

**HOUSING AUTHORITY OF THE CITY OF
WILMINGTON NORTH CAROLINA
(WHA)**

RE- BID INVITATION FOR BIDS (IFB)

SOLICITATION NO.: RFY23.01

LANDSCAPING & LAWN MAINTENANCE SERVICES

Issued: June 7, 2023

Date Due: June 21, 2023

Time Due: 4:30 p.m. EDT

Prepared By:

**Housing Authority of the City of Wilmington
Procurement and Contracts Department
1524 S. 16th Street
Wilmington, NC 28401**

Tyrone Garrett, Chief Executive Officer

INDEX**DATE: June 7, 2023**

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PUBLIC ADVERTISEMENT

HOUSING AUTHORITY OF THE CITY OF WILMINGTON NORTH CAROLINA

The Housing Authority of the City of Wilmington North Carolina (WHA) invites proposals from contractors for **RE-BID LANDSCAPING & LAWN MAINTENANCE SERVICES**. Please go to www.wha.net for bid package and further information.

INVITATION FOR BIDS

SOLICITATION NO.: RFY23.01

HOUSING AUTHORITY OF THE CITY OF
WILMINGTON NORTH CAROLINA
RE-BID LANDSCAPING & LAWN MAINTENANCE SERVICES

Sealed bids will be accepted at the Housing Authority of the City of Wilmington North Carolina (WHA Central Office), until date and time noted below. Bids will be publicly opened and recorded immediately thereafter at the Central Office, 1524 South 16th Street, Wilmington, NC 28401.

- Bid Opening: Wednesday, June 21, 2023, at 4:30 pm
Project Manual along with specifications will be available for pickup beginning 8:00 a.m. on Thursday, June 8th at the Central Office.
- Fee; non-refundable charge of \$15.00 or you can Download Project Manual at no cost -- www.wha.net (under Business Opportunities/IFB)
- Questions; E-mail to Chauntrell Burns no later than June 12th at 12:00 noon to cburns@wha.net

Upon written request to the Contracting Officer, bids will be available after the contract has been awarded. NO BIDS SHALL BE ACCEPTED AFTER THE DEADLINE DATE. FAX NEITHER COPIES WILL BE ACCEPTED.

The WHA does not discriminate based on race, sex, age, color, national origin, religion, or disability in its employment opportunities, programs, services, or activities.

WHA reserves the right to reject any or all bids.

NOTICE TO BIDDERS

The Housing Authority of the City of Wilmington North Carolina ("WHA" or "the Authority") is inviting proposals from qualified professional services firms for **Landscaping and Lawn Maintenance Services** at twelve (12) WHA-owned sites located throughout Wilmington, North Carolina.

IFB packets may be picked up beginning Thursday, June 8, 2023, between 8:00 a.m. and 4:00 p.m., Monday through Friday at the Authority's Central Office at 1524 S. 16th Street, Wilmington, North Carolina. There will be a \$15.00 charge for each copy. Questions will be due by June 12, 2023, at noon, and answered by June 13, 2023. Please note that WHA offices will be closed on 6/16/2023.

Interested Firms may request, by phone, letter, or email, an IFB packet, which contains a description of the services required, by contacting Chauntrell Burns, VP of Procurement, at cburns@wha.net. Technical questions should be directed to John Batey, SVP of Operations & Development, at jbatey@wha.net.

Bids shall be received in a sealed envelope and will be accepted until 4:30 p.m. on June 21, 2023.

There will be one or more contracts awarded to the most responsive and responsible bidder, which in the judgment of WHA best meets the objectives of the Housing Authority.

The proposal price(s) shall be included as provided in the Project Manual. Unless otherwise specified in the Project Manual. Late bids will be handled in accordance with form HUD-5369B.

A five percent (5%) bid bond is required. Bid bond shall be executed by an acceptable surety, cashier's check, or bank draft payable to the Housing Authority of the City of Wilmington North Carolina and shall be submitted with each proposal of \$25,000 or greater and will be returned 4-5 weeks after board approval of contract. **PERSONAL CHECK NOT ACCEPTED!**

Based on your proposal, all Contractors are required to have the *appropriate license* in order, to perform this project if applicable. **No EXCEPTIONS! All contractors must submit certification that the firm is not debarred, suspended, or otherwise prohibited from professional practice by any Federal State or local agency.**

The WHA does not discriminate on the basis of race, sex, age, color, national origin, religion, or disability in its employment opportunities, programs, services, or activities.

WHA reserves the right to reject any or all bids, or award multiple vendors and to waive informalities in the bidding. WHA may disqualify any bidders in accordance

with its Procurement Policy. Proposals will be available for review after a formal contract award is made.

INSTRUCTIONS TO BIDDERS

Proposals must be in accordance with the following instructions, requirements, and procedures to be eligible for consideration:

1. LICENSE:

All Bidders are hereby notified that they must have proper license under applicable State and Local Laws governing their respective trades at the time of submittal of bids.

2. SINGLE CONTRACT PROPOSALS:

Proposals for the Project Work shall be submitted under a Single GENERAL CONTRACT Proposal.

3. DEFINITIONS:

Owner: Housing Authority of the City of Wilmington North Carolina
(WHA)

Designer: Housing Authority of the City of
Wilmington or, Licensed Professional engaged by WHA, as
identified in the Project Manual.

Project Manager: Designated representative of WHA.

4. EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK:

Each bidder shall carefully examine the site and premises of the proposed work, the Proposal, the plans, specifications, and special provisions of the Contract Documents before submitting a proposal. The submittal of a proposal shall be considered full evidence that the bidder has made such necessary examinations, that he knows, and understands the conditions relating to the performance of the work required by the Contract Documents. The bidder has made every provision to operate under existing and stipulated conditions and has included all necessary items for the proper execution of work required by the Contract Documents.

The Owner and Designer shall conduct a pre-bid conference and tour of the Project on the Date and Time specified in the Notice to Bidders. Prospective Bidders are strongly encouraged to attend due to the nature, restrictions, and details of the work.

Inspections of the Project Site shall be made only during normal business hours and **only by appointment**, arranged a minimum of **24 hours in advance**. Bidders shall not disrupt Owner's operations or residents' privacy in the course of such inspections.

The Project Site is a residential community of the Housing Authority of the City of Wilmington, and visiting bidders shall adhere to security policies and cooperate fully with instructions of WHA management officials.

5. UTILITY CHARGES:

No service or connection charge, or fees by serving utility companies are anticipated in connection with the Project work. Coordination and scheduling of work to be performed by serving utilities, if required for relocation or temporary disconnection, shall be the responsibility of the Contractor.

6. CLARIFICATION OF DOCUMENTS/ INTERPRETATIONS:

Should any bidder be in doubt about the precise meaning or intent of any part of the plans, specifications, or other contract documents, or find discrepancies or omissions therein, he shall immediately notify the Owner or Designer and request a clarification. Prospective bidders shall request such clarification no later than ten (10) days before the date for submittal of bids.

WHA shall issue a clarification or correction by written addendum to all known bidders and to offices where Bid Documents are exhibited for inspection, no later than seven (7) days before the date for submittal of bids. The bidder in the spaces provided on the Form of Proposal shall acknowledge receipt of such addenda.

Neither the Owner nor the Designer shall be responsible for any oral instructions. All requests for payments involving deviations from the contract must be accompanied by a signed change order from the CEO of the Housing Authority of the City of Wilmington. Without this documentation, invoices for changes will not be paid.

7. PROPOSAL FORMS/ PREPARATION OF PROPOSALS:

Proposals shall be made in strict accordance with the Standard Form of Proposal bound in with these documents and shall be submitted on the supplied forms.

PROPOSAL DOCUMENTS: The following forms shall constitute the Proposal Documents:

Form of Proposal
Form of Bid Bond (\$25,000 and greater)
Form of Performance and Payment Bond (\$100,000 and greater)
Form HUD-5369C-Representations, Certifications and Statements of Bidders
Form HUD-2992 - Certification Regarding Debarment and Suspension.
Form HUD-92010 - Equal Employment Opportunity Certification.
Form Non-Collusive
Form WHA- Comparable Project Completion References Form.

Section 3 Documents:

- | |
|--|
| <ul style="list-style-type: none">• <i>Compliance Certification</i> |
|--|

All required forms shall be completely filled out and properly completed.

The forms shall not be detached from these documents. **However, proposals may be submitted on a separate, exact copy of the Form of Proposal and related documents listed above and shall be given full consideration and will have the same force and effect as if bound thereto.**

Fill in all appropriate blank spaces provided for Amounts, Contract Time, Alternates, Unit Prices, and Addenda as applicable.

Failure to furnish requested itemized prices or alternates may disqualify the proposal.

State the total amount bid in figures and in narrative in the proper spaces on the proposal form.

No lineation, erasures, adjustments, or alterations shall be made to the printed Form of Proposal. In receiving the proposal, the Owner and the Designer will assume that no such alterations have been made, and if any such modifications become apparent afterwards, they shall not be binding upon either of them.

Changes to any **entry** shall be made by marking through the initial entry and by inserting the corrected entry adjacent thereto. An authorized representative of the bidder shall initial each such correction.

8. EXECUTION OF PROPOSALS: Proposal Documents shall be executed in the following manner:

- A. If by Sole Proprietor, state by adding "Owner" after the name of the person executing the documents.
- B. If by a Partnership, state by adding "Partner" after the name of the person executing the documents.
- C. If by a Corporation, indicate if by the President or by Vice-President and attest by the Secretary. Identify the title of office of the executing entities and impress the corporate seal on each signature page of the documents.
- D. If the proposal is made by a Joint Venture, it shall be executed by each member of the Joint Venture in the above format for sole Owner, Partner, or Corporation, whichever format is applicable.
- E. If a person other than an Owner, Partner, or Officer of a firm holds the Contractor's license, and then the Licensee shall also sign and be a party to the proposal. The title "Licensee" shall be indicated under such signature.

All signatures shall be properly witnessed and sealed.

9. **BID SECURITY:** Bid Security in an amount not less than five percent (5%) of the base bid amount shall accompany each proposal, for bids exceeding \$25,000, or as stipulated in *the Notice to Bidders*. The bid guarantee shall be a negotiable certified check, bank draft, or bid bond, payable to the Owner.

10. **SUBMITTAL OF PROPOSALS:** Enclose bid documents in an opaque, sealed envelope of sufficient size to accommodate the documents without folding. Identify the envelope in the upper left-hand corner as follows:

EXAMPLE: PROPOSAL FOR RE-BID LANDSCAPING & GROUNDS MAINTENANCE SERVICE

Housing Authority of the City of Wilmington

Name of Bidder _____

COMPANY NAME _____

Address _____

Bidder's Lic. No. _____

Address proposals to: **Chauntrell Burns, Vice President of Procurement
Procurement Department
Housing Authority of the City of Wilmington
1524 South 16th Street
Wilmington, NC 28401**

Label the envelope on both sides "**PROPOSAL ENCLOSED- DO NOT OPEN!**"

Deliver or mail proposals to be received by the Procurement Manager at the address specified above and before the stated time for bid opening as specified in the Notice to Bidders.

11. **RECEIPT/OPENING OF PROPOSALS:** At the time and place established for the receipt of bids in the Notice to Bidders, every Proposal for the specified work received by the Owner within the time specified shall be opened, and acknowledged, regardless of any irregularities therein.

The Owner reserves the right to reject any or all proposals and or award multiple vendors or to waive informalities.

12. **PROTESTS/OBJECTIONS:** Prior to the opening of bids, a bidder shall be allowed to change or withdraw his bid as provided above. In the event of objections or protests before or after opening proposals, contentions shall be addressed in the following manner:

Sections VIII. A and B of Procurement Policy

A. General

It is the WHA's policy to resolve all contractual issues informally at the Authority level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the Authority level. When appropriate, the Authority may consider the use of informal discussion between parties by individuals who did not participate substantially in the matter in dispute, to help the differences. HUD will only review protests in case of violations of Federal law or regulations and failure of the Authority to review a complaint or protest.

B. Bid Protests

Any actual or prospective contractor may protest the solicitation or award of a contract only for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within 10 calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing and submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. A written protest shall contain, at a minimum, the name, address and phone number of the protester; identification of the procurement, including solicitation or contract number; a statement of the reasons for the protest; supporting exhibits, evidence, or documents to substantiate and arguments; and the form of relief requested. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

The WHA shall issue a decision as expeditiously as possible after receiving all relevant information requested. If the protest is granted, the solicitation or proposed award will be canceled or revised to comply with the protest decision. If the contract has already been awarded, it may be terminated for convenience and the contract re-awarded to the next eligible offeror; the procurement may be resolicited; or, if the WHA determines in writing that based on compelling circumstances such action would not be in the best interests, may let the award stand and pay the successful protestor bid and proposal costs, along with the costs of filing and pursuing the protest. If the protest is not granted, the Contracting Officer will issue a written decision with justification for the denial and explain the appeal rights of the protestor.

13. AWARD OF CONTRACT: If the Owner elects to award a Contract based on proposals received, the Contract will be awarded to the responsible, responsive bidder submitting a qualified proposal taking into consideration standards of quality, performance and the contract time specified in the proposal documents and may award to multiple vendors.

- The award shall be made as soon as practicable after the receipt of proposals as provided elsewhere in these Instructions. Contracts terms shall be for 1 year with 4

one-year extensions if agreed upon based on the date of the executed contract.

- Should the successful bidder fail to execute an agreement within 10 days, the contract may be offered to the responsible, responsive bidder submitting the next qualified proposal, at the Owner's discretion.
- The award may be made to a responsible, responsive bidder. A responsible, responsive bidder must follow:

Sections VI. A. 1-7 of procurement policy

A. Contractor Responsibility

WHA shall not award any contract until the prospective contractor, i.e., responsible, responsive bidder or successful offeror, has been determined to be responsible, responsive. A responsible, responsive bidder/offeror must:

1. Have adequate financial resources to perform the contract, or the ability to obtain them. WHA may request additional financial information to review from an apparent low bidder after it opens all submitted bids (WHA will check their credit reports and verify their lines of credit and account balances with the financial institution officer servicing the account.)
2. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; (Verify experience with other customers. Request copies of any audits. Verify that necessary personnel will be available to work on the WHA's contract);
3. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; (Request evidence that the offeror has all the equipment and facilities he/she will need or the capability to obtain them. Visit the offeror's place of business or other job sites to verify equipment and facilities. Contact equipment dealers and/or facility owners from whom the offeror indicates that he/she will rent or lease the equipment or space); and
4. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments; (verification by information on all other active contracts the offeror is performing and status);
5. Have a satisfactory performance record; (WHA will require offerors to submit contract information for recent contracts they have performed for other customers and contact them to ascertain the offeror's quality of performance, including timeliness of delivery/completion, quality of work, compliance with terms and conditions of the contract, and cost control, if applicable. Inquire of past customers whether or not they would contract with the offeror again and why. Research the offeror's performance history with the WHA);

6. Have a satisfactory record of integrity and business ethics; (verification with the Better Business Bureau and various State and Federal Government officers) and
7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including but not being suspended or debarred from Federal Programs, or not being under a HUD-imposed Limited Denial of Participation to a contractor. This HUD website www.hud.gov/enforce. WHA will check to determine if a contractor has been suspended or debarred from participation in Federal Programs. The GSA website is <http://epls.arnet.gov>. WHA will check to see if the contractor has been suspended by WHA from bidding on WHA's bid/offers.

14. **BIDDER QUALIFICATION:** Before awarding a contract, the Owner reserves the right to require the apparent qualified bidder to qualify himself to be the responsible bidder by furnishing such relevant information, which may include any or all of the following:

- Permanent name, address, and telephone of place of business.
- Length of time the organization has been in business under its present name and trade, and the number of regular employees with proper qualifications for the required work.
- Financial statement with balance sheet and income statement or other financial information satisfactory to the Owner, upon request. **(This will not be made public.)**
- Proof of satisfactory performance of projects of similar scope, requiring specialized skills, and experience and workmanship standards required for the work specified.
- List of names and license numbers of organization members or employees who hold trade or professional licenses or credentials.
- The name and home office address of the Surety proposed, and identification of its authorized agent licensed in North Carolina.
- List of principal materials and identification of suppliers and sub-contractors entering into the proposed contract work.
- **Any other information the Owner may consider relevant** to the bidder's qualifications for the performance of the work required by the terms of the Contract Documents.
- Should the Owner adjudge that the apparent low bidder is not the lowest responsible, responsive bidder by virtue of the above qualifications, which bidder will be so notified, and his bid security will be returned to him without prejudice.

15. **NOTIFICATION OF AWARD:** The Owner will notify the successful bidder in writing that his bid has been accepted and of the intent to award the contract, which shall constitute the Notice of Award.

The Notice of Award, if an award were made, will be issued within sixty days (60) after the receiving of bids, except that the Owner reserves the right to request from the successful Bidder an extension of the decision to award the contract for such reasonable time beyond the stated 45 days as may be mutually agreeable to both parties.

16. EXECUTION OF CONTRACT: Following the issuance of the Notice of Award and approval of the Materials and Sub-Contractor List, two (2) counterparts of the prepared Contract Documents will be sent to the successful Bidder for execution.

The Bidder shall promptly execute all counterparts of the contract and return them, together with the specified Bonds and Insurance Certificates and Power of Attorney attached to each counterpart, to the WHA / Designer for review within ten (10) days.

As soon as practicable, after receipt of the executed, verified documents, the Owner shall complete the execution of the Contract and return to the Contractor his counterpart of the Documents.

Should the successful bidder fail to execute an agreement, the contract may be offered to the next responsible, responsive bidder submitting the next qualified proposal, at the Owner's discretion.

The official Contract Forms, Bond Forms, Insurance Forms, and related documents are included in the Project Manual.

END INSTRUCTIONS TO BIDDERS

MAINTENANCE WAGE RATE DETERMINATION

THE PRIMARY CONTRACT AND HIS SUB-CONTRACTORS ARE REQUIRED TO PAY MINIMUM RATES OF PAY IN ACCORDANCE WITH SECTION 2 OF THE GENERAL CONDITIONS AS ESTABLISHED BY THE U.S. DEPARTMENT OF LABOR.

A COPY OF THE APPLICABLE MINIMUM RATES OF PAY IS REQUIRED TO BE POSTED AT THE JOB SITE UNTIL PROJECT COMPLETION.

Maintenance Mechanic	\$13.14	No change
Maintenance Mechanic Assistant	\$12.56	
Maintenance Laborer	\$8.04	
Janitor/Grounds Laborer	\$8.04	
Painter	\$12.95	
Abestos Abatement	\$11.05	
HVAC	\$17.26	
Elevator Mechanic	\$21.11	
Unit Turnaround (Except Painting)	\$8.12	
Electrician	\$14.93	
Pipelayer	\$10.77	
Plumber, Pipefitter	\$16.36	
Roofer	\$12.36	
Sheet Metal Worker	\$17.92	
Tree Trimmer and Pruner	\$9.34	
Brickmason and Blockmason	\$14.19	
Carpenter	\$12.59	
Carpet Installer	\$10.72	
Floor Installer, Except Carpet, Wood and Hard Tiles	\$13.44	
Tile and Marble Setter	\$12.93	
Cement Mason and Concrete Finisher	\$12.51	
Drywall and Ceiling Tile Installer	\$12.26	
Glazier	\$12.49	
Fence Erector	\$10.52	

FORM OF PROPOSAL FOR: GENERAL NON-CONSTRUCTION CONTRACT
Solicitation No. **RFY23.01 - June 6, 2023, at 4:00 pm**

PROJECT: **LANDSCAPING & LAWN MAINTENANCE SERVICES**

Housing Authority of the City of
Wilmington North Carolina

ID Code: NC001

SUBMITTED TO: Chauntrell Burns, Vice President of Procurement
Housing Authority of the City of Wilmington
1524 South 16th Street
Wilmington NC 28401

SUBMITTED BY: Bidder's Company Name: _____
Name: _____
Address: _____
E-mail Address: _____
Lic. No. : _____ as applicable
Phone #: _____
Fax #: _____
Date: _____

In compliance with the request for proposals issued by the WHA, the undersigned as Bidder hereby proposes to furnish all labor and materials, equipment, operations and incidentals, and to perform all work for the complete execution of entering into the **GENERAL CONTRACT** for **RE-BID LANDSCAPING & LAWN MAINTENANCE SERVICES**, in strict accordance with Plans (if applicable), Specifications, Contract Documents, applicable codes and regulations to the full and entire satisfaction of the Owner for the consideration of the following:

PROPERTY NAME

ANNUAL ESTIMATE

Central Administration Building _____

Solomon Tower Senior Apartments _____

Eastbrook Apartments _____

Woodbridge Apartments _____

Scattered Sites:

1037 S. 8th St. _____

913 Meares St. _____

813 Meares St. _____

901 Meares St. _____

821 Meares St. _____

825 Meares St. _____

917 Meares St. _____

Vacant Lot @ Southern & Adams _____

TOTAL ANNUAL FEE ESTIMATE: _____

TIME OF COMPLETION shall be as specified in the Supplementary General Conditions, Supplement Clause 25, and Contract Period.

The Undersigned, as Bidder, hereby declares that the only person or persons interested in this proposal, as principal or principals, is or are named herein, and that no other party or parties than those herein identified have any interest in this proposal or in the contract which may be entered into as a result of acceptance of this proposal; and that this proposal is made without connection with any person, company, corporation or parties making a bid or proposal; and that this proposal is in all respects fair and in good faith without collusion or fraud.

The Bidder further declares that he has examined the Site of the Work and informed himself fully with all conditions pertaining to the place where the Work is to be performed; that he has examined the Drawings, Specifications and Instructions for the Work and the Contract Documents relative thereto, and has read all special provisions furnished prior to submitting proposal, and that he fully understands and has made every provision to operate under the conditions relative to the Work required by the Contract Documents.

The undersigned further states that he is a duly licensed contractor in the State of North Carolina under applicable statutes governing his trade, and that all fees, licenses, permits, and charges pertinent to the submission of this Bid have been paid in full.

If written notice of the acceptance of this Bid is delivered to the undersigned within ninety(90) days after the date of Opening of the Bids, or any time thereafter before the specified time for retention of the Bids expires, the undersigned will, within ten (10) days after the date of such notice, execute and deliver a contract in the Form of Contract bound in with the Specifications, and provide Performance and Payment Bonds and Certificates of Insurance in accordance with the requirements prescribed in the Supplementary General Conditions.

The undersigned further agrees that in the case of failure on his part to execute the said Contract, Bonds and required Certificates of Insurance within ten (10) consecutive calendar days after written notice being given of the Award of the Contract, the submitted proposal shall be disqualified, and the Bid Security in the form of cash, certified check or bid bond shall be paid into the funds of the Owner's account set aside for the project as liquidated damages for such failure, and a contract may be offered to the bidder submitting the next qualified proposal at the discretion of the Owner; otherwise the Bid Security accompanying this proposal shall be returned to the undersigned.

The Bidder further proposes and agrees hereby to commence work under his Contract on a date to be specified in a written order of the Owner and to fully complete all work required by the Contract within the consecutive calendar days stated in this proposal, from and including said date. For each day in excess, applicable liquidated damages shall be assessed as stipulated in Supplementary General Conditions.

In submitting this proposal, it is understood that the Owner reserves the unqualified right to reject any and all proposals, and to waive informalities or irregularities in the bids.

Respectfully submitted this _____ day of _____, 2023

Witness: _____ Firm or Corporation making bid

(Partnership/Proprietorship)

By: _____

Attest: _____

Title: _____

(Owner, Partner, or Corp.
Pres. or Vice-Pres. Only)

(Corp. Sec. or Asst. Sec. Only)

Address: _____

(Corporate Seal)

License No.: _____

The Bidder declares that he has received, reviewed, and complied with all instructions issued in the following addenda:

Addenda Received and Considered in Preparing the Bid: (Initial as appropriate)

Addendum No. ___ Date _____ Initial _____

Addendum No. ___ Date _____ Initial _____

Addendum No. ___ Date _____ Initial _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned,

(Name of Principal)

as PRINCIPAL, and _____

(Name of Surety)

as SURETY, are held and firmly bound unto the Housing Authority of the City of Wilmington, NC, P. O. Box 899, or 1524 South 16th Street, Wilmington, NC hereunder called the "Local Authority", in the penal sum of _____ Dollars, lawful money of the United States, for the payment of which sum well and truly be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas, the principal has submitted the accompanying bid, dated _____, 2023, for

CONTRACT No: RFY23.01
RE-BID LANDSCAPING & LAWN MAINTENANCE SERVICES

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within ninety (90) days after the said opening, and shall within the period specified therefore, or, if no period be specified within ten (10) days after the prescribed forms are presented to him for signature, enter into a written Contract with Local Authority in accordance with the bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract; or in the event of the withdrawal of said bid within the period specified, or the failure to enter into such Contract and give such bond within the time specified, if the Principal shall pay the Local Authority the difference between the amount specified in said bid and the amount of which the Local Authority may procure the required work or supplies or both, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this _____ day of _____, 2023, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In presence of:

_____ **(SEAL)**
(Individual Principal)

_____ **(SEAL)**
(Business Address)

_____ **(SEAL)**
(Individual Principal)

_____ **(SEAL)**
(Business Address)

ATTEST:

_____ (Secretary or Treasurer) _____ (President or Vice-President)

_____ (Business Address)

By: _____
(Affix Corporate Seal)

ATTEST:

_____ (Corporate Surety)

By: _____
(Affix Corporate Seal)

Power-of-Attorney for person signing for Surety Company must be attached to bond.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ of the Corporation named as Principal in the within bond; that _____, who signed the said bond on behalf of the Principal was then _____ of said Corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested to for and in behalf of said corporation by authority of its governing body.

(Corporate Seal)



1524 South 16th Street Wilmington, NC 28401 • V 910.341.7700 • F 910.341.7760 • TDD 910.341.7740 • <http://wha.net>

FOR PROJECTS GREATER THAN

\$99,999, A PERFORMANCE AND
PAYMENT BONDS ARE REQUIRED
WITHIN TEN (10) DAYS AFTER
CONTRACT AWARD.

**PROJECT COMPLETION REFERENCE FORM
RE-BID LANDSCAPING & LAWN MAINTENANCE SERVICES**

NAME OF PROJECT	LOCATION	Est. Value	REFERENCE
1. _____	_____	\$ _____	NAME: _____
Year: _____			ADDRESS: _____
			PHONE: () _____
2. _____	_____	\$ _____	NAME: _____
Year: _____			ADDRESS: _____
			PHONE: () _____
3. _____	_____	\$ _____	NAME: _____
Year: _____			ADDRESS: _____
			PHONE: () _____
4. _____	_____	\$ _____	NAME: _____
Year: _____			ADDRESS: _____
			PHONE: () _____
5. _____	_____	\$ _____	NAME: _____
Year: _____			ADDRESS: _____
			PHONE: () _____

NON-COLLUSIVE AFFIDAVIT OF PRIME BIDDER

RE-BID LANDSCAPING & LAWN MAINTENANCE SERVICES AUTHORITY WIDE AS LISTED

**Housing Authority of the
City of Wilmington North Carolina
P.O. Box 899
Wilmington, NC 28401**

State of _____

County of _____

_____, being first.
duly sworn, deposes and says: That he is.

(a Partner or Officer of the Firm of, etc.)

the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived, or agreed directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or any other bidder, or to fix any overhead, profit or cost element of said bid price, or that of any other bidder or to secure any advantage against the Housing Authority of the City of Wilmington, NC or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

(Signature of Bidder, if Bidder is an Individual)

(Signature of Partner, if Bidder is a Partnership)

(SEAL)

(Signature of Officer, if Bidder is a Corporation)

NOTARY

Subscribed and sworn to before me this ____ day of _____, 20__

My Commission expires: _____

CONTRACTOR'S SECTION 3 COMPLIANCE CERTIFICATION

The undersigned makes this certification with full knowledge that its contents will be used in the expenditure of funds provided by the United States Government. Under penalty of perjury, I hereby state:

1. I am the _____ of _____,
(Owner, Partner, Officer, Representative, Agent)
the Bidder that has submitted the attached Bid; and

2. My company adheres to Section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u which requires, to the greatest extent feasible, that a "good faith effort" is given to identifying small businesses located within the boundaries of the Section 3 service area, making them aware of contracting opportunities, encouraging their participation, and actually awarding contracts to Section 3 business concerns.

3. Efforts will be made to undertake outreach activities intended to encourage participation by Section 3 residents in training and employment opportunities, to include but not limited to:

A. Advertising in local media;

B. Distributing flyers on training and job opportunities to public housing sites and posting flyers in common areas;

C. Informing labor organizations and private job training agencies of potential jobs and contract opportunities;

D. Participation in job information meetings and workshops to help Section 3 resident's complete applications and learn interviewing techniques.

Signature of Authorized Certifying Official: _____

Title: _____ Date: _____

Company

Name: _____

SECTION 3 DEFINITIONS:

A. Section 3 Resident:

Low- or very low-income person who resides in the Wilmington Metropolitan Statistical Area (MSA) in which Section 3 covered assistance is expended. Wilmington MSA consists of New Hanover and Brunswick Counties.

B. Section 3 Business Concern:

A business concern that is:

1. Fifty one percent (51%) or more owned by Section 3 residents; **or**
2. Whose permanent, full-time employees include persons, at least thirty percent (30%) of whom are currently Section 3 residents, or were Section 3 residents within three years of the date of first employment with the business concern: **or**
3. That provides evidence of a commitment to subcontract in excess of twenty five percent (25%) of the total bid/proposal price awarded to business concerns that meet the qualifications set forth in paragraphs 1 or 2 in this definition of a Section 3 business concern.

C. Section 3 Covered Assistance:

1. Public and Indian housing development assistance provided pursuant to Section 5 of the 1937 Act;
2. Public and Indian housing operating assistance provided pursuant to Section 9 of the 1937 Act;
3. Public and Indian housing modernization assistance provided pursuant to Section 14 of the 1937 Act;
4. Assistance provided under any HUD housing or community development program. Assistance expended for housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement), housing construction or other public construction projects.

D. Section 3 Covered Contract:

A contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. "Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR Chapter 1). "Section 3 covered contracts" also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e. the installation of the furnace) and is thereby covered by Section 3.

II. ORDER OF PROVIDING PREFERENCES

A. Section 3 Residents

Efforts shall be directed to providing training and employment opportunities to Section 3 residents in the following order of priority:

1. Residents of the Housing Authority of the City of Wilmington development or developments for which Section 3 covered assistance is expended (category 1 residents).
2. Residents of other Housing Authority of the City of Wilmington developments managed by the Housing Authority of the City of Wilmington (category 2 residents).
3. Participants in HUD YouthBuild programs being carried out in the Wilmington MSA (category 3 residents).
4. Other Section 3 residents of New Hanover County (category 4 residents).
5. Other Section 3 residents of Brunswick County (category 5 residents).

A Section 3 resident seeking employment provided by this part shall certify, in a form suitable to the Housing Authority of the City of Wilmington, that they are a Section 3 resident as defined in paragraph I.A. of this document.

B. Section 3 Business Concerns

Efforts shall be directed to award contracts to Section 3 business concerns in the following order of priority.

1. Business concerns that are fifty one percent (51%) or more owned by residents of the Housing Authority of the City of Wilmington developments for which the Section 3 covered assistance is expended, or whose full-time, permanent work force includes thirty percent (30%) of these persons as employees (category 1 business);
2. Business concerns that are fifty one percent (51%) or more owned by residents of other Housing Authority of the City of Wilmington developments where Section 3 covered assistance is expended, or whose full-time, permanent work force includes thirty percent (30%) of these persons as employees (category 2 business);
3. HUD Youth build programs being carried out in the MSA in which the Section 3 covered assistance is expended (category 3 business); and
4. Business concerns that are fifty one percent (51%) or more owned by Section 3 residents or whose permanent, full-time work force includes no less than thirty percent (30%) Section 3 residents or that subcontracts in excess of twenty five percent (25%) of the total amount of subcontracts to business concerns identified in paragraphs (1) and (2) of this section. (Category 4 business).

A business concern seeking to qualify for a Section 3 contracting preference shall certify, in a form suitable to the Housing Authority of the City of Wilmington, that the business concern is a Section 3 concern as defined in paragraph I.B. of this document.

III. SECTION 3 GOALS

Employment Opportunities

Thirty percent (30%) of the aggregate number of new hires for the one-year period beginning in FY 1997 (October 1, 1996, through September 30, 1997), and **continuing each year thereafter.**

Contracting Goals

At least ten percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work, for maintenance, repair, modernization or development of public housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and At least three percent (3%) of the total dollar amount of all other Section 3 covered contracts.

Good Faith Effort

Each contractor and subcontractor seeking to establish that a good faith effort, as required by Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, has been made to fill all training positions with lower income area residents; and fill all employment positions identified during this project, and shall attempt to recruit from the appropriate areas, the necessary number of lower income residents through local advertising media, signs placed at the proposed site, and community organizations, and public and private institutions operating within or serving the service area.

End of Section 3 Definition

SAMPLE
Contract for Service
(Contract No.: RFY23.01)

This **Landscaping & Lawn Maintenance Services** (the "Contract") made this the _____ day of _____, 2023 by and between the HOUSING AUTHORITY OF THE CITY OF WILMINGTON, NORTH CAROLINA (the "Authority"), whose address is 1524 S. 16th Street, Wilmington, North Carolina and _____ ("Contractor") whose address is _____.

Recitals

WHEREAS, the Authority is a public body and body corporate and politic organized under the laws of the State of North Carolina;

WHEREAS, the Authority has selected the Contractor to perform the services describe in this Contract in accordance with the Authority's procurement policy;

WHEREAS, the Contractor has the knowledge and experience required to fully perform the scope of work herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good valuable consideration hereby acknowledged, the parties hereto agree as follows:

Section 1. Contract Performance

The Contractor shall perform all tasks set forth in the "Statement of Work" attached as contractor agreement.

Section 2. Statement of Work

The Contractor shall furnish all labor, material, tools, equipment, transportation, supervision, and related services to perform and complete all work required under this Contract. All work shall be in strict conformance with the Contract.

In its performance of the work under the Contract, the Contractor shall perform all work in a prompt and efficient manner, as well as use its best efforts to minimize disturbance to residents at the Authority's premises.

Section 3. Changes

The Authority may at any time, by written order, and without notice to the sureties, if any, make changes within the scope of the Contract (including the Scope of Work and Project Manual in the services to be performed or supplies to be delivered by the Contractor.

If any such change causes an increase or decrease in the hourly rate or the time required for performance of any part of the work under the Contract, or otherwise affects the conditions under which the Contract shall be performed by the Contractor, the Authority shall make an equitable adjustment in the hourly rate, the delivery schedule, or other affected terms, and shall modify the Contract accordingly.

The Contractor must assert its right to an equitable adjustment under this Section within thirty (30) days from the date of receipt of the written order for change. However, if the Authority decides that the facts justify it, the Authority may receive and act upon a proposal submitted before final payment of the contract.

Failure to agree to any adjustment shall be a dispute which shall be resolved under Section 18. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

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 Authority.

If the contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of the contract, the contractor shall pay to the Housing Authority of the City of Wilmington, North Carolina liquidated damages in the sum of **\$50.00** per day for each day of delay within the Contractor's control (**Not Applicable**).

Disputes: Failure to complete the project, or any part thereof, on a specified date or dates shall not form a basis for a contractor's claim for extra compensation. No claims by a contractor for extra compensation or adjustments will be allowed on account of deletions of work items or delays or failure of others to complete work.

Default: If the Housing of the City of Wilmington deems it inexpedient to require the Contractor to correct work injured or not done in accordance with the contract, an equitable deduction from the contract price shall be made by agreement between the contractor and the Housing Authority of the City of Wilmington, North Carolina subject to prior approval of HUD and subject to settlement in case of dispute, as herein provided.

Section 4. Contract Price

Prices for the Contract shall be as follows:

Section 5. Contract Term

The Contract shall commence _____ and end on _____ with an option exercisable by the Authority to extend the contract for After the Contract has been executed by the Authority and delivered to the Contractor, the Contractor shall deliver a fully-executed original of the Contract to the Authority no later than five (5) days after delivery

by the Authority. If the fully executed original Contract is not delivered to the Authority within the time specified above, the Authority may in its discretion cancel the award and nullify the Contract.

Section 6. Insurance Requirements

Before work begins, the Contractor shall procure from a reputable insurance company authorized to do business in the State of North Carolina the following insurance policies that provide (at a minimum) the following coverage:

- A. **Commercial General Liability** - \$1,000,000 per occurrence combined single limit with a \$2,000,000 annual aggregate for bodily injury liability and property damage liability, including premises and/or operations, independent contractors, products and/or completed operations, broad form property damage and commercial umbrella coverage, and a contractual liability endorsement.
- B. **Commercial Auto Policy** - \$1,000,000 each occurrence combined for bodily injury liability and property damage liability, including owned vehicles, hired and non-owned vehicles, and employee non-ownership.
- C. **Worker's Compensation and Employers' Liability** - coverage for all employees to the statutory limits in compliance with state and federal law; employer's liability of \$500,000 each accident; \$500,000 bodily injury by disease each employee; \$500,000 bodily injury by disease policy limit.
- D. **Errors & Omissions** \$1,000,000.00 each occurrence.

The Authority shall be named as an additional insurer on the contractor's commercial general liability and business auto liability. Current, valid insurance meeting the requirements shall be maintained during the entire duration of the Contract. Renewal certificates shall be sent to the Authority thirty (30) days prior to any expiration date. The Authority shall be provided written notification in the event of cancellation or modification by either Contractor or Contractor's insurer of any coverage required under the Contract no less than thirty (30) days prior to such cancellation or modification.

The Contractor shall furnish the Authority with a Certificate(s) of Insurance evidencing the coverage required hereunder. It shall be unacceptable for any Certificate of Insurance to contain language or wording to the effect that the insurer shall have no liability for failure to provide the prior notices required hereunder.

It shall be the responsibility of the Contractor to ensure that any agreements between Contractor and sub-contractors contain the same insurance requirements as set forth in the Contract.

Section 7. Payment and Performance Bonds Requirements, if applicable.

The Contractor shall provide to the Authority payment and performance bonds naming the Authority as a dual obligee in an amount not less than the full value of the Contract. The Contractor shall not have done or permitted anything to be done that would affect the coverage of any performance or labor and material payment bonds required by the terms of the Contract and, upon demand of the Authority, the Contractor shall have obtained a written statement from the bonding company or companies assuring that such coverage continues in full force and effect.

Section 8. Billing and Payment

The Contractor shall upload an original copy of each invoice into the Vendor's Café'. Invoices shall contain the following information: Payment Request Number and all other relevant documentation. The Authority shall pay the Contractor within 30 calendar days following receipt of an acceptable invoice.

Section 9. License

During the term of the Contract, the Contractor shall maintain the proper license(s) under applicable state and local laws as required by the Authority, to perform all work under the Contract.

Section 10. Termination for Convenience

The Authority may terminate the Contract, in whole or in part, for the Authority's convenience. The Authority 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: (a) immediately discontinue all services affected (unless the notice directs otherwise); and (b) deliver to the Authority all information, reports, papers, and other materials accumulated or generated in performing the Contract, whether completed or in process.

Upon termination for the convenience by the Authority, the Authority shall be liable to the Contractor for reasonable and proper costs resulting from such termination (and upon the receipt by the Authority of a properly presented claim setting out in detail) including: (i) the total cost of the work performed to date of termination; (ii) the cost of settling and paying claims under subcontracts and material orders for any work performed and materials and supplies delivered to the site, payment for which has not been made by the Authority to the Contractor; (iii) the cost of preserving and protecting the work already performed (provided that such work was approved by the Authority), until the Authority or a party designated by the Authority takes possession thereof or assumes responsibility therefore.

Section 11. Termination for Cause

The Authority may terminate the Contract, in whole or in part, for cause. "Cause" shall include, but not be limited to: (a) failure of the Contractor to fulfill its obligations under the Contract; (b) falsification by any officer, employee or agent of the Contractor of any document or information submitted by the Contractor past or present in connection with the subject matter of the Contract; (c) Contractor's bankruptcy, insolvency, assignment for the benefit of creditors, marshaling of assets, or other such events; or (d) occurrences reasonably justifying the Authority's opinion that the Contractor is about to become unable to meet its obligations under the Contract.

The Authority shall terminate the Contractor for cause 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 Authority all information, reports, papers, and other materials accumulated or generated in performing the Contract, whether completed or in process.

If the termination is for cause, the Authority may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the Authority, any work as described in Subsection 11. (ii) above, and compensation be determined in accordance with the provisions set forth in Section 3 above; (2) 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 Authority; and/or (3) 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 Authority by the Contractor.

Section 12. Reports and Records

The Contractor shall provide all reports pertaining to its performance of the Contract reasonably required by the Authority.

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

Section 13. Assignment

The Contractor shall not assign or otherwise transfer any of its obligations or interest under the Contract without the prior written consent of the Authority.

Section 14. Equal Opportunity

The Contractor shall comply with the provisions of any federal, state, or local laws prohibiting discrimination on the grounds of race, color, sex, age, creed, national origin, marital status, or handicap, including Title VI of the Civil Rights Act of 1964 (Public Law 88352, 78 Stat. 241), Title VII of the Civil Rights Act of 1968 and Section 504 of the Rehabilitation Act of 1973.

Section 15. Authority's Waiver of Claim

In the event of the suspension or termination of the Contract, the Contractor shall remit to the Authority any unexpended balance of payments made by the Authority under this Agreement. The Authority's acceptance of the Contract remittance shall not constitute a waiver of any claim that the Authority might have against the Contractor.

Section 16. Indemnification

The Contractor shall protect, defend, indemnify and hold the Authority, its commissioners, officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of the Contract and/or the performance hereunder that are due to the omission, negligence or action of the Contractor, its officers, employees, or agents. The Contractor further agrees to investigate, handle, respond to, provide defense for, and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto.

Section 17. Third Party Relationships

The Contract shall not be construed to create any relationship of third-party beneficiary involving the Authority. The Contractor shall include in all contracts, subcontracts, or other agreements with other parties relating to the Contract an acknowledgment by those parties that this Contract does not create any relationship of third-party beneficiary.

Section 18. Dispute Resolution

All disputes arising under or relating to the Contract in connection with the Contractor's claims, except for disputes arising under provisions contained in Section II of the General Conditions for Non-Construction (Form HUD-5370-C) which is attached to the Contract as Exhibit E, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this Section.

All claims by the Contractor shall be made in writing and submitted to the Authority. A claim by the Authority against the Contractor shall be subject to a written decision by the Authority.

The Authority shall, with reasonable promptness, but in no event in no more than sixty (60) days, render a decision concerning any claim hereunder. Unless the Contractor, within thirty (30) days after receipt of the Authority's decision, shall notify the Authority in writing that it takes exception to such decision, the decision shall be final and conclusive.

Provided the Contractor has (i) given the notice within the time stated above, (ii) excepted its claim relating to such decision from the final release; and (iii) brought suit against the Authority not later than one (1) year after receipt of final payment, or if final payment has not been made, not later than one (1) year after the Contractor has had a reasonable time to respond to a written request by the Authority that it submit a final voucher and release, whichever is earlier, then the Authority's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.

The Contractor shall proceed diligently with performance of the Contract, pending final resolution of any request for relief, claim, appeal, or action arising under the Contract, and comply with any decision of the Authority.

Section 19. Notices, Demands, Approvals and Verifications.

All notices required to be given hereunder shall be in writing and shall be deemed served at the earlier of (i) receipt; (ii) the business day following deposit with a naturally recognized overnight courier service, postage prepaid for overnight delivery and addressed to the parties at their applicable addresses; or (iii) four (4) business days after deposit in registered, certified or first-class United States mail, postage pre-paid, return receipt requested and addressed to the parties at their applicable addresses. For purposes of notice, the following addresses, or such other addresses as may from time to time be designated by written notice given as herein required shall be the parties' applicable addresses:

The Contractor:

The Authority:

Housing Authority of the City of Wilmington, North Carolina
1524 South 16 Street
Wilmington, NC 28401
Attention: CEO

Section 20. Section 3

The work performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1986, 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 person, particularly persons who are recipients of HUD assistance for housing.

The parties agree to comply with HUD regulations in 24 CFR part 135 which implement Section 3. As evidenced by its execution of the Contract, the Contractor certifies that it is under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

Section 21. Independent Contractor

The Contractor agrees that it is an independent contractor, and this Agreement shall not be construed as establishing a joint venture, partnership, or, any principal-agent relationship between the Authority and the Contractor. Employees of the Contractor shall remain subject to the exclusive control and supervision of the Contractor, which is solely responsible for their compensation and any claims arising there from.

Section 22. Compliance with Laws

The Contractor shall comply with all laws, ordinances, rules and regulations pertaining to performance of work under or in connection with the Contract, and shall hold the Authority harmless against any fine, penalty, or damage for any actual negligent failure on the part of the Contractor to comply therewith.

Section 23. Entire Agreement

The Contract constitutes the entire agreement between the Authority and the Contractor and supersedes all prior oral and written agreements, if any, between the part

Section 24. Contract Documents

The Contract shall consist of the following components which are incorporated herein by reference:

- A. The Scope of Work
- B. Instructions to Bidders for Contract (Form HUD-5369) (Exhibit B)
- C. Representations, Certifications and Other Statements of Bidders (Form HUD-5369-A) (Exhibit C)
- D. Certification Regarding Debarment and Suspension (Form HUD-2992) (Exhibit D)
- E. Equal Employment Opportunity Certification (Form HUD-92010) (Exhibit E)
- F. Section 3 Compliance Certification (Exhibit F)
- G. General Conditions for Non-Construction (Form HUD-5370-C) (Exhibit G)

IN WITNESS WHEREOF, the parties thereto have caused this instrument to be executed in TWO (2) original counterparts as of the day and the year first above written.

AUTHORITY:

HOUSING AUTHORITY OF THE CITY OF WILMINGTON, NORTH CAROLINA

By: _____

Tyrone Garrett, CEO/ Contracting Officer

Date: _____

CONTRACTOR:

By: _____

Name:

Title:

Date: _____

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EXHIBIT A

Scope of Work

(See Attached)

Statement of Work (SOW)

The contractor shall be responsible to provide labor, materials, and equipment to accomplish the following work:

Trash Pick-Up:

1. Trash will be removed from mowing areas prior to mowing.
2. No paper or any objects to be run over by mower.
3. The contractor is also responsible for trash and litter pick-up in common and natural areas on a weekly basis, even if mowing is not performed during that week due to weather or other seasonal issues.
4. Sites will be visited weekly during non-mowing conditions (draught or excessive rain) and non-mowing seasons to perform trash pick-up in common areas, grounds, and parking lots.

Mowing:

1. Mow all turf areas weekly during the contract period when the turf exceeds .5 or more inches above the minimum height and bi-weekly in the late fall or as needed during draught conditions (an estimated 35 mowing per site per season). The turf will be cut to no less a height than 3 inches. Any excess clippings, clumps, or windrows are to be removed so as to not damage turf. At no time will turf be allowed to become overgrown.
2. With prior notice because of weather, excess rain, or special GHA function Contractor may be required to provide touch up work as needed.

Trim Work:

1. Trim work/edging to be done on a weekly time frame with mowing. This function will also be performed throughout the year to maintain clean, sharp edges. Includes buildings, trees, fences, sidewalks, parking areas, curbs, and mulch beds.
2. Chemical edging will not be allowed to take the place of standard edging under any circumstances.
3. Chemical edging will be allowed in parking lots, natural areas, and sidewalk cracks.
4. Any property that has a fence, contractors must keep the fence clean from overgrowth and debris.
1. Any damage to turf or plants from chemical treatment/drift will be the contractor's responsibility to repair.

Clean Up:

1. Remove grass clippings, leaves, debris from all sidewalks, curbs, parking areas, steps, etc. No grass clippings or debris to be blown into flower beds, mulched or natural areas.
2. Sweep/blow dumpster pads and remove trash and litter. Sweeping and /or blowing can accomplish this.

Pruning Shrubs:

1. Shrubs to be pruned in the Spring (April-May), Summer (July), and Fall (October). Shrubs at no time will be allowed to become overgrown. All shrub and hedge debris to be disposed of offsite. This will be performed on all shrubs except plant types that require pruning after flowering as in azaleas, etc.
2. Small trees such as crape myrtles and camellias will not be sheared as a hedge. This is contrary to natural growth habit and only requires select pruning and suckering.

Leaf Clean Up:

1. Leaves will be cleaned up on a weekly basis. Leaves will be removed from parking lots, sidewalks, curbs, grass areas, mulched natural areas, and flowerbeds.
2. At no time will leaves be allowed to lie on turf in a thickness as to be damaging to the grass. At no time will leaves be allowed to stay in parking lots, curbs, or around drains.

Aerate - Line & Fertilize - Grass Seed:

1. Aerate yard, fertilize, lime and seed twice a year. Spring and Fall.
2. Lime - 40 lbs. per 1000 square ft., Fertilize rate - 18-24-12@ 5.5 lbs. per 1000 sq. ft.
3. Overseed thin or bare areas only with multi blend fescue, sunshade mix. Grass seed to be applied in March and October (For October only, a blend of fescue and rye will be applied).

Weed Control:

1. All flower beds will be sprayed or weeded by hand to control weeds.
2. All hard surface cracks and crevices will be sprayed or weeded by hand to control weeds.
3. All mulch areas will be sprayed or weeded by hand to control weeds.

General Notes:

1. Precautions will be taken to prevent harm to personnel and damage to property resulting from flying debris. The contractor is responsible for the cost of reimbursement or repairs.
2. Care to be taken to prevent damage to trees, shrubs, buildings, and personal belongings while mowing. The contractor is responsible for the cost of reimbursement or repairs.
3. WHA expects to receive quality service and expects WHA residents and property management staff to be treated with courtesy and respect.

Locations:

The following are the locations included in this IFB. It shall be the responsibility of the Contractor to visit each referenced site to obtain the necessary site data and to verify all data relative to the existing site conditions necessary to prepare his IFB.

Beyond what is contained in this IFB, WHA takes no responsibility for the collection of data and specific site conditions needed for the submission of an accurate and responsible proposal. An annual quote for the work outlined in this IFB shall be submitted and broken down by each site. No other combination or method of pricing will be accepted.

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

HUD Form 5369-C Certifications 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:

HUD Form -2992 Certification Regarding Debarment and Suspension

Certification Regarding Debarment and Suspension

U.S. Department of Housing
and Urban Development

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or 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 paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. 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 of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary 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 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. 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 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. 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.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is 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 may terminate this transaction for cause of default.

Certification B: 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 participant shall attach an explanation to this proposal.

Instructions for Certification (B)

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 of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these 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 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
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 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, 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 Nonprocurement List.
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 lower covered transaction knowingly enters into a lower tier covered transaction with a person who is 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.

Applicant Earl M. Worsley, Jr., MAI		Date 10/5/2015
Signature of Authorized Certifying Official	Title Manager	

HUD Form -92010 Equal Employment Opportunity Certification

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

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

Department of Veterans Affairs

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

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

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

Firm Name and Address

By

Title

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

Excerpt from HUD Regulations

200.410 Definition of term "applicant".

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

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

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

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HUD Form HUD-5370-C General Contract Conditions Non-Construction

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

The following definitions are applicable to this contract:

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

2. Changes

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

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

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

2. Withholding of funds

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

3. Records

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

4. Apprentices and Trainees

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

- Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;
- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
 - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
 - (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
 - (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
 - (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

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

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

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.

- (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

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

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

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

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

7. Subcontracts

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

8. Non-Federal Prevailing Wage Rates

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