



## **Re-Bid Request for Proposal (RFP)**

### **CERTIFIED PUBLIC ACCOUNTING FIRM**

**Solicitation NO.; WHA24.10**

PROPOSAL DUE DATE: Monday, July 21, 2025  
PROPOSAL DUE TIME: 4:00 p.m. Local Eastern Standard Time

SUBMIT PROPOSAL TO: **HOUSING AUTHORITY OF THE  
WILMINGTON NORTH CAROLINA**  
1524 South 16<sup>th</sup> Street  
Wilmington, NC 28401

PROCUREMENT DEPARTMENT  
cburns@wha.net

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**HOUSING AUTHORITY OF THE CITY  
OF WILMINGTON NORTH CAROLINA**

**RE-BID REQUEST FOR PROPOSAL**

**CERTIFIED PUBLIC ACCOUNTING FIRM**

The Housing Authority of the City of Wilmington North Carolina (“WHA” or “the Authority”) is inviting proposals from qualified independent public accounting firms to conduct an annual financial and compliance audits of the Authority’s various programs as identified in Section 6, “Services Required” of this request. The contract performance begins with the fiscal year ending March 31, 2025, and ends with the completion of the fiscal year ending March 31, 2028, audit report of the Authority; with two single year options to extend the contract to the completion of the March 31, 2028, audit report.

RFP packets may be picked up beginning Thursday, June 26, 2025, between 8:00 a.m. and 4:00 p.m., Monday through Friday at the Housing Authority’s Central Office at 1524 S. 16<sup>th</sup> Street, Wilmington, North Carolina. There will be a \$25.00 charge.

Interested Firms shall visit WHA’s website for an RFP packet, which contains a description of the services required. Technical questions should be directed to Kinteh Darboe, Senior Vice President / Chief Finance Officer by e-mailing him at [kdarboe@wha.net](mailto:kdarboe@wha.net).

Proposals shall be received in a sealed envelope and will be accepted until 4:00 p.m. on Monday, July 21, 2025. Proposals shall be kept confidential.

The criteria for evaluating these Proposals will be based solely on the items set forth in the RFP. There will be one contract award to the most responsive and responsible proposal, which in the judgment of WHA best meets the objectives of the Housing Authority.

The WHA waives the right to interview the competitive range if such a process proves unnecessary.

The WHA reserves the right to reject any Proposals and/or waive any informalities in the solicitation process. The proposal will not be available for public review until after the contract award.

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.

# **REQUEST FOR PROPOSALS WILMINGTON HOUSING AUTHORITY**

## **1. PURPOSE**

The Housing Authority of the City of Wilmington North Carolina (“WHA” or “the Authority”) is inviting proposals from qualified independent public accounting firms to conduct One (1) annual financial and compliance audit of the Authority’s various programs as identified in Section 6, “Services Required” of this request. The contract period performance begins with the fiscal year ending March 31, 2025, and ends with the completion of the fiscal year ending March 31, 2028, audit report of the Authority; with two single year options to extend the contract to the completion of the March 31, 2028, audit report.

Financial statement audits determine (1) whether the financial statements of an audited entity present fairly the financial position in accordance with generally accepted accounting principles, and (2) whether the entity has complied with laws and regulations for those transactions and events that may have a material effect on the financial statements.

The intent of this Request for Proposal (RFP) is to define the general specifications for the professional services required by WHA and to set guidelines for selection. The purpose of this RFP is to solicit meaningful proposals so that WHA may select from among a range of proposals the firm that best meets its needs and requirements. It is further desired that the solicitation process will ensure competitive pricing.

Any Small Disadvantaged Business Concern (SDBC) proposer should state such status specifically. Proposals from small business enterprises, women’s business enterprises, and minority business enterprises are encouraged.

## **2. BACKGROUND**

The WHA is a body corporate and politic, and is governed by the U. S. Housing Act of 1937, as amended, and subject to regulations under Title 24 of the Code of Federal Regulations. Chartered in 1938, WHA was the first housing authority in North Carolina.

The WHA is an equal opportunity housing organization dedicated to enhancing the quality of life for public housing residents and Housing Choice Voucher clients by providing and/or subsidizing attractive, secure, affordable housing units. In addition, WHA works to ensure its homeownership; economic development and

community supportive service programs are designed and administered in a manner which enables clients to achieve a higher level of economic and social self-sufficiency. A nine-member Board of Commissioners, appointed by the Mayor of the City of Wilmington, N. C., sets policy for the Authority.

Attention is called to the provision for Equal Employment Opportunity (Executive Order 11246). Each firm must ensure that no employees and applicants for employment are discriminated against because of their race, color, religion, sex, or national origin. Each firm shall certify compliance with all applicable opportunities or handicap requirements governing contracts of this type. (Attachment A.)

### **3. FINANCIAL STATUS AND OPERATIONS**

The WHA is funded through a variety of federal, state and local sources, with the United States Department of Housing and Urban Development being the cognizant primary funding agency. For FYE 2025, WHA's income was \$24.6 million, and the expenditure was \$26.7 million. The Authority currently provides the following programs for the residents we serve:

- Public Housing – 1102 units
- Housing Choice Vouchers – 2094 units
- Capital Fund -\$3,219,422 grants which include Loan Debt Obligation
- Glover Plaza, Inc. – Multi-family – 75 units
- ROSS – 1 open grant
- FSS Grants - 2 open grants
- Job Plus – 1 open grant
- Housing and Economic Opportunities, Inc. (HEO) – Non-profit Instrumentality

### **4. AUDIT STANDARDS**

The audit report and financial statements as well as working papers will be subject to review and approval by HUD. The auditor must retain the working papers for a minimum of five years. The audit shall be made in accordance with Generally Accepted Auditing Standards in the United States and Government Auditing Standards issued by the Comptroller General Office of the United States. The audit and financial statements shall meet the requirements of federal single audit regulations as prescribed by OMB Circular A-133, "Audits of State, Local Governments and Non-Profit Organizations", Basic Financial Statements, Government Account Standard Board (GASB) Model 34, Management Discussion and Analysis for State and Local Governments and the U.S. Department of Housing and Urban Development's Public and Indian Housing Compliance Supplement. The financial statements are to be prepared by the auditor in accordance with Generally Accepted Accounting Principles (GAAP), and Housing and Urban Development's timetable for submissions. This includes assistance with

electronic submission of the Financial Data Schedule (FDS) via the internet as required by the Real Estate Assessment Center (REAC).

## 5. GENERAL INFORMATION

- A. Regulations pertaining to federally assisted programs are promulgated by HUD.
- B. The Authority's fiscal year is from April 1 to March 31. The last audit was performed for the fiscal year ended March 31, 2024. Prior years audit reports are available at the administrative offices of the Authority.
- C. Payment to the Independent Auditor: The audit acknowledgment of receipt and Final Acceptance of Audited Financials by HUD is required prior to final payment of the audit fee by the WHA. This fee may be broken into mutually agreed upon progress payments.
- D. Five (5) bound copies and one (1) electronic copy of the audit report will be required. In addition, the Auditor shall be responsible for the submission of the audit report to HUD. The Auditor is also required to send two copies to the Local Government Commission (LGC).
- E. The WHA will be prepared to have the audit commence on or about September 15, 2025. Field work may, by mutual agreement, begin prior to the commencement date of the audit. A draft report, including all findings and recommendations, should be reviewed with the Chief Executive Officer and Director of Finance during the exit conference. ***The audit report must be submitted within 120 calendar days after commencement of the audit or an agreed upon date.***
- F. WHA utilizes a data processing software system specifically developed for the Housing Authority industry by Yardi.
- G. WHA is required to submit financial statements prepared in accordance with Governmental GAAP. Utilizing the latest accounting standards, financial statements must also conform to the Financial Reporting Model as defined in GASB Statement 34, Issued June 1999. The Management Discussion & Analysis (MD&A) and other additional Required Supplemental Information (RSI) will be important components to the audit report. HUD issued guidance pertaining to the referenced reporting model in December 2001 under PHA GAAP Flyer Volume 2 Issue 1, or most current standards

The books of accounts and financial records to be audited are maintained and located at the Authority's office at 1524 S. 16<sup>th</sup> Street, Wilmington, North Carolina. These books and records will be made available to the Auditor by WHA during normal business hours. The majority of non-financial records required for compliance testing are also maintained at the above address; however some records may be housed off-site, at property offices.

## **6. SERVICES REQUIRED (Scope of Work)**

The selected firm should have proven experience with Public Housing Authorities.

A. A financial statement and compliance audit of the Housing Authority for fiscal years ended March 31, 2025, performed in accordance with the Section "Audit Standard" above.

### **1. Basic Financial Statements**

- a. Combined Statement of Net Assets for all major enterprise funds.
- b. Combined Statement of Revenue, Expenses and Changes in Net Assets for all major enterprise funds.
- c. Combined Statement of Cash Flow for all major enterprise funds.
- d. Combined Statement of Net Assets for non-major enterprise funds.
- e. Combined Statement of Revenues, Expenses and Changes in Net Assets for non-major enterprise funds.
- f. Combined Statement of Cash Flows for non-major enterprise funds.
- g. Footnotes accompanying the financial statements.

### **2. Supplemental Information**

- a. Schedule of Net Assets –FDS
- b. Schedule of Revenues, Expense and Changes in Net Assets –FDS
- c. Schedule for Expenditures of Federal Awards
- d. Notes to Schedule of Expenditures for Federal Awards

### **3. Supplemental Information – Special Reports**

- a. Schedule and Certification of Actual Grant Costs – Completed
- b. Schedule of Grant Costs – Uncompleted

B. Perform compliance procedures and issue a report which encompasses applicable laws regulations and grant agreements for the following:

1. Housing Choice Voucher Program
2. Low Income Public Housing Program
3. Capital Fund
4. Housing & Economic Opportunities, Inc. (separate audit submitted to WHA no later than 60 days after March 31 fiscal year end)
5. Glover Plaza, Inc. (separate audit submitted to WHA and HUD no later than 60 days after March 31 fiscal year end)
6. Other applicable grants

- C. Report on Compliance and on Internal Control over Financial Reporting based on an Audit of Financial Statement Performed in Accordance with Government Auditing Standards.
- D. Report on Compliance with Requirements Applicable to Each Major Program, Internal Control over Compliance and on the Schedule of Expenditure of Federal Awards in accordance with Circular A-133.
- E. Reserve Account Reconciliation.
- F. Supplemental Reporting Requirements – Return on Investments.
- G. Independent Auditor’s Report on the Schedules of Actual Modernization Cost Certificate for grant(s) as necessary.
- H. Prepare Bureau of Census form SF-SAC, Data Collection form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations.
- I. Attestation by auditor on Financial Data System (FDS) data as to its “fair presentation in relation to audited basic financial statements” in accordance with the audit provisions of the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards (SAS) No.29, “Reporting on Information Accompanying the Basic Financial Statements in Auditor-Submitted Documents.”
- J. A separate attestation agreed-upon procedures engagement under AICPA Statement on Standards for Attestation Engagements (SSAE) No. 4, “Agreed-Upon Procedures engagements” where the auditor compares the electronically submitted data in the REAC staging database to the hard copy of the FDS.
- K. Provide (basic) financial statements as described in the Guidelines for Public Housing Authorities and Independent Auditors under the UFRS Rule (SAS 29), in the appropriate format for electronic submission to REAC.
- L. Assist in draft preparation of the Management Discussion and Analysis (MD&A) and audit the completed MD&A.
- M. Assist Finance staff in preparation of unaudited FDS for Authority wide and multifamily submissions.
- N. Perform audit test of the WHA preparation of the Section 8 Management and Assessment Program (SEMAP) Report and Public Housing Assessment System (PHAS) Report as necessary.

- O. Provide an Independent Auditor's Management Letter to the Chief Executive Officer concerning minor findings noted that were not material in nature during tests of internal control structure policies and procedures.
- P. Provide any other reports as requested by WHA and as required by HUD's Uniform Financial Reporting Standards (UFRS) for Public Housing Authorities.
- Q. The Authority understands that generally accepted auditing standards require that the Auditor obtain a letter of representation prior to completion and submission of the Audit Report. This letter requires that the Chief Executive Officer and Director of Finance provide the Auditor with assurance based on knowledge and belief as to matters concerning the accounting records, operations and matters contained within the financial statements. The delay in providing this assurance will extend the date of completion of the audit.
- R. Provide the Authority with an electronic copy of the final audit work papers.
- S. Preparation of IRS 990's for HEO and Glover Plaza by September 15, 2025.

## **7. SUBMISSION OF PROPOSALS**

- A. The proposal must be for the entire scope of the requirements stated in Section 6 (Services Required). The proposal should be in one bound document, with 3 bound (or stapled) copies included.
- B. The proposal must contain specific information in the following format:
  - 1. Title page including the firm's name, address, phone and fax numbers, contact person, date of the proposal, Federal I.D. number of the firm, and firm license number with the State Board of Accountancy.
  - 2. Table of Contents.
  - 3. Description of your firm as to size and organization.
  - 4. A listing of the most significant engagements (maximum of five) performed in the last five years that are like this engagement described in this request. Indicate the scope of work, date, engagement partners, and total hours spent on the engagement.
  - 5. Qualifications of staff members to be assigned to the audit, their position in the firm, the types and amount of audit experience each staff member possesses in the activities to which the proposal relates.
  - 6. Work to be performed and compensation.

- a. Statement of understanding of work to be performed
  - b. Hourly rates and **maximum compensation** (Including out-of-pocket and other expenses) for the audit of each identified under Evaluation (10). This information must be provided in order to be determined responsive to this solicitation. The offeror should provide a fixed hourly rate per personnel category to accomplish the intent and provide the work defined in the solicitation. The hourly rates provided will be assigned to the contract. All hourly rates shall include profit, administrative burden, travel, and all other ancillary costs associated with the performance of the work in the contract, including telephone, fax, reproductions, etc. to accomplish the work defined in this solicitation.
  - c. Time estimates for performing the scope of the audit identified in paragraph "D".
- C. A list of work papers required to be prepared by WHA staff prior to the beginning of the audit.
- D. Briefly describe what the firm understands the scope of the work to be. Present a plan on how RFP audit requirements will be accomplished within the specified timeframe. Briefly discuss the audit approach regarding consideration of laws and regulations. Outline the level of support your firm will require of WHA staff.

All proposals must be submitted to:

**Chauntrell Burns,  
Sr. Vice President of Procurement  
Wilmington Housing Authority  
1524 S. 16<sup>th</sup> Street  
Wilmington, NC 28401**

One bound document with 5 bound (or stapled) copies of the proposal must be placed in a sealed envelope clearly marked "**AUDIT PROPOSAL.**" The proposals must be in our office no later than 4:00 p.m. **July 21, 2025.**

Proposals sent by U. S. Mail, Overnight Delivery, Federal Express, or similar carriers should be packaged and addressed and marked as above, in a sealed envelope inside the courier's envelope. Proposals received prior to the time set forth in the above paragraph will be kept unopened until the time set for opening. Proposals received after the date and time noted above will not be considered. The proposer alone is responsible for the timely delivery of all proposals. WHA will not be held responsible for late proposals.

You may contact Kinteh Darboe, Senior Vice President / Chief Finance Officer, at (910) 341-7700, extension 225 regarding the submittal process and/or technical aspects of the project.

The RFP for audit services is available for review on the Authority's website, [www.wha.net](http://www.wha.net) or at the office at 1524 S. 16<sup>th</sup> Street Monday through Friday between 8:00 and 4:30 regular business hours.

WHA reserves the right to reject all proposals and to waive any informality in the proposal process. Solicitation of the request for the proposal does not commit WHA to pay any cost incurred in the preparation of the proposal.

## **8. LENGTH OF CONTRACT/CONTRACT DEVELOPMENT/TERMS AND CONDITIONS**

- A. The proposers are invited to submit a proposal for a contract period that begins with the fiscal year ending March 31, 2025, and ends with the completion of fiscal year ending March 31, 2028, audit report of the Authority; with two single year options to extend the contract to the completion of the March 31, 2028, audit report. However, the WHA may terminate the audit contract upon written notice to the Contractor not less than sixty (60) days before the close of the fiscal year to be audited. Proposers are required to complete the "Certifications and Representations of Offerors, Non-Construction Contract" for (Attachment B).
- B. Upon selection of a qualified team through the RFP process, the WHA shall enter into a contract for services (based on an approved scope of services and budget) with the selected firm on terms and conditions acceptable to the WHA. Until the execution of a contract, the WHA reserves the right to cease negotiations and to start the RFP process again. Submissions will be held confidentially and not released in any manner until after the award of contract(s).
- C. The successful bidder shall provide proof of insurance to the Authority including the type and amount for coverage specified below before beginning work:
1. Workers' Compensation as required by law
  2. Errors and Omission Coverage (Professional Liability)- \$1,000,000.00
  3. General Liability Insurance - \$1,000,000.00
- D. The successful bidder shall indemnify and hold harmless from any liability whatsoever; including wrongful death, based or asserted upon any act or omission of the bidder, its employees, sub-contractors and agents relating to or in any way connected with the accomplishment of the work or performance of service under this agreement. As part of the forgoing indemnity the successful bidder agrees to protect and defend at its own expense, including attorney fees,

the Authority, its officers, agents, and employees in any legal action based upon any alleged acts or omission.

- E. The successful bidder and its agents, servants and employees shall act at all times in an independent capacity during the term of the agreement and in the performance of the services to be rendered there under, and shall not act as, and shall not be, and shall not in any manner be considered to be agents, officers or employees of the WHA.
- F. The successful bidder shall not discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sexual orientation, physical handicap, medical condition, marital status or sex in the performance of the contract, and, to the extent they shall be found to be applicable thereto, shall comply with the provisions of the California Fair Employment Practices Act and the Federal Civil Rights Act of 1964.
- G. At the option of the Authority, finalists may be selected for the best and final round of negotiations; however, vendors are encouraged to present their best offers with their initial submission.
- H. The Authority reserves the right to accept or reject any and all proposals. In addition to other factors, the proposals will be evaluated on the basis of the advantages and disadvantages to WHA that might result from the award of more than one contract. WHA reserves the right to make a contract award based solely upon the proposals, or to negotiate further with one or more vendors. The vendor(s) selected for the award will be chosen on the basis of greatest benefit to WHA, and not necessarily on the basis of lowest pricing. Nothing contained herein shall require the WHA to enter into exclusive negotiations and the WHA reserves the right to amend, alter and revise its own criteria in the selection of a respondent without notice.
- I. Neither the agreement, nor any part thereof, shall be assigned by the successful bidder without the prior written consent of WHA.
- J. The audit contract must be submitted to the North Carolina Department of State Treasurer Local Government Commission (LGC) for review and approval.

## **9. TERMINATION CLAUSE**

WHA reserves the right to reject any and all submittals, to take exception to these RFP specifications or to waive minor irregularities in any submittal, to issue additional RFP's and to either substantially modify or terminate the Project at any time prior to final execution of a contract.

WHA will reject the proposal of any respondent who is debarred by the U. S. Department of Housing and Urban Development providing services to public housing authorities, and reserves the right to reject the proposal of any respondent who has previously failed to perform any contract properly for any purchaser, or to complete on time, contracts of a similar nature, who is not in the position to perform the contract, or who has neglected the payment of bills or otherwise disregarded its obligations to clients, purchasers, subcontractors, material men, or employees. Each firm must complete "Certification Regarding Debarment and Suspension" form (Attachment A.)

## 10. EVALUATION

### A. Process

A team of reviewers will rate proposals. The review team will recommend the qualified firm for the week of **July 21, 2025**. If negotiations are not completed with the top ranked team, negotiations may proceed with the next most qualified team or teams.

### B. Criteria

Proposals will be ranked based upon the merits of the written proposal and the qualifications and experience of the firm or consultant team. Each reviewer will award a score based on a 100 point total as follows:

- |  |                |
|--|----------------|
| 1. Hourly rates and <i>maximum compensation</i>                          | 30%            |
| 2. Team/Firm qualifications, training, prior audits, resources, expenses | 35%            |
| 3. Ability to meet audit goals and objectives                            | 30%            |
| 4. Customer service/Availability to work                                 | 5%             |
| 5. Debarment Statement   | Yes ___ No ___ |
| 6. Minority/Women Business Enterprise                                    | Yes ___ No ___ |
| 7. Section 3 Certification   | Yes ___ No ___ |
| 8. Evidence of Insurance   | Yes ___ No ___ |
| 9. Equal Employment Opportunity Certification                            | Yes ___ No ___ |

The WHA reaffirms its right to make any selection it deems prudent, and responding firms or individual participants acknowledge through their participation that such selection is not subject to protest or contest.

It is the intent that this solicitation will provide a sufficient number of proposals to allow for competitive selection. If at a later date it is deemed necessary, because of lack of information that additional cost and price information is required, WHA reserves the right to require this information from all responders

**C. Timeline**

The following set dates are firm and shall not be waived unless specified in writing by the Chief Executive Officer.:

<b>Deadline</b>	<b>Activity</b>
<b>July 21, 2025</b>	Proposals must be received at the WHA office no later than 4:00 p.m.
<b>September 15, 2025</b>	Start date of fieldwork by selected CPA Firm
<b>November 15, 2025</b>	Final aging audit is submitted to WHA
<b>December 15, 2025</b>	Final comprehensive audit is submitted to WHA
<b>December 15, 2025</b>	Audited FDS submitted to REAC

The audit report may be submitted earlier than the above schedule. However, if the selected CPA firm fails to make delivery of the audit report within the time schedule specified herein, or if the selected CPA firm delivers the audit report which does not conform to all of the provisions of the contract, the WHA may, by written notice of default to the selected CPA firm, terminate the whole or any part of the contract. Under certain extenuating circumstances WHA may extend this schedule upon written request of the selected CPA firm with sufficient justification.

**11. REQUEST FOR PROPOSAL CHECKLIST**

This checklist must be completed and submitted with your proposal.

- A. Five bound (or stapled) copies of the proposal \_\_\_\_\_
- B. Equal Employment Opportunity Certification  
(Attachment C) (signed) \_\_\_\_\_
- C. "Certifications and Representations of Offerors, Non-Construction  
Contract" for (Attachment B) (signed) \_\_\_\_\_
- D. Section 3 Certification (Attachment D) (signed) \_\_\_\_\_

Submitted by:

<b>Company Name</b>	
<b>Address</b>	
<b>City/State/Zip</b>	
<b>Phone</b>	
<b>Fax</b>	
<b>Authorized Signature</b>	
<b>Authorized Personnel (please print)</b>	
<b>Date</b>	

**Contract for Service  
(Contract No.: WHA24.10)**

This **Contract for Certified Public Accounting Firm** (the "Contract") made this the \_\_\_\_\_ by and between the HOUSING AUTHORITY OF THE CITY OF WILMINGTON, NORTH CAROLINA (the "Authority"), whose address is 1524 S. 16<sup>th</sup> 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 "Scope of Work" as attached.

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, as amended.

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 liquidated damages in the sum of \$100.00 per day for each day of delay within the Contractor's control.

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 delay 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, 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:

- A. For services as specified in the Scope of Work and Project Manual, Contractor shall be paid in the amount of \$\_\_\_\_\_.

## Section 5. Contract Term

The Contract shall commence with the date listed on the award letter for one year, with an option exercisable by the Authority to extend the contract for four (4) additional one (1) year periods, unless terminated sooner by either party in accordance with the provisions of the Contract. Contractor will be notified by letter if an extension is granted.

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.

**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 liquidated damages in the sum of \$100.00 per day for each day of delay within the Contractor's control.**

## 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 and Omission Coverage (Professional Liability)** - Amount  
\$1,000,000.00

The Authority shall be named as an additional insured 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 insure 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 submit an original copy of each invoice containing contract number, location and signature of property manager to insure all work has been performed as requested, to the Authority at 1524 South 16<sup>th</sup> Street Wilmington, N.C. 28401, Attn: Finance Department. The Authority shall pay the Contractor within 30 calendar days following receipt of an acceptable invoice. The Authority is not responsible for any equipment on site.

## 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 there of 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:

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

Attn: \_\_\_\_\_

The Authority:

Housing Authority of the City of Wilmington, North Carolina

1524 South 16 Street  
Wilmington, NC 28402  
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 parties.

#### Section 24. Contract Documents

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

- A. Instructions to Bidders for Contract (Form HUD-5369)
- B. Representations, Certifications and Other Statements of Bidders HUD 5369C
- C. Certification Regarding Debarment and Suspension (Form HUD-2992)
- D. Equal Employment Opportunity Certification (Form HUD-92010)
- E. The Contractor's bid form dated \_\_\_\_\_ (provided, however, in the event that any provision in the Contract is inconsistent or conflicts with any provision in the Contractor's bid form, the provision in the Contract shall govern) .

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, Chief Executive Director

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

**CONTRACTOR:**

By: \_\_\_\_\_

Name:

Title:

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

Exhibit A

Instructions to Bidders for Contract (Form HUD-5369)

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

**Instructions to Bidders for Contracts  
Public and Indian Housing Programs**

## Instructions to Bidders for Contracts Public and Indian Housing Programs

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#### 1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work of the General Conditions of the Contract for Construction**). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

#### 2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

#### 3. Amendments to Invitations for Bids

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

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

#### 4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

- (1) Integrity;
- (2) Compliance with public policy;
- (3) Record of past performance; and
- (4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

## 5. Late Submissions, Modifications, and Withdrawal of Bids

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

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

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

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

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

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

(g) Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

## 6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

## 7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

## 8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, except other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

**9. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)**

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

**10. Assurance of Completion**

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[ ] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[ ] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[ ] (3) a 20 percent cash escrow;

[ ] (4) a 25 percent irrevocable letter of credit; or,

[ ] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

**11. Preconstruction Conference (applicable to construction contracts)**

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

**12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)**

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

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

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to be used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [ ] does [ ] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

Exhibit B. HUD 5369 C

Representations, Certifications and Other Statements of Bidders

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

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

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

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/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/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

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

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

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

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

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

- (a)  is,  is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b)  is,  is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c)  is,  is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

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

(Check the block applicable to you)

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

**3. Certificate of Independent Price Determination**

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

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

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

- (iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

**4. Organizational Conflicts of Interest Certification**

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:
  - (i) Award of the contract may result in an unfair competitive advantage;
  - (ii) The Contractor's objectivity in performing the contract work may be impaired; or
  - (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.
- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.
- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

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

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

**6. Conflict of Interest**

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

**7. Offeror's Signature**

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

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

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

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

Exhibit C

C Certification Regarding Debarment and Suspension (Form HUD-2992)

## 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		Date
Signature of Authorized Certifying Official		Title

Exhibit D

Equal Employment Opportunity Certification (Form HUD-92010)

**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

form HUD-92010 (1/82)  
VA form 26-421

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.