- ☐ List of all current full-time employees
- ☐ List of employees claiming Section 3 status
- ☐ HABC residents' leases
- ☐ Other evidence of Section 3 status less than 3 years from date of employment

Under penalty of perjury, I certify that I am the \_\_\_\_\_ (Title) of \_\_\_\_\_ (Name of Company), that I am authorized by the \_\_\_\_\_ to execute this affidavit on its behalf, that the documents I have submitted in support of my claim as a Section 3 Business are true and accurate, and that I have personal knowledge of the certifications made in this affidavit and that the same are true.

Authorizing Name and Signature \_\_\_\_\_

Name (printed) \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary \_\_\_\_\_

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

### Section 3 Business Self-Certification Form

**An authorized official must sign the following statement, notarized if applicable, and submitted along with the bid.**

**The Contractor represents and certified that it:**

☐ a Section 3 business as indicated below {check applicable category and subcategory}:

☐ **Category 1 Business**

- ☐ Fifty-one percent (51%) or more owned by residents of the specific community or communities for which the Section 3 covered assistance is expended; or
- ☐ Full-time, permanent workforce includes thirty percent (30%) of the above residents as employees.

☐ **Category 2 Business**

- ☐ Fifty-one percent (51%) or more owned by residents of another specific community or communities managed by The Housing Authority that is expending the Section 3 covered assistance; or
- ☐ Full-time, permanent workforce included thirty percent (30%) of the above residents as employees.

☐ **Category 3 Business**

- ☐ An entity selected to carry out a HUD Youthbuild Program in the metropolitan area or Non-metropolitan County, in which the Section 3 covered assistance is expended.

☐ **Category 4 Business**

- ☐ Fifty-one percent (51%) or more owned by Section 3 residents; or
- ☐ Full-time, permanent workforce includes no less than thirty percent (30%) Section 3 residents; or
- ☐ Will subcontract is excess of twenty-five percent (25%) of the total amount of subcontracts to business concerns identified above.

☐ is **not** a Section 3 business (**form must be notarized ONLY IF CERTIFYING as a Section 3 business**).

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

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

\_\_\_\_\_  
Notary  
My commission expires:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Project Name

\_\_\_\_\_  
Project Number

**HOUSING AUTHORITY OF BALTIMORE CITY  
FAIR HOUSING & EQUAL OPPORTUNITY  
SECTION 3 PROGRAM**

**SECTION 3 EMPLOYEE CERTIFICATION FORM**

This form is to be used by contractors or a subcontractor, working on HUD-funded projects, to certify that an employee is an eligible Section 3 resident. The contractor/subcontractor and Section 3 employee must sign this certification.

<b>PART I</b>				<b>TO BE COMPLETED BY EMPLOYER</b>			
Project Name No. (if applicable) Company:						Date Completed:	
Address:						State:	
City:						Zip:	
Person Completing This Form:		Office #:		Fax #:		Email Address:	

<b>PART II</b>		<b>TO BE COMPLETED BY EMPLOYEE</b>	
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**I am an employee of the business listed above, AND**  
(Please answer by placing a check in the appropriate box)

**I am a HABC resident. If yes, skip to Part III.**

**I am a low-income resident as defined by HUD, residing in the covered metropolitan area. My Total Household Income is not greater than the amount listed below based on the number of persons in my family.**

**HUD's FY2019 INCOME LIMITS SUMMARY**

*Please check the box that applies*

Income Limits	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
Very Low (50%)	\$35,350	\$40,400	\$45,450	\$50,500	\$54,550	\$58,600	\$62,650	\$66,700
Extremely Low (30%)	\$21,250	\$24,250	\$27,300	\$30,300	\$32,750	\$35,150	\$39,010	\$43,430
Low (80%)	\$52,850	\$60,400	\$67,950	\$75,500	\$81,550	\$87,600	\$93,650	\$99,700

**Under penalty of perjury, I certify that my personal information provided on this form is true and accurate. I agree to provide any documentation (if requested) that confirms the accuracy of my Residency, Family Size and Total Household Income for the stated calendar year.**

<b>PART III</b>		<b>TO BE COMPLETED BY EMPLOYEE</b>	
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Employee Name (printed):			Date Hired:	
Address:	City:	State:	Zip:	HABC Development acct. No.
Employee Signature:		Date:		

The goal of the HUD-Section 3 requirement is to provide self-sufficiency opportunities to residents and businesses of neighborhoods receiving HUD funding for fair housing and community development activities.

This certification is subject to all rules and regulations developed by the HUD Fraud, Waste and Abuse Office.



**Attachment 11**

**Form HUD-5369-B Instructions to Offerors Non-Construction**

# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 7. Contract Award

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

(b) The HA may

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

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

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

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

#### 8. Service of Protest

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

#### 9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

**Attachment 12**

**Form HUD-5369-C Certification and Representations of Offerors**



# Certifications and Representations of Offerors

## Non-Construction Contract

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

OMB Approval No: 2577-0180 (exp. 7/30/96)

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

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

### 1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

### 3. Certificate of Independent Price Determination

(a) The bidder/offers certifies that—

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

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

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

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

(1) Is the person in the bidder/offers'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/offers's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offers's organization);

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

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

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

#### 4. Organizational Conflicts of Interest Certification

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

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

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

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

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

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

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

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

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

#### 6. Conflict of Interest

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

#### 7. Offeror's Signature

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

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

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

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