



RFQ Number: P-004533
Date of Issuance: May 14, 2015
Due Date: June 29, 2015

To Prospective Offerors:

The Philadelphia Housing Authority (“PHA” or the “Authority”) is hereby requesting quotes for:
Energy Performance Contracting, Energy Generation, Resiliency and Related Services

The Philadelphia Housing Authority (PHA) is organized under the laws of the Commonwealth of Pennsylvania to develop, acquire, lease and operate low-rent housing programs. PHA is the largest housing agency in the Commonwealth, and the fourth largest in the Nation. The Authority has approximately 81,000 residents in 34 conventional developments, and about 5,500 scattered site units. Additionally, PHA currently administers over 16,000 Housing Choice Vouchers. PHA has an annual budget of approximately \$371 million, which is primarily funded by the U.S. Department of Housing and Urban Development. In April 2013, Kelvin Jeremiah was appointed President and CEO.

This procurement is being implemented in accordance with the CEA. Further, this procurement may be subject to the approval of the HUD representative acting for the Board of Commissioners as required by the CEA and the requirements of PHA’s Controlled Policy and Procedure Issuance No. 10, Procurement Policy.

Offerors must submit one (1) original and six (6) copies of their quotes, including the required proposal forms, as well as an electronic copy (on one or more CDs) in Microsoft Excel, Microsoft Word, and/or Portable Document Format (PDF) formats and the proposal shall be based upon and in conformity with this Request for Quotes. The proposal shall be enclosed in an envelope, which shall be sealed and clearly labeled with the name of the offeror, the RFP number, and the proposal due date. Quotes must be received by PHA Contracts Department at 3100 Penrose Ferry Road, Philadelphia, PA 19145, no later than 11:00 A.M. on proposal due date indicated above. Late proposals will not be considered. Quotes submitted via electronic mail will not be accepted. Photo identification is required for entrance into our facility.

Requests for additional information should be directed to the Contracting Officer’s representative, Kevin Denniston, Sourcing Manager, Philadelphia Housing Authority, 3100 Penrose Ferry Road, Philadelphia, PA 19145, e-mail: Kevin.Denniston@pha.phila.gov, Fax (215) 684-1213. Note that inquiries received later than seven (7) days before receipt of proposals may not receive a response.

Sincerely,

KELVIN JEREMIAH
PRESIDENT & CEO
THE PHILADELPHIA HOUSING AUTHORITY

**PHILADELPHIA HOUSING AUTHORITY
CONTRACTS AND PROCUREMENT DEPARTMENT**
Past Performance Survey

Contractor Name: _____

CLIENT INFORMATION

Commercial Client Government Client

Client Name: _____

Client Address: _____

_____ **City** _____ **State** _____ **Zip Code**

Project Name: _____ **Total Project Value:** _____

Performance Period:

Teaming Partner(s):

Government or Commercial Project Manager Contact

Alternate Government or Commercial Project Manager Contact

Name: _____

Name: _____

Title: _____

Title: _____

Phone number: _____

Phone number: _____

Fax number: _____

Fax number: _____

E-mail address: _____

E-mail address: _____

SPECIFIC PERFORMANCE

Instructions: This part consists of open-ended questions to determine the scope, complexity, and relevance of the project to the current requirement. Please answer the questions concisely and to the best of your knowledge.

1. Describe the overall project type the contractor provided.
2. Describe the end goal/end product and result.
3. Describe the long-term program development involved in performing this task.
4. Describe the level of planning and staffing contractor was required to perform and if they met the contracts exceptions.
5. Describe the average timeline involved in completing this project and if contractor met that timeline within reason.

Forward Replies to:

at the following e-mail:

SOURCE SELECTION SENSITIVE
NOT FOR PUBLIC RELEASE

Past Performance Survey

PAST PERFORMANCE RATINGS

Please answer each of the following questions with a rating that is based on objective measurable performance indicators to the maximum extent possible. Comments to support ratings may be noted on last page. The Government will assess an overall past performance rating for each reference contacted. The overall ratings of each reference will then be combined to arrive at a final past performance rating that will be assigned points based upon the following rating scheme:

RATINGS ARE DEFINED AS FOLLOWS:

Definition	Description
Excellent	The Contractor demonstrates an excellent performance level in all categories. There have been no performance problems and the Contractor has demonstrated initiative to enhance/exceed contractual requirements and objectives. The Contractor also has maintained an excellent Contractor/Government relationship throughout contract performance
Good	There are no quality of service problems; no cost/price issues; and no delays. Responses to inquiries and technical/service administrative issues are consistently effective and responsive. Non-conformance does not impact achievement of contract requirements.
Acceptable	Non-conformances are minor and have little impact in achievement of contract requirements, requires minor intervention by Government personnel to resolve issues.
Marginal	Non-conformances are impacting achievement of contract requirements, requires substantial intervention by Government personnel to resolve issues.
Unacceptable	Non-conformances are compromising the achievement of contract requirements, despite substantive intervention by Government personnel.

Past Performance Survey

PART 1: GENERAL PERFORMANCE

INSTRUCTIONS: PLEASE CHECK THE APPROPRIATE RATING

Quality of Service	Excellent	Good	Acceptable	Marginal	Unacceptable	N/A
1. Compliance with contract requirements	<input type="checkbox"/>					
2. Accuracy of Reports	<input type="checkbox"/>					
3. Effectiveness of Personnel	<input type="checkbox"/>					
4. Technical Excellence	<input type="checkbox"/>					
5. Record of conforming to specifications and standards of good workmanship	<input type="checkbox"/>					
6. Ability to provide services nationwide, including small and rural communities	<input type="checkbox"/>					

Cost Control	Excellent	Good	Acceptable	Marginal	Unacceptable	N/A
1. Record of forecasting and controlling target costs	<input type="checkbox"/>					
2. Current, accurate, and complete billings	<input type="checkbox"/>					
3. Relationship of negotiated costs to actual	<input type="checkbox"/>					
4. Cost efficiencies	<input type="checkbox"/>					

Timeliness of Performance	Excellent	Good	Acceptable	Marginal	Unacceptable	N/A
1. Met interim milestones	<input type="checkbox"/>					
2. Reliability	<input type="checkbox"/>					
3. Responsive to technical direction	<input type="checkbox"/>					
4. Completed on time including wrap up	<input type="checkbox"/>					
5. Met delivery schedules	<input type="checkbox"/>					

SOURCE SELECTION SENSITIVE
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Past Performance Survey

6. Amount of Liquidated Damages (Excellent=Low or None, Unacceptable= High)	<input type="checkbox"/>							
Business Relations	Excellent	Good	Acceptable	Marginal	Unacceptable	N/A		
1. Effective Management, including subcontracts	<input type="checkbox"/>							
2. Reasonable/cooperative behavior	<input type="checkbox"/>							
3. Responsive to contract requirements	<input type="checkbox"/>							
4. Notification of problems	<input type="checkbox"/>							
5. Flexibility	<input type="checkbox"/>							
6. Pro-active vs. Reactive	<input type="checkbox"/>							
7. Effective small/small disadvantage business subcontracting program	<input type="checkbox"/>							
8. History of staff turnover	<input type="checkbox"/>							

Customer Satisfaction	Excellent	Good	Acceptable	Marginal	Unacceptable	N/A
1. Commitment to customer satisfaction	<input type="checkbox"/>					
2. Would you recommend selection of this firm again?	<input type="checkbox"/>					
3. Overall Rating of Contractor	<input type="checkbox"/>					

ADDITIONAL COMMENTS:

Name and Signature of Reference _____

Date _____

SOURCE SELECTION SENSITIVE
NOT FOR PUBLIC RELEASE

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A. INSTRUCTIONS TO OFFERORS

1. Preparation of Offers

- (a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.
- (b) Each offeror shall furnish the information required by the solicitation as indicated in the Scope of Work and Mandatory Submissions Checklist, immediately preceding this Section A. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to PHA.
- (c) Offers for services other than those specified will not be considered.
- (d) If this solicitation requires proposing on all items, failure to do so will result in the proposal being rejected. If proposing on all items is not required, proposers should insert the words "NO PROPOSAL" in the space provided for any item for which no price is submitted.

2. Amendments to Solicitations

- (a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (b) Offerors shall acknowledge receipt of any amendments to this solicitation by (1) signing and returning the amendment; (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer; (3) letter or telegram, or (4) facsimile, if facsimile offers are authorized in the solicitation. PHA must receive the acknowledgement by the time specified for receipt of offers.

3. Explanation to Prospective Offerors

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

4. Responsibility of Prospective Contractor

- (a) PHA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -
 - (i) Have adequate financial resources to perform the Contract, or the ability to obtain them;
 - (ii) Have a satisfactory performance record;
 - (iii) Have a satisfactory record of integrity and business ethics;
 - (iv) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
 - (v) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the PHA/HUD.
- (b) Before an offer is considered for award, the offeror may be requested by PHA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

5. Late Submissions, Modifications, and Withdrawal of Offers

- (a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -
 - (i) 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);
 - (ii) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA that the late receipt was due solely to mishandling by PHA after receipt at PHA;
 - (iii) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date

specified for receipt of proposals. The term “working days” excludes weekends and U.S. Federal holidays; or

- (iv) Is the only offer received.
- (b) Any modification of an offer, except a modification resulting from PHA’s request for “best and final” offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.
- (c) A modification resulting from PHA’s request for “best and final” offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by PHA after receipt at PHA.
- (d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull’s-eye postmark on both the receipt and the envelope or wrapper.
- (e) The only acceptable evidence to establish the time of receipt at PHA is the time/date stamp of PHA on the offer wrapper or other documentary evidence of receipt maintained by PHA.
- (f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the “Express Mail Next Day Service-Post Office to Addressee” label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. “Postmark” has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull’s-eye postmark on both the receipt and the envelope or wrapper.
- (g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to PHA will be considered at any time it is received and may be accepted.

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

6. Contract Award

- (a) PHA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to PHA, cost or price and other factors, specified elsewhere in this solicitation, considered.
- (b) PHA may (1) reject any or all offers if such action is in PHA's interest, (2) accept other than the lowest offer, (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.
- (c) PHA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.
- (d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, PHA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by PHA.
- (e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

7. Service of Protest

- (a) Any protest against the award of a contract pursuant to this solicitation shall be served on PHA by obtaining written and dated acknowledgement of receipt from PHA at PHA Contracts Department, 3100 Penrose Ferry Road, Philadelphia, PA 19145. The determination of PHA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protester.
- (b) An actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Protests based on the contents of the solicitation must be submitted prior to the date and time

for receipt of proposals. Protests based on contract award must be made within seven days after the protestor knows or should have known the facts giving rise to the protest.

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

8. Offer Submission

- (a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to PHA Contracts Department, 3100 Penrose Ferry Road, Philadelphia, PA 19145, and (2) showing (on the face of the envelope) the time specified for receipt, the solicitation number, and the name and address of the offeror. One original hard copy, five (5) hardcopies, and one electronic copy of the Offer and modifications, including the required proposal forms, shall be submitted (on one or more CDs) in Microsoft Excel, Microsoft Word, and/or Portable Document Format (PDF) formats
- (b) Telegraphic, e-mail, or facsimile offers, modifications, or withdrawals will not be considered unless authorized by the solicitation.
- (c) It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.
- (d) To be considered for award, offers must include the following mandatory submissions:

- Proposal Form (Section H)
- Technical Proposal (Per SOW)
- Certifications and Representations (Section I)
- Affirmative Action Forms (Section J)
- Section Three Forms (Section K)
- Proposal Security (if required)
- Electronic Copy

9. Pre-Proposal Conference

A mandatory non-mandatory pre-proposal conference/meeting will be held at TBD on June 2, 2015 at TBD

SAMPLE

**B. SERVICE CONTRACT
FOR THE PROVISION OF**

PART I – AGREEMENT

THIS AGREEMENT, made and entered into as of _____, 2015, by and between the PHILADELPHIA HOUSING AUTHORITY, a body corporate and politic created under the laws of the Commonwealth of Pennsylvania (“PHA”), whose address is 12 S. 23rd Street, Philadelphia, PA 19103 and _____ (“Contractor”), a _____, organized and existing under the laws of _____, whose address is _____.

WITNESSETH:

WHEREAS, PHA desires to retain the services of Contractor and Contractor desires to provide such services to PHA; and

WHEREAS, by Resolution No. _____, adopted on _____ the Executive Director is authorized to conclude and execute a contract;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. SERVICE TO BE PERFORMED.

- (a) Contractor agrees to perform the services described in the Solicitation _____, known as _____ and Contractor’s proposal; both made part of this Agreement.
- (b) This Contract shall be for an initial contract period of TBD years with TBD additional option periods, to be exercised solely at the discretion of PHA. The initial contract period will commence on _____, 2014, and will continue until TBD, unless work is completed or terminated pursuant to this Contract.

2. COMPENSATION.

PHA will pay Contractor at the rate of \$ _____, with total payment not to exceed \$ _____ for the initial contract period of ____ () year(s), \$ _____ if PHA exercises the first ____ ()-year option period, \$ _____ if PHA exercises the second () ____-year option period, and \$ _____ if PHA exercises the third () ____-year option period. Such payment will be made

monthly and upon receipt and approval of an itemized invoice, as set forth in Section 2 of the PHA General Terms and Conditions of this Agreement, including but not limited to the use of Electronic Funds transfer through the Automated Clearing House, at the option of PHA. .

3. COMPLIANCE WITH APPLICABLE STATUTES, ORDINANCES AND REGULATIONS

Contractor shall comply with all applicable Federal, State, county and city statutes, ordinances and regulations, including those pertaining to wages, hours and conditions of employment.

4. GOVERNING LAW.

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, and all actions hereunder shall be brought in Pennsylvania.

5. CONTRACT COMPOSITION.

The following documents are hereby incorporated by reference, and constitute the Contract. Contractor acknowledges receipt of all listed documents. If there is any conflict between the documents of this Contract, then the following order of precedence shall govern:

Addendum Number _____ dated _____, 20__.

Addendum Number _____ dated _____, 20__.

Services Contract:

HUD Standard Terms & Conditions

Statement of Work

PHA Special Terms & Conditions

PHA Standard Terms & Conditions

Solicitation Number _____ dated _____, 20__, and entitled

Contractor's proposal and Best and Final Offer (if requested) as accepted by the PHA.

Affirmative Action requirements

Instructions to Proposers

Representations, Certifications, and other statements to Proposers

6. PRIOR AGREEMENT SUPERSEDED.

This Agreement constitutes the sole Agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed as of the date first above written.

CONTRACTOR

WITNESS:

BY: _____

Name: _____

(AUTHORIZED

REPRESENTATIVE)

WITNESS:
AUTHORITY

BY: _____

Name: _____

CONTRACTING OFFICER

SAMPLE
PHILADELPHIA HOUSING

Statement of Work

RFP# P-0045330- Energy Performance Contracting, Energy Generation, Resiliency and Related Services

I. Introduction and Overview of Services Required

The Philadelphia Housing Authority (“PHA”) is seeking proposals from interested Energy Services Companies (each an “ESCO”) and Energy Service Providers (each an “ESP”) that are capable of providing water, air and energy-related capital improvements, energy generation measures and other services through one or more energy performance contracts (each an “EPC”) that will improve the energy and water efficiency, the air quality, environmental health, and the resiliency of the PHA public housing and other properties (the “PHA Sites”) covered by this request for proposals (“RFP”).

PHA is planning to contract for a full range of energy, air and water services, resiliency measures and related capital improvements financed through a performance-based contractual structure that will include a guarantee of savings under a guaranteed energy savings agreement (“ESA”) sufficient to finance the entire cost of all eligible improvements and services (including an energy audit, monitoring and verification, and ongoing technical support services for the term of the EPC, as detailed herein) with no initial capital cost to PHA. PHA will implement the EPC and other services in accordance with requirements established by the U.S. Department of Housing and Urban Development (“HUD”), and responses to this RFP must demonstrate experience with HUD’s public housing requirements as they relate to EPCs. PHA also is seeking proposals for all other services described in this RFP and for overall project management services that will assure full coordination and implementation thereof. PHA may select more than one ESCo and/or ESP, depending on qualifications for the required services, at times convenient to PHA. The services required under this RFP may proceed simultaneously or sequentially; in the planning and execution of each service, all of the others must be taken into account.

A. Energy Audit Services. A comprehensive investment grade energy audit and certain additional energy, air and water audits (detailed below) of the PHA Sites, and the planning, design, management, implementation and financing of energy, air and water-related capital improvements (the “Energy Conservation Measures” or “ECMs”) that will improve the energy and water efficiency and air quality of the PHA Sites, with, at PHA’s option, the supplemental audit services described in Section I.G “Supplemental Audit Services” below; and

B. Generation Services. Comprehensive survey, planning, design, project management, installation, operation, maintenance, and financing services for on-site utility technologies for electricity and heat generation, and water and wastewater gathering, processing and diversion

technologies at some or all of the PHA Sites under a design, build and finance contract (the “Energy Generation Measures”); and

C. Resiliency Services. A resiliency assessment and report on the vulnerabilities of the PHA Sites to damage or loss of services including power and water as a result of the effects of extreme weather, climate change and natural disasters, and comprehensive planning, design, project management, installation, operation, maintenance and financing of capital and other improvements, along with new policies and procedures, staff and resident training, and other measures (the “Resiliency Measures”) appropriate to assure that PHA has reasonably minimized its vulnerability to, and will be capable of responding to, such contingencies, including assuring the safety of its residents and staff, protecting and preserving information systems and data, promptly resuming full operations, and rebuilding after natural disasters; and

D. Health and Environmental Services. An assessment and report of all observed conditions (such as moisture, mold, mildew and pests) at the PHA Sites that are apparent to auditors during the conduct of the energy audit described herein and that substantially increase the risk of asthma, respiratory diseases and other significant health impacts for PHA residents and staff, together with planning, design, project management, installation, operation, maintenance and financing of capital and other improvements, along with new policies and procedures, staff and resident training, and other measures (the “Health Measures”) appropriate to assure that PHA has reasonably minimized such risks; and

E. BAS SCADA Services. An assessment and written report of the operational status of PHA’s existing Building Automated System (“BAS”) and its supervisory control and data acquisition (“SCADA”) system (described in Section II entitled “Overview of PHA Sites and Related Programs” below) and the two existing PHA contracts for operation and maintenance of the system and for energy management using the system. The report will include recommendations and cost estimates for required maintenance, repair and/or upgrades of the system and recommendations to optimize its effectiveness for its intended purposes and for purposes of the EPC; the report will include comparisons of the costs of such recommended work against other available services that have capabilities like those of BAS SCADA, including subscription services; the report will identify staffing and training needs. At PHA’s request, the selected ESCO or ESP will plan, design, manage, install, re-commission, operate, maintain and arrange financing of improvements to BAS SCADA (the “BAS SCADA Measures”), that complement the Energy Conservation Measures and Resiliency Measures, and will provide new procedures, staff training, and other measures to assure that BAS SCADA will be employed to maximize energy and water savings at the PHA Sites; and

F. Maintenance and Warranty Services. Development and implementation of a program of maintenance, warranty enforcement, and staff training for a period of five (5) years from the date of installation for all systems and equipment provided pursuant to the EPC, and pursuant to the Energy Generation Measures, Health Measures and Resiliency Measures, to assure the

maintenance of all such systems and equipment in good working order in strict compliance with the manufacturer's routine and preventive maintenance guidelines and in compliance with an appropriate residential/commercial standard acceptable to PHA, such as Enterprise Green Communities Criteria or US Green Building Council LEED Certification; and to assure strict and timely enforcement of equipment warranties, and the replacement of equipment that has failed due to lack of proper maintenance; and to assure a regular ongoing program of appropriate training of PHA maintenance staff in the operation of, and routine and preventive maintenance of, existing and new equipment at the PHA Sites; and

G. Resident Training Services. Development and implementation of a five-year program of resident energy and water-conservation training, presented for residents to explain behaviors that contribute to high water and energy consumption and those that can reduce water and energy bills, such training program to be aimed at reducing energy and water consumption and the operating costs of the heating and ventilation systems, lighting systems, water systems, and other energy-using equipment at the PHA Sites.

H. Supplemental Audit Services. The Energy Performance Contract will be based upon an investment grade energy audit ("IGEA") to be prepared by the selected ESCo; but the selected ESCo will, on PHA's request, simultaneously complete (a) a green physical needs assessment (a "GPNA") that conforms to HUD's GPNA Tool and HUD's proposed GPNA specifications then published (whether or not HUD has mandated completion of the GPNA at that time); and (b) for those sites to be designated by PHA for inclusion in HUD's Rental Assistance Demonstration ("RAD") program (PHA will designate the RAD sites before the start of the IGEA), assessments in support of the RAD Physical Needs Assessment to be completed in accordance with HUD specifications ("RPCA") in conjunction with the audits and assessments to be completed in connection with the EPC.

I. Certain Key Definitions. For purposes of this RFP:

"Energy Services Company" or "ESCo" means a company that specializes in managing energy and water conservation retrofit projects and has capability in all of the following services: auditing, developing packages of recommended measures, arranging financing, installing or overseeing installation of measures, resident and staff education, equipment commissioning, maintenance, measuring, verifying, and guaranteeing savings.

Energy Service Provider or "ESP" means a commercial or non-profit business that may have select area(s) of expertise in managing energy and water conservation and energy generation projects. An ESP may distinguish itself by its experience in specific practice areas such as renewable technology, on site-generation, and/or use of innovative financing methods for selected measures that include off-balance sheet approaches in such a way as to reduce the utility cost for a building. An ESCo may also be an ESP. As required for the ESCo, the ESP's work will be financed through a performance-based contractual structure that will include a guarantee that savings will be sufficient to finance the entire fee or project costs.

“Energy Performance Contract” or “EPC” means a contract for energy and water efficiency services and equipment and other Energy Conservation Measures in which the repayment of the cost of financing such Energy Conservation Measures is guaranteed by the ESCo or ESP under contract to be less than the energy and water cost savings attributable to the Energy Conservation Measures under the contract, for the term of the contract.

“Energy Savings Agreement” or “ESA” means a guarantee provided in connection with the EPC, in which the ESCo or ESP guarantees to PHA that the Energy Conservation Measures under the EPC will generate energy cost savings sufficient to pay for the cost of the project over the term of the ESA. The savings are to be verified under a fully transparent M&V plan.

“Investment Grade Energy Audit” or “IGEA” means a comprehensive energy, water and air quality audit, covering all major energy and water consuming equipment and processes and all air processing systems, for the purpose of identifying suitable retrofits and new technology to reduce energy and water consumption and maintain healthful air quality, with a focus upon savings, cash flow and payback periods and aggregate return on investment for commercial underwriting requirements for financing purposes. The audit will meet or exceed the standards of ASHRAE Level II Energy Audits and otherwise conform to industry standards.

It will be completed under the supervision of a licensed professional engineer having not less than five years’ experience performing energy audits of similar properties. It will also meet all standards mandated by applicable state and local laws.

“M&V” means the procedures for measurement and verification of energy and water expense savings that complies with HUD requirements and is acceptable to PHA.

Definitions of other terms are provided in the sections of this RFP indicated below:

TERM	SECTION
BAS SCADA	I.E
BAS SCADA Measures	I.E
Energy Conservation Measures, ECM	I.A
Energy Generation Measures	I.B
GPNA	I.H
Health Measures	I.D
HUD	I
LIHTC Sites	II.A
MTW	II.D
RAD	I.H

Resiliency Measures	I.C
RPCA	I.H
Scattered Sites	II.A

PHA is interested in proposals that address the full range of services and energy-related capital improvements described in this RFP, including those described in Sections I.A through I.H above, all financed, where possible, through a performance-based contract with guaranteed savings at no initial capital cost. PHA, however, may also consider from ESPs proposals that address fewer than all of these services or propose complementary services that address other distinct areas such as environmental health, resiliency, renewable technology and/or on-site generation.

II. An Overview of PHA Sites and Programs That Will Impact the EPC

A. PHA Sites; Consumption Data. PHA is the fourth largest public housing authority in the United States and the largest owner of scattered site public housing. PHA owns and operates approximately 13,000 public housing units at 35 conventional public housing sites, and approximately 5000 units comprising PHA's scattered sites portfolio ("Scattered Sites"). PHA also owns and operates office and warehouse sites, community centers and other non-residential facilities. The address and basic property data for each of the PHA Sites that are conventional public housing or non-residential sites (that is, other than the LIHTC Sites and Scattered Sites) is provided in Attachment A. Data for the RAD Sites is included. PHA pays all utility expenses at these PHA Sites. Aggregated consumption and expense data for the PHA Sites is provided in Attachment B.

The IGEA and other audits, the Energy Performance Contract and Energy Generation Measures will, at PHA's option, also include 24 sites comprising 2130 low income housing units owned by limited partnerships affiliated with PHA (the "LIHTC Sites"). The address and basic property data for each of PHA's LIHTC Sites including electric and gas utility allowances where residents pay for their own utilities is included in Attachment C. Data for the RAD Sites is included. Generally, PHA pays for water service at these sites and residents pay for their own electricity and natural gas service. Aggregated water consumption and expense data for the LIHTC Sites is provided in Attachment D.

PHA has not included further details about its Scattered Sites due to the volume of data, but will provide to interested parties on request the address and basic property data for each of PHA's (approximately 5,000) Scattered Sites including electric and gas utility allowances where residents pay for their own utilities. Generally, PHA pays for water service at these sites, and residents pay for their own electricity and natural gas service. PHA's aggregated water consumption and expense data for the scattered sites also will be provided on request.

Descriptions of recent major energy measures at PHA Sites and more detailed data including utility consumption and expense data, occupancy levels by site for one year, and PHA's Form HUD 52722 for the current and two most recent fiscal years, will be provided to interested ESCOs and ESPs. Any information furnished by PHA in connection with this RFP that is labeled "confidential" shall be treated as proprietary information of PHA by the recipients. By receipt of the RFP, each recipient is deemed to agree not to disclose any or all of any confidential information to any person, including attorneys or government officials, except as essential to the preparation of a proposal in response to this RFP, and agree to secure from any party to whom disclosure is made under this clause, a confidentiality agreement, naming PHA as a third-party beneficiary with full rights of enforcement, containing customary protective provisions and remedies in the event of breach or unauthorized disclosure.

B. Utility Allowances. PHA's current utility allowance schedule is provided in **Attachment E**.

C. Public Housing Regulations. As a public housing authority, PHA is subject to all HUD public housing regulations, published guidance and other requirements, including HUD requirements relating to Energy Performance Contracts and HUD guidance on energy rate reduction incentives (in addition to all other applicable federal, state and local laws). Interested parties responding to this RFP must demonstrate experience with HUD's public housing requirements, HUD restrictions on encumbering public housing assets, utility allowances, the Moving to Work demonstration, HUD's EPC requirements, rate reduction incentives, and the RAD demonstration.

D. Moving to Work Demonstration. PHA is a participant in HUD's Moving to Work ("MTW") demonstration and, as such, has the benefit of flexibility with respect to certain HUD requirements. As an MTW Agency, the utility subsidy that is part of PHA's operating subsidy, is calculated using a stipulated consumption level frozen for the term of the demonstration, and multiplying that stipulated consumption amount by current market utility rates. HUD allows PHA to retain savings that result from reductions in consumption and some or all savings that result from rate reductions, and allows the use of such savings for financing purposes in an EPC. As an MTW Agency, PHA is not required to obtain HUD approval of its EPC, but PHA may nevertheless consult with HUD on details of the EPC and other services.

E. BAS SCADA. In 2012, PHA completed installation of a network of Building Automation Systems (BAS) connected through a centralized Supervisory Control and Data Acquisition (SCADA) system using Delta control hardware and software. This BAS/SCADA system consists of approximately 6,000 sensors, meters and outputs installed in building systems throughout 27 of PHA's largest public housing sites serving approximately 5,200 public housing units. Additional sites may be added to this system before the EPC proceeds. These sensors monitor vital system parameters in real-time, including temperatures, pressures, airflows, water usage, natural gas usage, electricity usage, and system set points. The system is intended to

allow PHA operators to remotely monitor and evaluate building performance to optimize efficiency, streamline maintenance, predict failure, schedule preventive maintenance, and manage the overall performance of the connected housing developments. Building performance can be monitored and optimized through this system, and all building performance data can be archived for future comparison and analysis. Interested parties responding to this RFP should indicate expertise in BAS SCADA systems using Delta controls hardware.

F. Rate Reduction and Other Incentives. The Energy Conservation Measures, Energy Generation Measures, Health Measures, Resiliency Measures and BAS SCADA Measures will be planned and implemented by the selected contractor(s) in conjunction with PHA's initiatives to purchase energy supply through competitive procurement, and PHA's initiatives to secure the benefit of all water and energy-related incentive programs, rebates, etc., and to maximize the benefit to PHA of all available federal income tax deductions or credits pursuant to Section 179D (or to any program that extends or is similar to Section 179D) of the Internal Revenue Code of 1986, as amended to date or hereafter. PHA intends to use rate reduction savings, such tax benefits and other incentives to provide cost savings, additional scope or rebates to PHA through the contracts with the selected ESCo or ESP. The selected ESCo or ESP will itself obtain, or will assist PHA in obtaining, all available tax or other benefits, rebates and other incentives, and will negotiate in good faith with PHA to reasonably allocate the financial benefits of the same between the ESCo or ESP and PHA.

G. Rental Assistance Demonstration. Upon completion of the IGEA, PHA will work with the selected ESCo or ESP to plan the Energy Conservation Measures and structure the Energy Performance Contract in the context of the expected participation by PHA in HUD's RAD program, which will include, for sites to be designated by PHA, a significant capital improvements program. PHA Sites that will be included in the RAD program may be excluded from the EPC or may have limited Energy Conservation Measures under the EPC, as PHA may determine. For any PHA Sites that are to be included in the EPC and may be converted in the RAD program, PHA will require financing options for the EPC that permit early prepayment of debt or early termination of other financing arrangements without unacceptable lockout or penalty to ensure PHA's optimization of both EPC and RAD programs.

H. Financing. Proposals for the Energy Performance Contract, Energy Generation Measures, BAS SCADA Measures, Health Measures and Resiliency Measures must identify all measures that may be financed within the Energy Performance Contract and, separately, those measures that may be financed through other means. Proposals must include financing plans, including such options as power purchase agreements, lease-purchase agreements, etc; however PHA may elect to arrange financing itself for all or any portion of the work.

I. PHA's Advisors. PHA has engaged financial, energy, EPC and RAD professional advisors to assist with the preparation of this RFP, evaluation of proposals and oversight of work performed pursuant to contracts signed pursuant to this RFP. PHA may, at its sole option,

engage additional advisors from time to time. PHA also will retain legal counsel. The following is a list of the current advisors (other than legal counsel) to PHA and the services that each may provide to PHA in connection with this RFP or the EPC and who will not be permitted to submit proposals or to act as subcontractors or vendors for services under this RFP:

Apollo Engineering Solutions, LLC. Assistance with preparation of RFP, review and evaluation of qualifications and proposals; review of IGEA and other reports; review of ECM and other measures proposed and selection of same; advice on terms of EPC; oversight of performance of some or all services.

Mondre Energy, Inc., General energy advisory and energy management services; review and evaluation of qualifications and proposals; review of IGEA and other reports; review of ECM and other measures proposed and selection of same; advice on terms of EPC; oversight of performance of some or all services.

CSG Advisors, Inc., Financial modeling and analysis.

III. ENERGY AUDIT, EPC AND ENERGY CONSERVATION MEASURES SCOPE OF SERVICES-DETAIL

A. Preliminary Audits 3Sites.

1. Provide preliminary energy and water audit reports for the three (3) PHA Sites identified in Section IV of this RFP, which should include an analytical summary and discussion of proposed ECMs and sufficiently detailed projections of energy savings and hard costs that there will be minimal variance with the final IGEA. Based upon observations during the site visits and information provided by PHA, the report should include recommendations of new equipment and modification or replacement of existing equipment.
2. The preliminary audit reports should include a table of costs listing each ECM and its total equipment cost, per unit cost and total hard cost (without contingency).
3. The preliminary audit reports should include a table itemizing estimated project soft costs for each site by dollar amount and maximum percentage of total unloaded hard cost. Projected costs should be fully-loaded, including overhead and profit which should represent the dollar amount and percentage applied to unloaded hard cost only. Items to be included in this table are: audit cost, project development and design, construction administration, site management, general conditions, hazardous waste, bonds/permits, risk and insurance, resident training, staff training, M&V, other (specified), and overhead and profit.
4. The preliminary audit reports should list all procedures, formulas and methodologies including special metering or equipment that the Proposer would use to calculate

reduced energy consumption by PHA. A table should be included listing each recommended ECM and specifying for each: unloaded hard cost, total installation cost, consumption savings (with unit of measurement), total Dollar savings, annual Dollar savings and payback period. The report should describe the methods used to assign the Dollar value to the savings and the method that will be used to measure performance.

5. The preliminary audit reports should also provide details of the savings guarantee that would be offered.

B. Comprehensive Investment Grade Energy/Water Audit – Minimum Requirements

The objectives of the audit are to identify comprehensive energy, air quality and water conservation and generation measures and the cost savings that will result from implementing the measures, and thereby reduce operating costs. The audit should include the resiliency assessment, the health and environmental assessment and, on request of PHA, the GPNA and the RPCA assessment described in Section I. Additionally, the audit should identify any material compliance or safety issues observed at the PHA Sites. During the audit work, the ESCo and ESP shall make its project managers available for regularly scheduled meetings and, on request of PHA, emergency meetings with PHA staff.

1. The audit shall be an Investment Grade Energy Audit of all energy, air and water systems, including the building envelope, and also shall meet the standards of HUD's GPNA. The combined IGEA shall meet all of the requirements listed in this Section III. B.
2. The audit shall include a review of each property's most recent energy audit.
3. The energy audit firm is required to visit every site in order to properly perform this review and evaluation.
4. Pre-site visit analysis of current utility (water, electricity, natural gas, fuel oil) consumption shall include, at a minimum:
 - a) A minimum of 12 consecutive months of water and energy bills shall be evaluated for consumption levels, patterns of energy use, rates, and cost of energy and water. Reliance upon PHA's audited financial statements is not acceptable.
 - b) Analysis of fuel, water and electricity bills for all PHA-paid and, to the extent available, resident-paid utilities. Where resident bills are not available, analysis of fuel and electricity utility allowances and PHA's utility allowance calculation methodology.
 - c) Energy usage data shall be normalized using local weather data, providing energy intensity per unit (KBTU/equivalent unit/year) and per square foot of occupied space (KBTU/squarefoot/year).
 - d) Energy usage by energy type shall be disaggregated into a minimum of heating, cooling and base load end uses.

- e) Current water, storm water, fire suppression and sewage rates shall be obtained for use in projecting savings from water efficiency measures.
- f) The selected ESCo or ESP is responsible for verifying all data PHA has provided to HUD for purposes of determining baseline energy use and costs that may subsequently be utilized for purposes of an EPC.
 - i) The audit site visit for each building shall include, at a minimum:
 - a. Review of maintenance and repair records.
 - b. Review of record drawings (as-built) if available; if not available, provide survey as needed.
 - c. Discussion of building with personnel to be designated by PHA who are familiar with the building and its systems. The discussions shall include, at a minimum, facility and equipment operating hours, building performance, equipment (energy and water) issues, HVAC systems including boilers and chillers, electrical, and building envelope issues, scheduled maintenance, major repairs, occupant comfort, moisture/mold issues and the use of BAS SCADA.
 - d. Site visits shall be conducted using acceptable techniques for building type and size (i.e. small buildings with independent entries may utilize blower testing, large buildings with common entrances and hallways utilize visual inspection and measurements to assess building envelope deficiencies and to calculate leakage.)
 - e. The following is the minimum audit information that shall be collected:
 - i. For buildings where each apartment has its own heating, cooling or domestic hot water system:
 - (1) 10% of all apartments, 5 minimum per building, shall be sampled
 - (2) All unit types (bedroom count, HVAC system type, location in building) shall be taken into account.
 - (3) However, all sites and building and unit types must be surveyed.
 - f. For each building where heating and domestic hot water are provided by central plants:
 - (i) 5% of all apartments, 5 minimum, shall be sampled; However, all sites and building and unit types must be surveyed.
 - (ii) Use diagnostic tools, as applicable, such as: infrared camera to investigate/verify insulation voids and moisture problems, combustion analyzer for efficiency testing of heating and domestic hot water appliances/plants, smoke pencils to identify points of air leakage, flow pans to measure apartment ventilation rates.
 - (iii) Water fixture flow rates and ventilation rates shall be measured.
 - (iv) Permanent lighting fixtures types and usage shall be recorded.
 - (v) Model # and usage of appliances to be evaluated for replacement

shall be recorded.

- (vi) Field verify blue prints.
 - (vii) Identify moisture, mold problems.
 - (viii) Identify ventilation system type, make-up air.
 - (ix) Field verify fan operation (flow rates, timers).
 - (x) Assess and record location and sizes of building penetrations and airflows.
 - (xi) Evaluate building envelope (continuity of thermal boundary and air barrier).
 - (xii) Note any limitations of electrical service, local codes, asbestos, etc. that would need to be updated before the energy conservation measure could be installed.
 - (xiii) Mechanical Systems, including:
 - a. Provide a detailed inventory of HVAC equipment, including boilers and chillers and domestic hot water heaters), include age, capacities, make and model #s.
 - b. Identify where each piece of equipment and meter is located and what locations it serves
 - c. State condition of equipment and remaining useful life.
 - d. Provide combustion efficiencies for combustion equipment.
 - e. Identify distribution systems and state condition of distribution systems (including domestic hot water) and components.
 - f. Identify operational discrepancies
 - g. Electrical Systems, including:
 - i. Provide a schedule of lighting, motors, transformers, and major appliances.
 - ii. Identify baseline consumption and energy use intensity for energy and cost savings of energy conservation measures in both common spaces and apartment units.
2. Analysis of audit findings shall at a minimum include:
- a) Energy modeling - The baseline energy model shall be adjusted to match the disaggregated energy source and usage by end-uses (heating, cooling, and non-weather dependent base load), and calibrated to utility bills
 - b) The energy audit should be completed utilizing a 3-year hourly building energy use simulation software package similar to one of the following:
 - (i) DOE-2
 - (ii) EnergyPlus

- (iii) eQUEST
- (iv) EZDOE
- (v) Visual DOE
- (vi) TRACE 700 (Trane Air Conditioning Economics)

c) Use the adjusted model to then evaluate all appropriate ECMs and Energy Generation Measures, including the following:

(i) Building Envelope

- a. Air sealing, caulking and weather-stripping;
- b. Insulation of the building structure or systems within the building;
- c. Storm windows or doors, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing reductions in glass area, or other window and door system modifications that reduce energy consumption;
- d. Building Controls and Metering
- e. Automated or computerized energy or water control systems;
- f. Optimized use or replacement of BAS SCADA;
- g. The installation of energy or water information and control systems that monitor consumption, redirect systems to optimal energy sources, sense building occupancy or equipment usage, and/or manage energy using equipment;
- h. Meter upgrades;
- i. Sub metering;

(ii) HVAC

- a. Heating, ventilating, or air-conditioning and distribution system modifications or replacements, including the installation, replacement or modification of boilers and chillers;
- b. Energy recovery ventilation systems;
- c. Indoor air quality improvements;
- d. Combustion air system, exhaust system and make-up air systems

(iii) Lighting

- a. Replacement or modification of lighting fixtures, controls or wiring to increase the energy efficiency of the lighting system while providing proper illumination levels
- b. Day lighting systems;

(iv) Plumbing, Water and Sewer

- a. Water and sewer conservation measures;
- b. Domestic hot water system and distribution;
- c. Low-flow, low-flush plumbing fixtures;
- d. Greywater recycling systems;
- e. Storm water capture and use systems;
- f. Irrigation systems and controls;
- g. Process and industrial water uses, and infrastructure;

- (v) Appliances
 - (vi) Motors
 - (vii) Renewable and Other Distributed Generation
 - a. Solar photovoltaics;
 - b. Solar hot water systems;
 - c. Wind turbines;
 - d. Combined-heat-and-power systems;
 - e. Battery and other storage technologies; and
 - f. Biomass-fired systems.
- (d) The improvements shall be grouped into packages of investments for each site to evaluate interactions between improvements and between ECMs and Energy Generation Measures. Proposed metering configuration should be included. The packages selected may reflect considerations other than energy or water use, such as environmental health, resiliency, air quality and other PHA desired measures. Packages should take into account compatibility with BAS/SCADA control. Recommended equipment and systems should be non-proprietary.
- (e) Economic analysis
- (i) Account for inflation and discount rates utilizing the savings-to-investment ratio formula.
 - (ii) Cost estimates for all energy efficiency, generation, environmental health, resiliency and other recommended measures with construction cost, payback, cost/benefit analysis (using life cycle costing). Provide back-up for cost estimates. Provide in spreadsheet format for local verification.
 - (iii) Calculate energy and dollar savings (annual savings, life cycle savings; show payback period) per recommended energy conservation measure (ECM).
 - (iv) Include benefits to end-use bill payers; include adjustments of utility allowances for resident-paid utilities
 - (v) Include maintenance cost savings and increases, including life cycle replacements, due to each ECM.
 - (vi) Identify non-energy related benefits.
3. Deliverables: Audit Report shall be delivered in draft form and, after comment by PHA, in final form and must include, at a minimum, the following:
- a) Executive Summary including detailed table of all identified opportunities for energy, air and water efficiency measures and Energy Generation Measures including for each measure:
 - (i) Annual savings to PHA in kilowatt-hours and MMBTU and gallons of

water, and energy usage intensity, as applicable

- (ii) Annual savings in dollars
 - (iii) Useful life
 - (iv) Life cycle savings using the following approaches:
 - a. Payback analysis must recognize that for a replacement component, the incremental cost of a more efficient component should be used to determine cost-effectiveness. For example, if an Energy Star appliance costs \$100 more than a standard appliance with the same estimated life and the component has to be replaced, in order for the Energy Star appliance to be cost-effective, it must cost \$100 less to operate than the standard component over the designated payback period; and
 - b. Savings-to-Investment Ratio (SIR) based on estimated cost.
 - v) Detailed estimated cost of full implementation of recommended measures (e.g. from RS Means)
- b) Description and performance specifications of existing equipment, building and site conditions including pertinent engineering data input, output and calculations for audited buildings and equipment and an energy balance for all equipment and systems using electricity and natural gas based upon actual consumption for 3 years.
- c) For each evaluated ECM and Energy Generation Measure, the report must include:
- (i) Description and performance specifications
 - (ii) Rationale, including energy and non-energy impacts
 - (iii) Details of recommended measures
 - (iv) Recommended ECMs and Energy Generation Measures identified in the energy audit must be organized into those with:
 - a. Paybacks of 12 years or less,
 - b. paybacks of greater than 12 and less than or equal to 20 years, and
 - c. Paybacks of more than 20 years.
- (d) Building site visit data in matrix format with soft copy
- (e) Assumptions regarding levels of comfort for each building
- (f) Completed GPNA using the then latest version of HUD's GPNA Tool

- (g) Resiliency assessment report and recommendations
- (h) Health and environmental risk assessment report and recommendations
- (i) If requested by PHA, completed RPCA details as follow
 - (i) identify “traditional” and “green” components that meet or exceed local building code, providing recommendations on the benefits (financial and otherwise) of the green alternative;
 - (ii) evaluate how energy and water is used at the property. Document prudent utility-related improvements (water and energy) to the property, the cost of the improvements, and a simple financial payback analysis (however, note that a more sophisticated analysis is available for systems with multiple components with varying estimated useful lives and where the full lifecycle cost analysis is useful). Includes an initial assessment of potentially viable alternatives for generating electricity, heating water, and heating and cooling the conditioned space at the building; and
 - (iii) establish a baseline for tenant-paid and owner-paid utilities. The baseline should allow for benchmarking, and for future measurement of consumption and costs. The utility baseline should create a whole building consumption profile, addressing missing utility data, vacancies, and weather patterns, in achieving PHA’s aim of establishing standards on which future consumption can be compared.
- (j) All backup data, calculations and reports with respect to the above shall be delivered to PHA promptly on request

C. Energy Performance Contract

1. All energy performance contracts and work performed thereunder must comply with U.S. Department of Housing and Urban Development (HUD) regulations as defined in 24 CFR 990 and 24 CFR 965, and HUD PIH Notices 2009-43, 2011-36 and 2014-18.
2. No contract shall exceed twenty (20) years in duration.
3. Only energy performance contract proposals based on a minimum guaranteed savings agreement will be considered. If the project does not generate the guaranteed level of savings in any year, the ESCo or ESP, as applicable, will reimburse PHA the amount of the shortfall.
4. It is expected that the savings or guarantee(s) provided by the ESCo or ESP selected pursuant to this RFP will fully offset the PHA project costs including financing and maintenance costs.

5. Proposals should define arrangements for acquisition, financing, and ownership of equipment to be installed as part of this project that responsibly maximize the net economic benefit to PHA or reduce PHA's risk.

6. Financing – The selected ESCo or ESP, as applicable, may be asked to facilitate the acquisition of favorable financing arrangements (including lease/purchase, power purchase agreement(s) and other acquisition financing) to cover the cost of the EPC. PHA's procurement policy will be followed to obtain such services to the extent that such services are beyond the scope of this RFP. PHA reserves the right to explore its own financing options. Security for any such financing will be limited by HUD restrictions on encumbering public housing assets and, for the LIHTC Sites, the terms of existing financing agreements. For PHA Sites that are included in the EPC and may be converted in the RAD program, financing arrangements must include options for early prepayment of debt or early termination of other financing arrangements without unacceptable lockout or penalty to ensure PHA's optimization of both EPC and RAD programs.

7. All ESCos and ESPs - ESCo(s) selected as a result of this RFP will be expected to provide the comprehensive energy services described in Section I (Introduction) above, including:
 - a) Energy Audit - The performance of an Investment Grade Energy Audit as defined in Section I.H, meeting the minimum requirements of Section III.B.
 - b) The design and specification of ECMs, Energy Generation Measures, energy efficient equipment and systems, Health Measures, Resiliency Measures, BAS SCADA Measures and other recommended improvements.
 - c) Services associated with the procurement (with bid-level cost-estimating), installation, and commissioning of new energy and water efficient equipment, Health Measures, Resiliency Measures and BAS SCADA Measures.
 - d) Investment grade decision-making support
 - e) Routine, preventive and emergency maintenance and servicing of all equipment installed.
 - f) Management and strict enforcement of warranties.
 - g) Training facility staff with respect to routine and preventive maintenance and operation of all improvements.
 - h) Detailed terms of financing and, on request of PHA, secure such financing for the project. PHA's procurement policy shall be followed in procuring these services.
 - i) PHA requires a minimum guaranteed savings approach to the project. If the project does not generate at least the guaranteed level of savings in any given repayment year, the ESCo will be responsible for reimbursing PHA the amount of the shortfall necessary to pay for annual project financing and all related

contract obligations.

- j) The ESCo must work cooperatively with PHA staff and other service providers in coordinating all work described in this RFP, including work to be performed by others and including RAD Measures.
- k) The identification of financial incentives and rate reductions available from companies supplying fuel oil, natural gas, electricity, or transmission and associated distribution services in compliance with HUD's rate reduction incentive regulations.
- l) The report shall rank all energy and water saving measures with 35-year paybacks or less, by project, listing the construction cost, energy or water usage and cost savings, the proposed metering configuration, proposed verification methodology and application of weather adjustments.
- m) The ESCo shall provide bid-level construction cost estimating and documentation to assist PHA in determining cost reasonableness. All cost breakdowns must conform to the Federal Cost Principles as defined in HUD Handbook 2210.18 and must be in sufficient detail to determine the allowability and allocability of costs. The cost principles are also contained in the Federal Acquisition Regulation or FAR, 48 CFR Chapter 1, Part 31. ESP(s) selected as a result of this RFP will be expected to provide as part of their proposal related to their specialized services, including Energy Generation Measures, the following:
 - (i) Routine, preventive and emergency maintenance and servicing of all related equipment installed.
 - (ii) Management and strict enforcement of warranties.
 - (iii) Training facility staff with respect to routine and preventive maintenance and operation of all improvements.
 - (iv) Detailed terms of financing and, on request of PHA, secure such financing for the project. PHA's procurement policy shall be followed in procuring these services.
 - (v) PHA requires a minimum guaranteed savings approach to the project. If the project does not generate at least the guaranteed level of savings in any given repayment year, the ESP will be responsible for reimbursing PHA the amount of the shortfall necessary to pay for annual project financing and all related contract obligations.
 - (vi) The ESP must work cooperatively with PHA staff and other service providers in coordinating all work described in this RFP, including work to be performed by others and including RAD Measures.
 - (vii) The identification of financial incentives and rate reductions available from companies supplying fuel oil, natural gas, electricity, or transmission and associated distribution services in compliance with HUD's rate reduction incentive regulations.
 - (viii) The report shall rank all energy and water savings measures with 35-year

paybacks or less, by project, listing the construction cost, energy or water usage and cost savings, the proposed metering configuration, proposed verification methodology and application of weather adjustments.

- (ix) The ESP shall provide bid-level construction cost estimating and documentation to assist PHA in determining cost reasonableness. All cost breakdowns must conform to the Federal Cost Principles as defined in HUD Handbook 2210.18 and must be in sufficient detail to determine the allowability and allocability of costs. The cost principles are also contained in the Federal Acquisition Regulation or FAR, 48 CFR Chapter 1, Part 31.

D. Measurement and Verification

The ESCos and ESPs shall provide quarterly and annual savings reports with measurement and verification of all utility consumption data during the EPC and ESA; utility consumption savings shall be validated according to the then current HUD Measurement and Verification Guidance, as amended from time to time hereafter. Measurement and Verification requirements include assessing that equipment is performing to specifications and performing calculations of the actual energy or water savings resulting from the implementation of the ECMs and other measures. All data shall, on request of PHA, be shared with PHA and other parties that PHA may designate.

E. General Requirements

1. For ESCOs, with the acceptance of the IGEA and proposed program, and financing arrangements, PHA and the ESCo shall enter into formal program contracts including the ESA, and the ESCo shall construct and install the ECMs; the contracts shall include all of the terms, conditions and other requirements of this RFP and the RFP submissions. PHA retains final approval over the scope of work and end-use conditions.

For, ESPs, with the acceptance of the ESP(s) proposed program and financing arrangements, PHA and the ESP(s) shall enter into formal program contracts and the ESP shall construct and install the agreed measures; the contracts shall include all of the terms, ESP conditions and other requirements of this RFP and the RFP submissions. PHA retains final approval over the scope of work and end-use conditions.

2. The ESCo/ESP must provide a final schedule of project milestones including equipment-servicing provisions, which will become part of the final contract. In the event any milestone or equipment servicing provision is not met as scheduled, without prior approval, PHA reserves the right to consider it a default and withdraw from all contractual obligations without penalty.

3. The ESCo/ESP shall provide to PHA assurance of completion in the form of performance and labor and material payment bonds in a total amount equal to the total cost of all work, including 100% of all subcontracts.
4. The PHA must have access to inspect, test and approve both the work conducted in the facility, during construction and operations, as well as access to the books, records, and other compilations of data that pertain to the performance of the provisions and requirements of the agreement. Records shall be kept on a generally recognized accounting basis, and calculations kept on file in legible form.
5. The Davis Bacon Wage Determination in force at the time of construction shall be implemented.
6. The ESCo/ESP will fully disclose all actual costs, including the cost of subcontractors, vendors, and materials, and will fully disclose in writing all legal and financial relationships with equipment and materials vendors and service companies
7. The ESCo/ESP will be responsible for maintaining the levels of comfort for each building as specified. Persistent failure to maintain the defined climate and lighting conditions will constitute a default.
8. All audits, data, drawings, reports and materials prepared by the ESCo/ESP specifically in performance of the contract shall become the property of PHA and shall be delivered to PHA as needed or upon completion of construction.
9. All work completed must be in compliance with all Commonwealth of Pennsylvania and local building and energy codes.
10. The selected firm must hold appropriate accreditation, certification and licensing standards to perform work in the Commonwealth of Pennsylvania and the City of Philadelphia.
11. PHA shall reserve the right to renegotiate the awarded contract if changes in the regulatory or utility climates or if the PHA's use of energy warrant it and/or permit the addition of sites to the contract.
12. The contract must meet applicable PHA and HUD procurement requirements found at 24 CFR 200.

13. The contract and program must meet applicable HUD operating subsidy requirements found at 24 CFR 990.185, as well as applicable energy performance requirements found at 24 CFR 965.
14. A registered professional engineer must, at a minimum, review and approve all design work done under this contract.
15. The ESCo/ESP will be responsible for all construction waste management including materials separation and recycling hazardous waste disposal or recycling.
16. The ESCo/ESP will be required to work with the current building management and maintenance personnel in order to coordinate construction and provide appropriate training in retrofit operation to PHA personnel and residents. No equipment shall be installed which would necessitate PHA hiring additional personnel unless contract negotiations produce an explicit exemption from this provision.
17. The ESCO/ESP must provide reproducible "as built" record drawings of all existing and modified conditions associated with this project, conforming to typical engineering standards. These should include architectural, mechanical, structural, and control drawings and operating manuals. Such as-built drawings, one (1) CD, and one (1) set of standard printed record drawings, must be provided to PHA within 30 days of the completion of installation. Drawings are to be produced in AutoCAD or another program acceptable to PHA, and the ESCO/ESP will provide to PHA a copy of the file and one licensed version of the program used to produce the drawing.
18. Within 30 days after completion of all work at any PHA Site, at least three (3) hard-copy maintenance manuals for that site will be provided to PHA for all equipment provided under the contract, as well as the same on a CD. Manuals are subject to the approval of PHA.
19. Within 30 days after completion of all work at any PHA Site, at least three (3) hard copies of record product data will be provided to PHA for that site, and the same in CD format.
20. Within 30 days after completion of all work at any PHA Site, the ESCo/ESP shall provide PHA a comprehensive schedule of necessary preventative maintenance for all installations at that site for the five (5) years following the contract closeout.
21. Within 30 days after completion of all work at all PHA Sites, the ESCo/ESP shall compile all such individual preventative maintenance schedules and provide to PHA a single comprehensive preventative maintenance schedule for all PHA Sites.

F. Assigning or Subcontracting of Contract

In the execution of the Energy Performance Contract it may be necessary for the ESCo/ESP to subcontract part of the work to others; however, the ESCo/ESP shall not award any work to any subcontractor without prior written approval of PHA, which approval shall not be given until the ESCo/ESP submits to PHA a written request of approval of the proposed award to the subcontractor, which statement shall contain such information as PHA may require. All subcontracts will incorporate and be subject to all of the terms and conditions of the ESCo's or ESP's contract.

The ESCo/ESP shall be fully responsible to PHA for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the subcontractors, and for the acts and omissions of persons directly employed by the ESCo/ESP. Nothing contained in the ESCo/ESP contract shall create any contractual relation between any subcontractor and PHA.

The ESCo/ESP shall not assign, transfer, convey, or otherwise dispose of its rights or obligations under the Energy Performance Contract, the ESA, any related contracts, or any part thereof, or its right, title or interest in the same or any part thereof, without the prior written consent of PHA. The ESCo/ESP shall not assign by power-of-attorney, or otherwise, any of the moneys due or to become due and payable under the Energy Performance Contract or related contracts without the prior written consent of PHA.

G. Additional Services

PHA is requesting that ESCOs and ESPs comment on the following additional services that PHA may request as a complement to the anticipated EPC and Energy Savings Agreement. These services include but are not limited to the following:

1. Benchmarking

The ESCo or ESP may be asked to propose, design and implement for PHA energy and water consumption database and benchmarking systems and procedures that will enable active monitoring and management of energy and water consumption over time, and enable comparison of a building's energy and water performance against its past performance and against that of similar buildings in order to identify trends, predict problems, and identify savings opportunities. Any such benchmarking system must be designed for and utilize the U.S. Environmental Protection Agency's Energy Star Portfolio Manager online tool. Procedures are to be developed to enable PHA staff to regularly assess each building's energy and water consumption according to industry-standard metrics, and assess energy performance, compare its consumption to low

income and affordable housing in the same geographical area and identify potential areas for maintenance or improvement after the energy project is complete. The implementation of the system and procedures will include a program of training for designated PHA staff in data management and reporting.

2. Enterprise green Communities; LEED Certification

PHA is interested in pursuing Enterprise Green Communities and/or LEED certifications for existing buildings (Operation and Maintenance certification) to the extent that it is economically practical under the proposed EPC. PHA may require the selected ESCO or EPC to evaluate the opportunity for PHA to achieve LEED or Enterprise Green Communities certifications. If either such certification is achievable, PHA reserves the right to include the services of the ESCO or ESP in assisting PHA in achieving such certification in identified properties within the energy services agreement (ESA).

IV. Procurement Process

PHA will select ESCo(s) and/or ESP(s) under this RFP through the following process:

- A. Site Visits and Preliminary Energy Audit.** PHA will hold an initial pre-bid meeting at PHA's offices to provide ESCOs and ESPs an opportunity to question PHA staff about the project and PHA's public housing inventory. Interested firms will then be required to attend a pre-response site visit to be conducted over two (2) consecutive days on June 4-5, 2015, to view representative complexes of PHA's inventory as arranged by PHA. Interested firms should give notice (according to the notice requirements below) of intent to participate in the site visit details of the location and time of day of the session will be sent to those who have given notice of intent to attend. Dependent upon the response to this RFP, additional sessions may be scheduled. As part of the proposal process, prospective Proposers are required to inspect and complete preliminary energy audits and reports for three (3) PHA Sites, which PHA has selected as representative of its portfolio in terms of age, type of construction and types of systems:
1. **Greater Grey's Ferry Estate (GGFE) Administrative Office Building-** 1800 S. 32nd Street Philadelphia, PA 19145
 2. **Wilson Park Senior and Family High-Rise Building-** 2500 Jackson Street Philadelphia, PA 19145
 3. **Johnson Homes Conventional Site-** 2500 W. Norris Street Philadelphia, PA 19121

On receipt of a proposer's notice of intent to participate in the site visit, PHA will provide to the proposer the time and address for start of that site visit along with site plans, floor plans and a facility profile for each site.

In the event that additional time is required to complete a required site visit, or if interested parties would like to inspect additional sites, request for the same should be submitted to PHA and PHA will, at its option, schedule additional time or additional visits before the proposal submission deadline.

B. Questions and Clarifications.

Questions or suggestions relating to this RFP or the PHA Sites may be submitted in writing by no later than June 19, 2015 to: Kevin Denniston at Kevin.Denniston@pha.phila.gov

Responses to all questions and requests for clarification will be issued in writing by PHA to all interested firms.

C. Submission and Evaluation of Written Proposals. All ESCos and ESPs will be required to submit a preliminary energy, water and wastewater audit report based upon the preliminary site visits and the consumption and expense data provided by PHA, and a cost based proposal to PHA for review. The requirements of the proposal are described in detail in Section V. Evaluation of proposals and selection of an ESCo and/or ESP will be conducted as described in Section VI. On request of PHA, each ESCo or ESP will provide to PHA (on a confidential basis if requested) supporting data for the preliminary audit and the cost based proposal.

D. Interview and Presentation. Each of the top rated ESCos and/or ESPs will be asked to prepare a presentation of the firm's experience with energy performance contracting in public housing and experience with HUD requirements and HUD's MTW program. Upon the conclusion of the presentation, the firm will participate in an interview to further discuss the firm's qualifications, experience, and approach to the project. The evaluation of the interview will be based on the criteria established in Section VI. Presentation and interview time will be limited to two (2) hours per ESCo or ESP.

E. Selection of ESCo - Audit – The PHA will select the highest rated firm or firms whose proposals are most advantageous to PHA to conduct a complete technical analysis of the PHA Sites and provide to PHA the IGEA as specified in Section III.B above. PHA intends to negotiate in good faith a contract that complies with all requirements of this RFP (the "IGEA Contract") with the selected ESCo for the IGEA and all other audits and assessments that are to be completed in conjunction with the IGEA. If an acceptable IGEA Contract cannot be reached within 60 days from the date of ESCo selection, negotiations with the second-ranked ESCo may be initiated.

F. Selection of ESCo - Energy Performance Contract – Within 15 days after the execution of the IGEA Contract and issuance of a notice to proceed by PHA, the ESCo will begin the audit work and will diligently and continuously proceed with such work to completion. Within forty-

five (45) days after completion of the IGEA and all other audits and assessments that are to be completed in conjunction with the IGEA, the written report complying with Section III.B above will be delivered to PHA, along with the ESCo's proposed form of ESA, including the proposed ECMs and scope of work, guaranty and warranty terms, and proposed implementation plan and schedule. The ESCo shall make an in-person presentation of the findings in the audit to PHA. The audit report shall comply in all respects with Section III.B. The ESCo shall develop and propose the details of the energy performance contract/program based on the recommendations of the IGEA, including the timetable for completing engineering and construction work, a detailed description of services to be provided, specific financing arrangements and terms, and an estimate of energy savings, cash flows and guarantees offered by the firm.

At this point, the PHA may either choose to enter into the energy performance contract or decline. If PHA elects to proceed, PHA and the ESCo will complete negotiation of the terms of the EPC, the ESA and related agreements. The accepted IGEA report and IGEA Contract will be incorporated as attachments to the final executed EPC. The cost of the IGEA and all other audits and assessments that can be included as project costs of the EPC will be included as a project cost of the EPC. The savings guarantee under the ESA must mirror HUD's financial incentive payments to PHA, fully protecting PHA in the event that the savings are not realized.

Prior to execution of the EPC, PHA will be required to obtain approval from the PHA Board of Commissioners and PHA will have no obligation to enter into the EPC unless such approval has been secured. PHA may also condition its execution of the EPC upon HUD approval, whether or not the same is mandated by HUD.

If PHA decides not to enter into an energy performance contract with the selected ESCo after the IGEA has been completed in accordance with the IGEA Contract and accepted by PHA, PHA agrees to pay the agreed price of the IGEA and other audits and assessments under the IGEA Contract, provided that all proposed contract terms offered by the ESCo meet the conditions set forth in this RFP. Payment for each of those audits and other assessments that cannot be included as project costs in the EPC will be made upon completion, delivery and acceptance of the final report for each in accordance with the IGEA contract. The IGEA and other audits and assessments shall remain the property of PHA.

V. The Selection Process for ESCo(s) and ESP(s)

- A. Selection Committee. PHA will select key staff within the agency to serve on a selection committee. The Selection Committee members will be responsible for individually reviewing and evaluating proposals. Proposals will be reviewed and ranked based on the scoring criteria listed below. The topped ranked ESCos and/or ESPs will be invited to the second phase of the selection process.

B. Timetable

- | | |
|---|-----------------------|
| 1. Pre-proposal meeting | <u>June 2, 2015</u> |
| 2. Pre-proposal preliminary site visits and audits (2 days) | <u>June 4-5, 2015</u> |
| 3. Deadline for Receipt of Written Questions | <u>June 19, 2015</u> |
| 4. Deadline for Responses to Questions | <u>June 24, 2015</u> |
| 5. Deadline for Receipt of Proposals | <u>June 29, 2015</u> |

C. Proposal Evaluation Criteria. Note that under 24 CFR 965.308, technical criteria are significantly more important than the price of the IGEA in selection of the ESCo/ESP. Proposals will be evaluated and scored, up to a maximum total score of 100 points, on the basis of the following criteria:

1. Project Experience {Maximum 15 points}

Points will be awarded based on demonstrated experience with similar projects and financing arrangements. Experience with similar projects will be understood to include IGEAs and other assessments described in this RFP, development of performance contracts, energy generation projects and equipment lease and purchase and financing arrangements, to furnish energy services in multifamily housing or commercial facilities of similar size, systems, and use. Experience with BAS SCADA.

2. Public Housing Experience {Maximum 15 points}

Points will be awarded based on demonstrated experience with HUD's public housing requirements, HUD restrictions on encumbering public housing assets, utility allowances, the Moving to Work demonstration, HUD's EPC review process, rate reduction incentives, and the RAD demonstration

3. Staffing Plan, Technical Capacity, and Approach for Entire Project {Maximum 20 points}

Points will be awarded based on documented technical and project administration skills, licensure, certification, experience and availability of the proposed project team. Only those individuals proposed to work directly on the subject project should be included in the Staffing Plan. Consistency of staff in the example projects and the proposed team will be ranked higher. Points will be awarded based the firm's technical capacity in all areas, including compliance with HUD requirements and BAS SCADA expertise, and on the quality and comprehensiveness of the technical approach, the quality of the preliminary audit reports for two sites, sample energy audit, available data collection equipment and simulation software, description of the energy baseline methodology, description of measurement and verification

methodology, and the preliminary assessment of the energy efficiency opportunities in the sample facilities.

4. Financial Capacity {Maximum 15 points}

ESCo/ESP must demonstrate its financial capacity over the last 5 years, related to the ability to access commercially viable project financing. The ESCo/ESP must demonstrate its ability to obtain a long-term reliable source for financing its energy efficiency projects. The ESCo/ESP must be able to approach the banking industry to provide project-based lending to energy savings projects on a medium- to long-term basis. The ESCo/ESP must demonstrate a track record with examples and references of successfully implemented projects and innovative financing approaches. The ESCo/ESP must also demonstrate that it concentrates its service activities on qualified energy end-users and short payback periods that can generate revenue streams quickly. Any public housing authority projects in the ESCo/ESP's portfolio within the last 5 years that failed to achieve projected cost savings must be identified and explained.

5. Financial Terms {Maximum 10 points}

Consideration will be given to proposals that responsibly maximize the net economic benefit to PHA over the term of the energy services agreement, and that responsibly minimize the risk to PHA in connection with the proposed transaction. Overhead costs will be evaluated for the value brought to PHA by the proposed approach to project implementation. The percentage of non-HUD incentives that will be allocated to PHA will be considered in evaluation of the financial benefits of the proposal. Points will be awarded based upon the form of IGEA Contract provided.

6. Proposed Project Schedule {Maximum 5 points}

Proposals will be evaluated on the reasonableness, clear presentation, length and detail of the proposed project schedule and the interim milestones. The proposal should include descriptions of how the proposer intends to achieve the project schedule.

7. MBE/WBE Participation {Maximum 5 points}

The maximum points will be awarded for proposals that include substantial MBE/WBE participation in both the audit phase and the implementation phase.

8. Section 3 Participation {Maximum 5 points}

All proposals must include a commitment to hire Section 3 residents and/or enter contracts with Section 3 business concerns at the levels mandated by applicable regulations. Up to 5 additional points will be awarded for proposals that include realistic commitments that Section 3 residents will comprise 30% of all new hires resulting from the services contracted for (and not fewer than 1 person) and/or Section

3 business concerns will be awarded subcontracts for at least 10% of the total value of services contracted for in both the audit and implementation phases.

9. Interview – additional points will be added to the scores of those ESCos/ESPs invited for interview, following the interview {Maximum 10 points}

Interviews will be held with up to three top ranked ESCos/ESPs to obtain clarification on issues raised by earlier stages of the evaluation process, and to assess the qualifications of the project team and its ability to implement all tasks and responsibilities in a prompt and efficient manner. Scores assigned for proposals, under any category, may be amended based on information obtained during the oral interviews. The proposed project team should be made available during the oral interview to discuss their individual experience, as well as their specific role in this project.

VI. Proposal: Format and Contents

A. Proposal Format

1. Proposals must be submitted in the format outlined in this section. PHA reserves the right to eliminate from further consideration any proposals deemed to be substantially or materially non-responsive to the requests for information contained herein.
2. Proposals are to be submitted on or before June 29, 2015 at 5 P.M.
3. An original and six (6) copies of the proposal are required. To prevent opening by unauthorized individuals, your submittal should be identified on the envelope as follows:

**(DO NOT OPEN - PROPOSAL ENCLOSED
ENERGY PERFORMANCE PROJECT**

4. The proposals shall be addressed to:

PHILADELPHIA HOUSING AUTHORITY
ATTENTION: Kevin Denniston- Sourcing Manager
ADDRESS: 3100 Penrose Ferry Road Philadelphia, PA 19145

B. Proposal Required Content

Each Proposal shall include a table of contents with content to be in the following order with page numbers shown in the table of contents.

1. Section 1 - Statement of General Qualifications. Proposer must include the following elements in response to this RFP:
 - a) Name and address of firm
 - b) Telephone and fax numbers.
 - c) Names, titles, and e-mail addresses of two people authorized to represent the ESCo/ESP on this project, and answer any questions presented.
 - d) Year firm was established.
 - e) An organizational chart for the proposer's company, showing number and type of licensed and/or certified professionals in local office within 100 miles of PHA. If the firm does not have a local office, discuss the mechanism that will guarantee the local support services necessary for completing and servicing this project through the term of the contract.
 - f) A summary of the intended approach to the work described in this RFP and the plan for project management including make-up of the project team, the proposed responsibilities of the project team members, and other current project commitments for the project team.
 - g) Copies of all business licenses and certifications required to conduct business in PA.
 - h) Describe the process to be followed in selecting and managing subcontractors.

2. Section 2 - Project and Public Housing Experience. Proposer should provide a list of all contracts to provide energy services to public housing authorities entered into since June 1, 2010, identifying name of owner, location, and contact information for an officer familiar with the contract. Proposer must describe three to five projects that best exemplify the range of technical and financial services provided by the ESCo/ESP for a project similar to this one for a public housing authority. Each project description (not to exceed 2 pages) should include:
 - a) Customer's name and address
 - b) Total contract cost.
 - c) Type of contract; guaranteed savings, no guarantee, e
 - d) Name and telephone number of references for the project. (Submission of a proposal constitutes consent to PHA contact of all references)
 - e) Brief description of the project's scope of services and status. (Include type of facility at which project was implemented, whether the project was completed on the original schedule (and if not, why) and whether significant problems occurred that affected project performance. Any issues relating to HUD requirements should be

described. As appropriate, identify all prime contractors or subcontractors and their role in each project.) This section should be used to demonstrate the firm's experience in completing a project using the technologies relevant to PHA's facilities and complying with HUD requirements.

- f) Energy use (consumption) and costs prior to project implementation.
 - g) Level of projected annual energy cost savings and annual levels actually achieved. This section should document the projected versus the actual cash flows of the contracts including the cost benefit to PHA as related to the different HUD incentives.
 - h) Identify members of the proposed project team involved with the sample projects and their current primary office location
 - i) Type of HUD incentive utilized: Freezing the rolling base or Add-on subsidy.
 - j) Type of verification methodology utilized: Describe the IPMVP methodology used along with a description of the yearly measurement and verification process for all stipulated savings
 - k) Provide, as an attachment, an abridged and redacted copy of the IGEA developed for the most similar of the example projects listed above to PHA's project. The example audit provided should be similar to the IGEA anticipated for this project.
3. Section 3 – Staffing Plan. This section should include a complete description of the individual experience and qualifications of the proposed project staff. Professional resumes should be provided for all senior project management personnel to be responsible for this project. The staffing plan should include a table identifying name, title, professional certifications, years and summary of relevant experience, a list of projects (with type and Dollar value) that each has worked on since June 1, 2010 and relevant duties of each individual active in this specific project and the percentage of time each will dedicate to the project. No credit will be granted during the evaluation process for the experience of anyone who will not be directly involved in implementing this project. In addition, any subcontractors the ESCo/ESP intends to use for the project shall be identified and their role(s) described. Provide subcontractor's name, address, contact person, phone number, relevant experience and references. Examples of subcontractors that shall be identified include but are not be limited to:
- a) Architectural/engineering firm that will be responsible for project design.
 - b) Energy auditing firm.
 - c) Construction manager.
4. Section 4 – Technical Capability and Approach.

- a) In a Section to be labeled Section 4-1, the proposal must explain the approach your organization will take in managing and delivering the comprehensive technical services required to audit, design, install, and maintain the proposed water, air and energy efficiency improvements. The proposal should describe the firm's capabilities and experience providing the ECMs, Energy Generation Measures, Resiliency Measures, Health Measures, BAS SCADA Measures and training programs called for in this RFP. It should include an outline of specific health hazards that would be addressed by equipment selection, capital measures and training. Actual designs/specifications are not required at this time but the proposal should include a preliminary assessment of PHA's facilities as observed during the site visit, demonstrating an understanding of the systems, operations and building conditions, and a discussion of potential ECMs.
- b) In a Section to be labeled Section 4-2, describe the IGEA and other assessments that will be conducted for this project after selection of an ESCo/ESP on the basis of this RFP. The proposal must include information on the systems to be covered, the personnel to be involved, the data collection equipment and building simulation programs, and the general method to be used.
- c) In a Section to be labeled Section 4-3, describe in detail the method to be used to compute the energy and water baselines Attach a sample computation from a previous project done by your firm, with full documentation of methods, assumptions and input data. Explain how verification of HUD reported consumption values will be verified.
- d) In a Section to be labeled Section 4-4, describe your firm's capabilities with respect to:
- (i) Resident paid utility allowances, the affect they have on this type of program, and your familiarity with 24 CFR 965 subpart E;
 - (ii) The three typical HUD incentives for energy cost reduction, which methodology is most utilized by your firm, how they interact and why an incentive is chosen;
 - (iii) Explain how your firm contractually deals with utility unit costs (rates) in relation to the financial savings created by your programs;
 - (iv) Measurement and verification techniques utilized by your firm to establish and report on guaranteed savings;
 - (v) Quality assurance procedures to be utilized including the approach to be taken to ensure that PHA is adequately resourced to fulfill its operation and maintenance responsibilities for new equipment and systems, including plans for training; and

(vi) BAS SCADA systems.

5. Section 5 – Financial Capacity.

Evidence of financial capacity, ability to secure financing and examples of projects financed within the preceding 5 years. Please provide the company's most recent audited financial statement and a bring-down financial statement including balance sheet and income statement for all quarters of the current fiscal year completed more than 60 days before the submission of the proposal. Contact information for any third-party preparer should be provided.

6. Section 6 – Preliminary Audit Reports.

The preliminary audit reports based on the site visits will be provided in this section.

7. Section 7 - Financial Terms.

- a) PHA seeks to structure the contract such that the guaranteed energy savings will be sufficient to pay the cost of the IGEA, the debt service and other financing costs, monitoring and verification, and all ESCo/ESP fees, including those for ongoing technical support services, and possible consulting fees incurred by PHA. The project budget may include contingency, but the amount must be clearly stated and funds will be retained by PHA. Proposals will include proposed approach to financing and any special conditions relating to the same, and all applicable rebates or incentives that would be available, with details of the incentive programs. The proposals will include the principal substantive terms of the ESA and a description of the proposed project financing approach. A sample IGEA Contract should be provided here. A separate cost estimate for travel and related expenses should be provided.
- b) PHA may participate in the competitive bidding and selection of all construction contractors. The proposal must identify the cost estimating software to be used and, on request of PHA, provide a license for its use. Construction bids will be reviewed with PHA and contractor selection will be jointly determined between the ESCo/ESP and PHA. PHA shall approve the bid documents and any subsequent addenda required prior to release. If the proposer is intending to provide a portion or all of the construction utilizing their own personnel, the process by which the assurance of a competitive construction cost will be insured shall be described in detail. None of the ESCo/ESP expenses and/or overheads shall be included in any way as part of the construction bids. A signed certification statement shall be required from the ESCo stating this is true.
- c) For the purpose of calculating the overhead and profit percentages below, the unburdened construction cost shall be defined as the value of the construction bids received from the construction contractors without any additional mark-up by the ESCo/ESP.

d) Detailed financial information required in this Section includes the following pricing proposals based on the information provided in this RFP.

(i) IGEA and Other Audit Pricing:

IGEA price for all PHA Sites listed in Attachment A (excluding any RAD Sites that have been excluded from Attachment A before the proposal is submitted) which shall be inclusive of all requirements specified in this RFP and all soft costs, profit and overhead, , and will be the maximum amount paid whether or not an EPC is entered into with the ESCo; and a breakdown of each price quote by PHA Site for all items in the table below except G and J, and incremental price increase or reduction for each of the following optional services, assuming that all added GPNAs, Health and Environmental Assessments, RPCAs, Resiliency Assessments and BAS SCADA Assessment will be performed simultaneously with the IGEA for the designated sites:

Audit or Other Incremental Price Adjustor Type	Described In RFP Section	Basis	Price (\$) by Basis
(A) IGEA all PHA Sites, including generation, resiliency, BAS SCADA,	III.B and Attachment A (includes all non-LIHTC public housing sites, scattered sites, and non-residential use sites	Full Project Completion and Deliverables	
(B) Increase for Resiliency Assessment all PHA Sites in (A) above	I.C	Full Project Completion and Deliverables	
(C) Increase for Health and Environment Assessment all PHA Sites in (A) above			
(D) Increase for IGEA 24 LIHTC Sites	III.B and Attachment C	For all 24 LIHTC Sites, Full Project Completion and Deliverables	
(E) Increase for Resiliency Assessments all LIHTC Sites in (C)	I.C	Full Project Completion and Deliverables	

(F) Increase for Health and Environment Assessment all LIHTC Sites in (D) above			
(G) Deduct for RAD Sites excluded	II.H	Per individual housing unit	
(H) Increase for GPNA all PHA Sites in (A) above excluding non-housing uses	I.H	Full Project Completion and Deliverables	
(I) Increase for GPNA all LIHTC Sites	I.H	Full Project Completion and Deliverables	
(J) Increase for RPCA all RAD Sites	I.G	Per individual housing unit	Increase for RPCA

For each of the above, please also provide the man-hours and rates attributable to the audit tasks, subcontractor costs (if applicable), and direct costs that make up the proposed cost to complete.

(ii) Energy Performance Contract Pricing:

Show costs (A) through (J) as a percentage of <u>unburdened</u> construction cost.	
	Maximum Percentage (%)
(A) Designs and specifications (A/E Fees)	
(B) Administration	
(C) Cost of Risk	
(D) Commissioning	
(E) Guarantee	
(F) Construction Management	
(G) Hazardous Waste Administration	
(H) Staff Training	
(I) Other overhead (specify)	
(J) Profit	
<p>NOTE: The above categories (ii) (A) – (J) can be revised / extended by the ESCo/ESP through the proposal. Unclear descriptions will be considered not in the best interest of PHA. PHA will not pay for any additional costs above the unburdened construction cost that are identified in this proposal.</p>	

(iii) Ongoing Project Management Pricing:

Show costs (A) through (F) as a percentage of <u>unburdened</u> construction cost.	
	Maximum Percentage (%)
(A) Yearly energy savings measurement and verification costs:	
(B) 5-Year Operation, Maintenance and Warranty Services	
(C) Yearly resident training costs.	
(D) Other yearly service fees (specify):	
(E) Other overhead (specify)	
(F) Profit	
NOTE: The above categories (iii) (A) – (F) can be revised / extended by the ESCo/ESP through the proposal. Unclear descriptions will be considered not in the best interest of PHA. PHA will not pay for any additional costs above the unburdened construction cost that are identified in this proposal.	

7. Section 7 – Proposed Project and Payment Schedule. The proposal must provide a complete schedule for achievement of all major project milestones (*assuming* that the work will include, in addition to the IGEA, the GPNA, the Health and Environmental Assessment, the RPCA, the resiliency assessment, and the BAS SCADA assessment,) including but not limited to:

- a) Commencement and completion of energy audits.
- b) Detail all tasks involved with the completion of the energy audit and the expected timeline for the completion of each.
- c) Delivery of draft IGEA and other required reports.
- d) Delivery of final IGEA and other required reports and all remaining deliverables.
- e) Final Project Implementation Proposal including a list of all proposed improvements, baseline calculations, and cash flow projections.

Payment for the IGEA and all other audits and assessments that can be financed in the EPC/ESA financing will be paid at the time of closing of the financing transaction unless PHA elects not to enter into an EPC with the selected ESCo/ESP. The proposal will describe the firm’s standard billing procedures and proposed payment schedule for work that will not be included in the project costs under the EPC. A sample invoice will be provided in the proposal

8. Section 8 - Official Statement of Proposer. The proposal shall include a statement to the effect that the proposal is a firm offer for a minimum 120-day period. The proposal shall

also provide the: name, title, address, and telephone number of individual(s) with authority to negotiate and contractually bind the company and also who may be contacted during the period of proposal evaluation.

VII. Contract Negotiations and Contractual Provisions

The IGEA Contract and, following the acceptance of the IGEA and proposed program, the EPC, ESA and other related program contracts to be entered into between the ESCo or ESP and PHA, all shall include the following terms or provisions:

A. The contents of this RFP and all attachments, and the RFP proposal submission, shall become part of the final contract.

B. A final schedule of project milestones including equipment commissioning and servicing will become part of the final contracts. Failure to meet milestones will be considered events of default.

C. PHA retains final approval over the scope of work and end-use conditions.

D. The ESCo/ESP must carry appropriate levels of insurance for each of the audit, construction and operations phases, as well as the monitoring phase. At a minimum the ESCo/ESP must carry and provide evidence of a Comprehensive General Liability Insurance Policy, Worker Compensation Policy, and an Automobile Liability Policy, With PHA named as an additional insured party on the Comprehensive General Liability and Automobile Liability Insurance policies, and the ESCo/EPC contracts shall indemnify PHA against all claims and demands for injury, death or damage as a result of the negligence of the ESCo/ESP and/or its subcontractors, employees, agents, licensees, or invitees, in the performance of the contract.

E. The selected ESCo/ESP shall obey and abide by all the State laws and regulations and the U.S. Department of Housing and Urban Development relating to the employment of workers for construction and capital improvement projects.

F. The ESCo/ESP agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. The ESCo/ESP further agrees that every subcontract entered into will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor.

G. All State Laws and Regulations, regarding the prevailing wage rates will be adhered to.

VIII. Attachments

Attachment A PHA Sites (excluding LIHTC Sites and Scattered Sites) - Property List

Attachment B Aggregated Utility Consumption and Expense Data

Attachment C LIHTC Sites – Property List

Attachment D LIHTC Sites – Aggregated Water Consumption and Expense Data

Attachment E Current utility allowance schedule.

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 1/31/2017)

Applicability. This form is applicable to any construction/development contract greater than \$100,000.

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).

The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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.

HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
 - (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
 - (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
 - (d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
 - (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
 - (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
 - (g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
 - (h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.
 - (j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
 - (l) "Work" means materials, workmanship, and manufacture and fabrication of components.
- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.
 - (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
 - (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
 - (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
 - (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
 - (f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
 - (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
 - (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

- (a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

2. Contractor's Responsibility for Work

- (b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.
- (c) The Architect's duties and responsibilities may include but shall not be limited to:
- (1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;
 - (2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;
 - (3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,
 - (4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

4. Other Contracts

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

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

- (a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.
- (b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

6. Construction Progress Schedule

- (a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.
- (b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

7. Site Investigation and Conditions Affecting the Work

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is

reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

- (b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

8. Differing Site Conditions

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.
- (d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.
- (b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.
- (c) Where "shown" "indicated", "detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".
- (d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- (e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.
- (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

9. Specifications and Drawings for Construction

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be

required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

- (h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.
- (i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

- (a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."
- (b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.
- (c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship

- (a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) Approval of equipment and materials.
- (1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the

machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- (2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.
- (3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.
- (4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.
- (5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.
- (6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.
- (c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

12. Permits and Codes

- (a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any

waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

- (b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

13. Health, Safety, and Accident Prevention

- (a) In performing this contract, the Contractor shall:
- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
 - (2) Protect the lives, health, and safety of other persons;
 - (3) Prevent damage to property, materials, supplies, and equipment; and,
 - (4) Avoid work interruptions.
- (b) For these purposes, the Contractor shall:
- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
 - (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.
- (c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.
- (d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- (e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

15. Availability and Use of Utility Services

- (a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.
- (b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.
- (b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- (c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- (d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- (e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

- (f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
- (g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
- (h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
- (i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
- (j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- (k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

- (a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- (b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water

The contractor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

19. Energy Efficiency

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

20. Inspection and Acceptance of Construction

- (a) Definitions. As used in this clause -
 - (1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.
 - (2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
 - (3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.
- (d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

- (f) The PHA may conduct routine inspections of the construction site on a daily basis.
- (g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.
- (i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the PHA considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right under any warranty or guarantee.

21. Use and Possession Prior to Completion

- (a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.
- (b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas

occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22. Warranty of Title

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

23. Warranty of Construction

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of _____ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.
- (b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—
 - (1) The Contractor's failure to conform to contract requirements; or
 - (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
- (c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.
- (d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
- (e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
 - (3) Enforce all warranties for the benefit of the PHA.
- (g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

- (h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.
- (i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.
- (j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

Administrative Requirements

25. Contract Period

The Contractor shall complete all work required on this contract within _____ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

26. Order of Provisions

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

27. Payments

- (a) The PHA shall pay the Contractor the price as provided in this contract.
- (b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.
- (c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a

basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

- (d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than _____ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:
 - (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
 - (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
 - (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

Name:

Title:

Date:

- (f) Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.
- (g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.

Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

- (h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.
- (i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.
- (j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.
- (k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or

responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

- (c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

29. Changes

- (a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) PHA-furnished facilities, equipment, materials, services, or site; or,
 - (4) Directing the acceleration in the performance of the work.
- (b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- (f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.
- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change. The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.
- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

30. Suspension of Work

- (a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have

been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

- (a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.
- (f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to

proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—
- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
 - (2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

33. Liquidated Damages

- (a) 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 this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of \$ _____ [Contracting Officer insert amount] for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay.
- (b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final

completion of the work together with any increased costs occasioned the PHA in completing the work.

- (c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

34. Termination for Convenience

- (a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.
- (b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.
- (c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.
- (d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

35. Assignment of Contract

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

36. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:
- (1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.
 - (2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount]

per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount] per occurrence.

(b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

37. Subcontracts

(a) Definitions. As used in this contract -

(1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

(2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

- (b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.
- (c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.
- (d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.
- (e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

38. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

39. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.
- 40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.**
- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

41. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

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

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

43. Limitations on Payments made to Influence Certain Federal Financial Transactions

- (a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

45. Examination and Retention of Contractor's Records

- (a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

46. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

- (a) Minimum Wages.
- (1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall

be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the

amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.
- (c) Payrolls and basic records.
- (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to

- make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- (f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (i) Certification of eligibility.
 - (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.
- (j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
 - (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
 - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.
 - (3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.
- (k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

47. Non-Federal Prevailing Wage Rates

- (a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:
 - (1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
- (b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- (c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

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

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/31/2017)

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

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

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

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

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/31/2017)

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

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

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

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

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

1. Minimum Wages

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

2. Withholding of funds

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

3. Records

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

4. Apprentices and Trainees

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

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

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
- (iii) A training/trainee program that has received prior approval by HUD.

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

5. Disputes concerning labor standards

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

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

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

6. Contract Work Hours and Safety Standards Act

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

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

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

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

7. Subcontracts

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

8. Non-Federal Prevailing Wage Rates

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



TERMS & CONDITIONS

SECTION II. PHA STANDARD TERMS & CONDITIONS

1. Minimum Acceptance Period

- a. "Acceptance period," as used in this provision, means the number of calendar days available to PHA for awarding a contract from the date specified in this solicitation for receipt of proposals.
- b. PHA requires a minimum acceptance period of 90 calendar days. If the award is delayed by a required approval of another governing agency, then the acceptance period shall be 120 days.
- c. A proposal allowing less than the PHA's minimum acceptance period will be rejected.

2. Billing and Payment

- a. The Contractor shall submit invoices to the PHA as provided pursuant to the terms of this Contract. Invoices must show the type of service performed and the amount charged to the Contract during the billing period. PHA's billing address is:

Philadelphia Housing Authority
Attn: Contract Administration
P.O. Box 8737
Philadelphia, PA 19104-9742
- b. PHA shall exert its best efforts to pay the Contractor within forty-five (45) days of receipt of an accurate/uncontested invoice, given fulfillment of deliverable(s), and if Contractor is in compliance with all Contract terms and conditions. PHA reserves the right to withhold payment for performance deficiencies.
- c. No interest shall be payable to the Contractor from PHA for delayed progress or final payment.

3. PHA Option for Payment by Electronic Funds Transfer

- a. At PHA's option:
 - i. All payments by PHA under this Contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(ii) of this clause. As used in this clause, the term EFT refers to the funds transfer and may also include the payment information transfer.
 - ii. In the event PHA is unable to release one or more payments by EFT, the Contractor agrees to either (1) Accept payment by check or some other mutually agreeable method of payment; or (2) Request PHA to extend payment due dates until such time as PHA makes payment by EFT (but see paragraph (d) of this clause).
- b. Mandatory submission of Contractor's EFT information.
 - i. The Contractor is required to provide PHA with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this

information directly to the office designated in this Contract to receive that information (hereafter: designated office) within 10 days after award of the Contract. If not otherwise specified in this Contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the Contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).

- ii. If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office.

However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

- c. Mechanisms for EFT payment. PHA may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.
- d. Suspension of payment.
 - i. PHA is not required to make any payment under this Contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this Contract. The prompt payment terms of the Contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.
 - ii. If the EFT information changes after submission of correct EFT information, PHA shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this Contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.
- e. Liability for uncompleted or erroneous transfers.
 - i. If an uncompleted or erroneous transfer occurs because PHA used the Contractor's EFT information incorrectly, PHA remains responsible for (1) Making a correct payment; (2) Paying any prompt payment penalty due; and (3) Recovering any erroneously directed funds.
 - ii. If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and (1) If the funds are no longer under the control of the payment office, PHA is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or (2) If the funds remain under the control of the payment office, PHA shall not make payment and the provisions of paragraph (d) shall apply.
- f. EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this Contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- g. EFT and assignment of claims. If the Contractor assigns the proceeds of this Contract as provided for in the assignment of claims terms of this Contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in

accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to PHA, is incorrect EFT information within the meaning of paragraph (d) of this clause.

- h. Liability for change of EFT information by financial agent. PHA is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.
- i. Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. PHA may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, PHA does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to PHA. If PHA makes payment by check in accordance with paragraph (a) of this clause, PHA shall mail the payment information to the remittance address in the Contract.
- j. EFT information. The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.
 - i. The contract number (or other procurement identification number).
 - ii. The Contractor's name and remittance address, as stated in the Contract(s).
 - iii. The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.
 - iv. The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.
 - v. The Contractor's account number and the type of account (checking, saving, or lockbox).
 - vi. If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.
 - vii. If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

4. Notices

- a. Any notice to or demand upon the Contractor shall be considered given if delivered at the office of the Contractor as stated on the signature page of the Contract or at such place or other address as he may designate, in writing, to the Authority.
- b. All papers required to be delivered to PHA, unless otherwise specified in writing to the Contractor, shall be sent to:
 - Attn: Contracting Officer
 - Philadelphia Housing Authority
 - 12 South 23rd Street, 5th Floor
 - Philadelphia, PA 19104
- c. All Contractor notices, demands, requests, instructions, approvals, claims, etc., must be made in writing to PHA. No oral communications will be considered binding under the terms of this Contract.

5. Option to Extend Term of Contract

PHA may extend the term of this Contract through exercise of option year(s), if any, by written notice to the Contractor.

6. Option to Extend Services

PHA may require continued performance of any services within the limits and at the rates specified in the Contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. This option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within ten (10) days prior to the expiration of the Contract.

7. Contract Modifications

- a. Only the Contracting Officer has authority to modify any term or condition of this Contract. Any contract modification shall be authorized in writing.
- b. PHA may modify the Contract unilaterally (1) pursuant to a specific authorization stated in a Contract clause; or (2) for administrative matters which do not change the rights or responsibilities of the parties. All other Contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

8. Hold Harmless

The Contractor shall hold PHA harmless from and indemnify PHA against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents pursuant to the Contract and shall, at the request of PHA, defend any and all actions brought against PHA based upon any such claims or demands.

9. Suspension of Work

- a. The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that the Contracting Officer determines appropriate for the convenience of PHA.
- b. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this Contract, or (2) by the Contracting Officer's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.
- c. A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

10. Default

If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this Contract, or any

extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. In this event, PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

11. Contractor Claims

In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. The Contracting Officer shall review timely-filed claims and issue a determination in accordance with the "Disputes" clause in Terms and Conditions, Section I, Article 7.

12. Contractor Integrity

a. Definitions

- i. Confidential Information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with PHA.
 - ii. Consent means written permission signed by a duly authorized officer or employee of PHA, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, PHA shall be deemed to have consented by virtue of execution of this agreement.
 - iii. Contractor means the individual or entity that has entered into this agreement with PHA, including directors, officers, partners, managers, key employees, and owners of more than a five percent interest.
 - iv. Financial Interest means: (1) ownership of more than a five percent interest in any business; or (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - v. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- b. The Contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with PHA.
 - c. The Contractor shall not disclose to others any confidential information gained by virtue of this agreement.
 - d. The Contractor shall not, in connection with this or any other agreement with PHA, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of PHA.
 - e. The Contractor shall not, in connection with this or any other agreement with PHA, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of PHA.
 - f. Except with the consent of PHA, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from

any person in connection with the performance of work under this agreement except as provided therein.

- g. Except with the consent of PHA, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
- h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify PHA in writing.
- i. The Contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.
- j. The Contractor, upon the inquiry or request of PHA, HUD, the Inspector General of the Commonwealth or any agents or representatives of PHA, HUD or the Inspector General of the Commonwealth, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by PHA, HUD or the Inspector General of the Commonwealth to the Contractor's integrity or responsibility, as those terms are defined by federal and state statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.
- k. For violation of any of the above provisions, PHA may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with PHA. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those PHA may have under law, statute, regulation, or otherwise.

13. Subcontracts

- a. There shall be no subcontracting without the prior written consent of the Contracting Officer.
- b. The PHA may, without claim for extra cost by the Contractor, disapprove any subcontractor for cause on the basis of its own determination or because the proposed subcontractor is suspended or debarred by the U.S. Government, the Commonwealth of Pennsylvania or PHA.
- c. The Contractor shall cause provisions to be inserted in all subcontracts to bind subcontractors to the terms of this Contract (including Affirmative Action provisions) insofar as they are applicable to the work of the subcontractor.
- d. Nothing contained in the Contract shall create any contractual relation between any subcontractor and PHA.

14. Subcontracting with Small and Minority Firms, and Women's Business Enterprise

The Contractor shall take the following steps to assure that, whenever possible, subcontracts are awarded to small and minority firms, and women's business enterprises by:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses and women's business enterprises are solicited whenever possible;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

- d. Establishing delivery schedules, where the requirements of the Contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- e. Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and state and local governmental small business agencies.

15. Contractor Conflicts

The Contractor, its employees, agents and subcontractors shall not, during the term of this Contract, undertake any employment or engagement or, except as required by law, perform any act or allow any omission, which may result in a conflict with any of their respective obligations under this Contract. A conflict includes, but is not limited to engagement by a third party to review, comment or critique PHA work in the same or similar areas as reflected in this Contract's scope of work. In the event Contractor, its agents, or subcontractors are called upon under a purported requirement of law to do or omit anything that may be in violation of the foregoing, the Contractor shall give the PHA Contracting Officer sufficient advance written notice thereof to allow the matter to be contested by PHA.

16. Permits and Licenses

If any permits, licenses or other approvals are necessary for the performance of this Contract, then the Contractor shall obtain all such permits, licenses or approvals, including use of patents, trademarks or copyrights, at no extra charge to PHA.

17. Rights in Data and Copyrights

- a. Except as provided elsewhere in this clause, PHA shall have unlimited rights in data first produced in the performance of this Contract; form, fit, and function data delivered under this Contract; data delivered under this Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Contract; and all other data delivered under this Contract unless provided otherwise for limited rights data or restricted computer software.
- b. The Contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data of restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this Contract to the extent provided below.
- c. For data first produced in the performance of this Contract, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this Contract. The Contractor grants the PHA and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the PHA.
- d. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this Contract any data not first produced in the performance of this Contract and which contains copyright notice, unless the Contractor identifies such data and grants the PHA a license of the same scope as identified in the preceding paragraph.
- e. The PHA agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this Contract are

improperly marked, the Contracting Officer may either return the data to the Contractor, or cancel or ignore the markings.

- f. The Contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the Contractor's obligations under this Contract.
- g. Notwithstanding any provisions to the contrary contained in any contractor's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this Contract, and irrespective of whether any such agreement has been proposed prior to the award of this Contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the Contractor agrees that the PHA shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this Contract. The terms and conditions of this Contract, including any commercial lease of licensing agreement, shall be subject to the following procedures.
 - i. The restricted computer software delivered under this Contract may not be used, reproduced, or disclosed by PHA except as provided below or as expressly stated otherwise in this Contract.
 - ii. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any PHA location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this Contract; and used or copies for use in or transferred to a replacement computer.

18. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save PHA harmless from loss on account thereof; except that PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified by PHA is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

19. Warranty & Product Documents

- a. The Contractor shall submit product data and manufacturer's specifications as required by PHA. Manufacturer's written product and procedures requirements, when approved by PHA, become part of the Contract. PHA reserves the right to reject items not in compliance with the manufacturer's specifications.
- b. The Contractor shall submit warranty and guaranty papers along with the manufacturer's data for each product. The adequacy of the documentation is subject to approval by PHA. The Contractor shall be a fully authorized and qualified seller, user or installer of the materials specified and/or approved. The Contractor shall submit proof of certification indicating he is acceptable to the manufacturer.
- c. **On-Site Delivery**

If PHA requires Contractor to deliver goods to a PHA site, then the Contractor's representative shall sign in at the PHA manager's office on-site prior to commencing delivery.

20. Insurance

- a. Before commencing work, the Contractor and each sub-contractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:
 - i. Workers' Compensation, in accordance with State or Territorial Workers' Compensation laws and Employers Liability with limits of not less than \$500,000.
 - ii. Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$1,000,000.00 per occurrence/\$2,000,000 General Aggregate. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy based on Section (e) (5) of this clause, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and should the policy be canceled on non-renewed, the extended reporting coverage will be purchased to extend coverage to one year after the end of the contract period, limited only by the exhaustion of the policy limits. See PHA Special Terms and Conditions for higher levels of coverage for certain types of purchases.
 - iii. Automobile Liability coverage on owned, non-owned, and hired auto coverage for motor vehicles used on the site(s) or in connection therewith and with a combined single limit for bodily injury and property damage of not less than \$1,000,000.00 per occurrence.
 - iv. Contractor's Pollution Liability with limits of not less than \$5,000,000 per loss and \$5,000,000 aggregate, with no sub-limits and no exclusion of hazardous materials/pollutants, naming PHA as additional insured, with endorsements for waiver of subrogation, primary & non-contributing clause, and severability of interest clause.
- b. All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located and have an A.M. Best Rating of A . If any such insurance is due to expire during the Contract period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least thirty (30) days prior written notice has been given to the Contracting Officer. Such notice must be sent by Certified Mail, Return Receipt Requested, to the Contracting Officer's attention.
- c. Additional Insured Requirement: Philadelphia Housing Authority is to be named an "additional insured" on all policies required hereunder except Workers' Compensation, Employer's Liability, and Professional Liability. An endorsement stating the above shall be provided to the PHA by the Contractor prior to the commencement of the work. The General Liability additional insured endorsement shall be provided to PHA.
- d. Minimum Scope of Insurance: Coverage should be at least as broad as:
 - i. Insurance Services Office form number CA 0001 (Ed. 03/06) covering Automobile Liability, Symbol "1" - "any auto".
 - ii. Workers' Compensation Insurance as required by the Pennsylvania Workers' Compensation Act, with \$500,000 limit of liability for Employers Liability Insurance.
- e. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:
 - i. General Liability and Automobile Liability coverages
 - 1) The PHA, its Board of Commissioners, officers, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed or should have been performed by or on behalf of the

Contractor; products and completed operations of the Contractor; automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the PHA, its Board of Commissioners, officers, employees or volunteers.

- 2) The Contractor's insurance coverage shall be primary insurance as respects the PHA, its Board of Commissioners, officers, employees and volunteers. Any insurance or self-insurance maintained by PHA, its Board of Commissioners, officers, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- 3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the PHA, its Board of Commissioners, officers, employees or volunteers.
- 4) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit brought, except with respect to the limits of the insurer's liability.
- 5) In each instance, coverage should be provided on an "occurrence" basis, as opposed to a "claims-made" basis. Claims-made coverage will only be accepted in the event that it is verified that occurrence coverage is not available.

Also included in the Commercial General Liability coverage supplied by the Contractor will be Explosion Collapse and Underground Hazard Liability, if applicable.

- ii. **Workers' Compensation and Employer's Liability Coverage:** The Contractor agrees to obtain a waiver from the insurer waiving all rights of subrogation against the PHA, its Board of Commissioners, officers, employees and volunteers for losses arising from work performed by, for, or in behalf of the Contractor for the PHA.
 - iii. **All Coverages:** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the PHA Risk Management Department.
 - iv. **Professional Liability Insurance:** If the entity responding to this Request for Proposal will provide architectural, engineering, consulting, construction management, counseling, medical, legal, or professional services, the Contractor shall maintain Professional Liability Insurance. The minimum limit of liability will be \$1,000,000.00 per claim, \$2,000,000.00 annual aggregate on an occurrence basis. If suitable coverage cannot be obtained on an occurrence basis, then the Contractor may purchase suitable coverage on a claims-made basis with the retroactive date being on or before the execution date of the Contract. Should such insurance be cancelled, or not renewed, the Contractor agrees to purchase extended reporting coverage which extends the discovery period for at least five (5) years from the date of cancellation. The Contractor also agrees to continue the above coverage for a period of at least five (5) years from the date of completion of the Contract. This coverage shall not have a deductible maximum greater than \$10,000.00 per loss. This type of insurance is required for certain types of purchases as defined in PHA Special Terms and Conditions.
- f. **Deductibles and Self-Insured Retention:** Self-insured retentions must be declared to and approved by the PHA. At the option of the PHA, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the PHA, its Board of Commissioners, officers, employees and volunteers. **Verification of Coverage:** Contractor shall furnish the PHA with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificate shall include the Contract number and the Development name. These certificates and endorsements for each insurance policy are to be signed by a person

authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the PHA before work commences. Upon renewal of coverages, Contractor must provide new insurance certificates meeting the insurance coverages as indicated above. The PHA reserves the right to require complete, certified copies of all required insurance policies, at any time.

- g. Subcontractors: Coverage provided under the applicable Contractor's policies will include coverage for those liabilities incurred through the actions, omissions and activities of all subcontractors. Contractor will cause any subcontractors to carry insurance coverage identical to that of the Contractor as regards perils insured against, scope of coverage, and limits of liability such as for Workers Compensation and Liability Insurance for asbestos and other hazardous types of purchases. When applicable and upon request, certificates of subcontractor's insurance shall be provided to PHA.
- h. Binders: Binders are not acceptable as adequate insurance coverage.

21. Compliance with Law

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in performing its obligations under the Contract.

22. Nondiscrimination/Sexual Harassment

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any person who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.
- c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the Contract relates.
- e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Contracting Officer for purposes of investigation to ascertain compliance with this clause.
- f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. PHA may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this clause. In addition, PHA may proceed with debarment or suspension of the Contractor.

23. Americans with Disabilities Act

Contractor shall comply with federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C. F. R. § 35.101 et seq. The Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under this Contract. As a condition of accepting and executing this Contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C. F. R. § 35.130, and all other regulations promulgated

under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by PHA through contracts with outside contractors.

24. Commonwealth of Pennsylvania Steel Products Procurement Act

- a. This project is subject to the provisions of the Steel Products Procurement Act of 1978 (P.L. 6, No. 3) as amended by the Act of July 9, 1984 (P.L. 674, No. 144). All contractors, subcontractors, and material suppliers shall be required to comply with all provisions of this Act.
- b. The Contractor shall be required to provide with each Application-Certificate of Payment form an executed copy of the Certification of Compliance with the Steel Products Procurement Act form and additional documentation, including but not limited to, invoices, bills of lading, mill certifications, or other acceptable evidence that the steel products represented on the payment application comply with one or more of the following categories:
 - i. That the steel utilized on this project was melted and manufactured in the United States; and/or
 - ii. The product contains both foreign and United States steel, and at least seventy-five percent (75%) of the cost of all of the articles, materials, and supplies incorporated in the product have been mined, produced, or manufactured, as the case may be, in the United States; and/or
 - iii. The steel product is not produced in the United States in sufficient quantities to meet the requirements of the Contract, and prior written approval to use foreign steel has been obtained from The Pennsylvania State University.
- c. Any nonconforming steel products incorporated into the work shall be removed and replaced by the Contractor, at its own expense, with products meeting the requirements of the Act.
- d. Willful violation of this Act can result in penalties, including (but not necessarily limited to) prohibition from submitting any bids, or performing any work, or supplying any materials to a public agency for a period five (5) years from the date of the determination that a violation has occurred.

25. Applicable Law

The Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

26. Provisions Required or Prohibited by Law

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though such provisions were included herein. Any clause in this Contract prohibited by law shall be deemed to be deleted from this Contract, and this Contract shall be read and enforced as though such provision were not included herein.

27. Related Entities

PHA reserves the right to procure supplies or services on behalf of its affiliated entities and subsidiaries including but not limited to several limited partnerships ("Related Entities"). Each Related Entity shall have the right to procure such supplies or services directly from Contractor pursuant to this Contract. PHA will generally advise the Contractor that the contract or task/delivery order is being issued on behalf of a Related Entity and provide any special

instructions. However, failure of PHA to do so does not negate the Contractor's obligation to provide the supply or service ordered.

28. Order of Precedence

Conflicts in the contract documents shall be resolved in accordance with the following order of precedence:

1. Addendum Number ____ dated _____, 20__.
2. Addendum Number ____ dated _____, 20__.
3. Services Contract;
4. HUD Standard Terms & Conditions
5. Statement of Work
6. PHA Special Terms & Conditions
7. PHA Standard Terms & Conditions
8. Solicitation Number _____, ____ dated _____, 20__, and entitled _____.
9. Contractor's proposal and Best and Final Offer (if requested) as accepted by the PHA.
10. Affirmative Action requirements
11. Instructions to Proposers
12. Representations, Certifications, and other statements to Proposers

29. Certifications and Representations

In the event that Contractor's certifications and representations set forth in Section I shall at any time cease to be true and correct in all material respects, Contractor shall promptly notify PHA of same, setting forth the particulars and identifying the steps, if any, being taken by Contractor to render such representation or certification to be true and correct in all material respects.

30. Taxes

- a. Contractor agrees to disclose to PHA all taxes paid pursuant to 72 Pennsylvania Statutes ("P.S.") § 7202 ("Sales Tax") paid by the Contractor in connection with the Contract, including in the Contractor's bid an itemization of Sales Tax expected to be paid in connection with this Contract.
- b. Contractor agrees to cooperate fully with PHA in determining which items Contractor purchases pursuant to this Contract are those on which Contractor will pay Sales Tax.
- c. Contractor will also cooperate fully with PHA in seeking guidance from the Pennsylvania Department of Revenue ("Department of Revenue") in determining which items are subject to Sales Tax.
- d. With respect to any item on which Contractor expects to pay Sales Tax, Contractor agrees to allow PHA the option of purchasing such item directly and to reduce the cost charged to PHA by the amount of Sales Tax Contractor would have paid had Contractor purchased such item.
- e. Contractor assigns to PHA all of its right, title and interest in and to any and all refund of Sales Tax Contractor will pay in connection with this Contract and agrees to cooperate fully with PHA in assisting PHA to obtain a refund of any and all Sales Tax Contractor paid in connection with this Contract, including but not limited to:
 - i. filing a petition for refund with the Department of Revenue at the request of PHA;
 - ii. providing PHA with any receipts or other documentation reasonably requested by PHA in connection with PHA pursuing such refund; and
 - iii. testifying at a hearing in connection with the pursuit of such refund.
- f. In the event PHA exercises its right under Section e to require Contractor to file a petition for refund of Sales Tax paid, PHA will, at its sole discretion:

- i. determine the manner in which to pursue, and whether to continue pursuing, such refund; and
- ii. select the representative to pursue such refund.

Further, PHA agrees to pay all fees and costs associated with pursuing such refund, but Contractor agrees that its payment under this Contract constitute full and complete consideration for any assistance Contractor may provide to PHA in pursuing such refund on PHA's behalf. Not later than five days after receipt thereof, Contractor agrees to pay to PHA any amount of Sales Tax refund received by Contractor in connection with a refund of Sales Tax paid in connection with this Contract.

- g. Contractor agrees to purchase, but not pay Sales Tax on, every item that qualifies as 'building machinery and equipment' (as defined in 72 P.S. § 7201(pp)) by providing Contractor's vendor with a properly completed exemption certificate (REV-1220) within sixty days of the purchase of each such item. Contractor further agrees that it shall include on line 7 of such exemption certificate the following statement: Property or services qualify as 'building machinery and equipment' and will be transferred pursuant to a construction contract to a tax-exempt organization. Further, if any purchase of items by Contractor includes both Sales Tax exempt 'building machinery and equipment' and otherwise taxable property, Contractor agrees to maintain records sufficient to permit the Department of Revenue to ascertain whether the items purchased were in fact 'building machinery and equipment.'
- h. Contractor agrees to be solely responsible for any Sales Tax assessed on any item Contractor purchased pursuant to this Contract and further agrees to indemnify PHA for any Sales Tax PHA is subsequently assessed by the Department of Revenue with respect to any item Contractor purchased in connection with this Contract and on which Contractor did not pay Sales Tax.

31. Public Disclosure

After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.



**F. TERMS & CONDITIONS
SECTION III. PHA SPECIAL TERMS & CONDITIONS**

1. Term Of The Contract

The term of the Contract shall consist of a TBD base period with TBD option periods to extend services. This term includes the performance period of all task orders or purchases released under the contract. Contract options may be exercised early if Contract funding is utilized before the Contract performance period expires; provided that PHA shall be under no obligation to do so, and the Contract rates will not increase until the annual period for which they were proposed has elapsed.

2. Cost Proposals

Offerors [X] are [] are not required to propose prices for all line items in the Schedule.

The following selected clauses are applicable to the Contract:

3. [] Proposal Security

- a. Failure to furnish proposal security in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the proposal.
- b. The Offeror shall furnish a proposal guarantee in the form of a firm commitment, e.g., proposal bond supported by good and sufficient surety or sureties acceptable to PHA, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. PHA will return proposal guarantees, other than proposal bonds, (1) to unsuccessful Offerors as soon as practicable after the opening of proposals, and (2) to the successful Offeror upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the proposal as accepted.
- c. The amount of the proposal guarantee shall be 5 percent of the proposal price.
- d. If the successful Offeror, upon acceptance of its proposal by PHA within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the Offeror, the Contracting Officer may terminate the Contract for default.
- e. In the event the Contract is terminated for default, the Offeror is liable for any cost of acquiring the work that exceeds the amount of its proposal, and the proposal guarantee is available to offset the difference.

4. Multiple Awards

PHA reserves the right to make multiple awards under this solicitation. Although the scope of services will remain the same for each contract, the dollar amount of each contract may vary.

5. Fixed Fee

- a. If a cost plus fixed fee type of contract is used, PHA shall pay the Contractor for performing this Contract the fixed fee specified in the Schedule.
- b. Payment of the fixed fee shall be made as specified in the Schedule; provided that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect PHA's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

6. Indefinite Quantity (Special Services)

- a. This is an indefinite-quantity contract with FIRM FIXED UNIT PRICING for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this Contract.
- b. Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to PHA, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." PHA shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."
- c. Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. PHA may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- d. Any order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The Contract shall govern the Contractor's and PHA's rights and obligations with respect to that order to the same extent as if the order were completed during the Contract's effective period.

7. Definite Quantity

- a. This is a definite-quantity, indefinite-delivery contract with FIRM FIXED UNIT PRICING for the supplies or services specified, and effective for the period stated, in the Schedule.
- b. PHA shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.
- c. Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. PHA may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- d. Any order issued during the effective period of this Contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The Contract shall govern the Contractor's and PHA's rights and obligations with respect to that order to the same extent as if the order were completed during the Contract's effective period.

8. Requirements

- a. This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this Contract. Except as this Contract may

otherwise provide, if PHA's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

- b. Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this Contract, the Contractor shall furnish to PHA all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. PHA may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- c. Except as this Contract otherwise provides, PHA shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by PHA activity or activities specified in the Schedule.
- d. PHA is not required to purchase from the Contractor requirements in excess of any limit on total orders under this Contract.
- e. If PHA urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this Contract, and if the Contractor will not accept an order providing for the accelerated delivery, PHA may acquire the urgently required goods or services from another source.
- f. Any order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The Contract shall govern the Contractor's and PHA's rights and obligations with respect to that order to the same extent as if the order were completed during the Contract's effective period.

9. [] Ordering

- a. Any supplies and services to be furnished under this Contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule during the term of the Contract. Such orders may be issued from the date of award through the remaining time and or available funds, in accordance with this Contract. The ordering activity for this Contract/task order is PHA's Procurement and or Contract Administration department.
- b. All delivery orders or task orders are subject to the terms and conditions of this Contract. In the event of conflict between a delivery order or task order and this Contract, the Contract shall control.
- c. If mailed, a delivery order or task order is considered "issued" when PHA deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic methods.
- d. Contractor must resolve any discrepancies appearing on PHA's task/delivery order prior to delivery. Contractor must resolve issues regarding quantities, services, descriptions, items, etc. Failure to comply and resolve discrepancies shall remain the Contractor's sole responsibility.

10. [] Order Limitations

- a. **Minimum order.** When PHA requires supplies or services covered by this Contract in an amount of less than _____ [insert dollar figure or quantity], the PHA is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the Contract.
- b. **Maximum order.** The Contractor is not obligated to honor-
 - i. Any order for a single item in excess of 10% of the total Contract value for the Contract period;
 - ii. Any order for a combination of items in excess of 100% of the total Contract value for the Contract period; or
 - iii. A series of orders from the same ordering office within seven (7) days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

- c. Notwithstanding paragraphs (b) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within five (5) days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons.

11. Prequalification

- a. Contract award may only be made to pre-qualified offerors. Although not a condition to submitting an offer, it is strongly advised that a pre-qualification application be obtained, completed, and returned to PHA's Pre-Qualification Division prior to the submission of a proposal. Applications may be obtained from the Pre-Qualification Division, 3100 Penrose Ferry Road, Philadelphia, PA 19145; Tel: 215-684-8562.
- b. Failure to complete the application within the required time limits may cause the offeror to be deemed non-responsive and ineligible for contract award. The following time limit applies to this solicitation:
 - Offerors will be given ten (10) working days after notification by the Pre-Qualification Division to supply the information necessary to complete the Pre-Qualification application.
 - Offerors will be given two (2) working days after notification by the Pre-Qualification Division to supply the information necessary to complete the Pre-Qualification application.

12. Liquidated Damages

- a. If the Contractor fails to complete the work within the time specified in the Contract, or any extension, the contractor shall pay to the PHA as liquidated damages, the sum of \$_____ for each day of delay. To the extent that the Contractor's delay or nonperformance is excused under another clause of this Contract, liquidated damages shall not be due to PHA. The Contractor remains liable for damages caused other than by delay.
- b. If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs incurred by PHA to complete the work.

13. Warranty

The equipment provided under this Contract shall have a warranty of _____ (years/months) from the date of final acceptance of all deliveries or work under this Contract.

14. Insurance

The following types of insurance is required in addition to the workers compensation and auto liability insurance included in Section 20 of PHA Standard Terms and Conditions.

SUPPLEMENTAL INSURANCE REQUIREMENTS

(check marks indicate required coverage)

Type of Work	General Liability \$2M/occurrence \$2M aggregate	Professional Liability \$1M/claim \$2M aggregate	Liability Pollution \$5M/loss \$5M aggregate
Architectural and Engineering Services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Consulting			
Construction	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Contractor - Single Trade			
Boiler Maintenance			
Elevator Maintenance			
Asbestos Removal			
Janitorial Services			
Sprinkler & Fire Alarm Systems			
Insurance			
Landscaping and Snow Removal			
Legal Services			
Security Services			

G. EVALUATION CRITERIA

All proposals received by the specified date shall be subject to evaluation by a review committee. The following criteria will be used to rank offerors. PHA reserves the right to hold discussions with and request Best and Final Offers from the highest rated offerors determined by PHA to be within the competitive range. Award will be made to the offeror whose price and technical factors are most advantageous to PHA.

Note that under 24 CFR 965.308, technical criteria are significantly more important than the price of the IGEA in selection of the ESCo/ESP. Proposals will be evaluated and scored, up to a maximum total score of 100 points, on the basis of the following criteria:

1. Project Experience {Maximum 15 points}:

Points will be awarded based on demonstrated experience with similar projects and financing arrangements. Experience with similar projects will be understood to include IGEAs and other assessments described in this RFP, development of performance contracts, energy generation projects and equipment lease and purchase and financing arrangements, to furnish energy services in multifamily housing or commercial facilities of similar size, systems, and use. Experience with BAS SCADA.

2. Public Housing Experience {Maximum 15 points}:

Points will be awarded based on demonstrated experience with HUD's public housing requirements, HUD restrictions on encumbering public housing assets, utility allowances, the Moving to Work demonstration, HUD's EPC review process, rate reduction incentives, and the RAD demonstration

3. Staffing Plan, Technical Capacity, and Approach for Entire Project {Maximum 20 points}:

Points will be awarded based on documented technical and project administration skills, licensure, certification, experience and availability of the proposed project team. Only those individuals proposed to work directly on the subject project should be included in the Staffing Plan. Consistency of staff in the example projects and the proposed team will be ranked higher. Points will be awarded based the firm's technical capacity in all areas, including compliance with HUD requirements and BAS SCADA expertise,

and on the quality and comprehensiveness of the technical approach, the quality of the preliminary audit reports for two sites, sample energy audit, available data collection equipment and simulation software, description of the energy baseline methodology, description of measurement and verification methodology, and the preliminary assessment of the energy efficiency opportunities in the sample facilities.

4. Financial Capacity {Maximum 15 points}:

ESCO/ESP must demonstrate its financial capacity over the last 5 years, related to the ability to access commercially viable project financing. The ESCo/ESP must demonstrate its ability to obtain a long-term reliable source for financing its energy efficiency projects. The ESCo/ESP must be able to approach the banking industry to provide project-based lending to energy savings projects on a medium- to long-term basis. The ESCo/ESP must demonstrate a track record with examples and references of successfully implemented projects and innovative financing approaches. The ESCo/ESP must also demonstrate that it concentrates its service activities on qualified energy end-users and short payback periods that can generate revenue streams quickly. Any public housing authority projects in the ESCO/ESPs portfolio within the last 5 years that failed to achieve projected cost savings must be identified and explained.

5. Financial Terms {Maximum 10 points}:

Consideration will be given to proposals that responsibly maximize the net economic benefit to PHA over the term of the energy services agreement, and that responsibly minimize the risk to PHA in connection with the proposed transaction. Overhead costs will be evaluated for the value brought to PHA by the proposed approach to project implementation. The percentage of non-HUD incentives that will be allocated to PHA will be considered in evaluation of the financial benefits of the proposal. Points will be awarded based upon the form of IGEA Contract provided.

6. Proposed Project Schedule {Maximum 5 points}:

Proposals will be evaluated on the reasonableness, clear presentation, length and detail of the proposed project schedule and the interim milestones. The proposal should include descriptions of how the proposer intends to achieve the project schedule.

7. MBE/WBE Participation {Maximum 5 points}

The maximum points will be awarded for proposals that include substantial MBE/WBE participation in both the audit phase and the implementation phase.

8. Section 3 Participation {Maximum 5 points}:

All proposals must include a commitment to hire Section 3 residents and/or enter contracts with Section 3 business concerns at the levels mandated by applicable regulations. Up to 5 additional points will be awarded for proposals that include realistic commitments that Section 3 residents will comprise 30% of all new hires resulting from the services contracted for (and not fewer than 1 person) and/or Section 3 business concerns will be awarded subcontracts for at least 10% of the total value of services contracted for in both the audit and implementation phases.

9. Interview – additional points will be added to the scores of those ESCos/ESPs invited for interview, following the interview {Maximum 10 points}:

Interviews will be held with up to three top ranked ESCos/ESPs to obtain clarification on issues raised by earlier stages of the evaluation process, and to assess the qualifications of the project team and its ability to implement all tasks and responsibilities in a prompt and efficient manner. Scores assigned for proposals, under any category, may be amended based on information obtained during the oral interviews. The proposed project team should be made available during the oral interview to discuss their individual experience, as well as their specific role in this project.

H. PROPOSAL FORM

I, we _____ agree to perform the services requested in accordance with the attached Statement of Work for the following:

(i) IGEA and Other Audit Pricing:

IGEA price for all PHA Sites listed in Attachment A (excluding any RAD Sites that have been excluded from Attachment A before the proposal is submitted) which shall be inclusive of all requirements specified in this RFP and all soft costs, profit and overhead, , and will be the maximum amount paid whether or not an EPC is entered into with the ESCo; and a breakdown of each price quote by PHA Site for all items in the table below except G and J, and incremental price increase or reduction for each of the following optional services, assuming that all added GPNAs, Health and Environmental Assessments, RPCAs, Resiliency Assessments and BAS SCADA Assessment will be performed simultaneously with the IGEA for the designated sites:

Audit or Other Incremental Price Adjustor Type	Described In RFP Section	Basis	Price (\$) by Basis
(A) IGEA all PHA Sites, including generation, resiliency, BAS SCADA,	III.B and Attachment A (includes all non-LIHTC public housing sites, scattered sites, and non-residential use sites	Full Project Completion and Deliverables	
(B) Increase for Resiliency Assessment all PHA Sites in (A) above	I.C	Full Project Completion and Deliverables	
(C) Increase for Health and Environment Assessment all PHA Sites in (A) above			
(D) Increase for	III.B and	For all 24 LIHTC	

IGEA 24 LIHTC Sites	Attachment C	Sites, Full Project Completion and Deliverables	
(E) Increase for Resiliency Assessments all LIHTC Sites in (C)	I.C	Full Project Completion and Deliverables	
(F) Increase for Health and Environment Assessment all LIHTC Sites in (D) above			
(G) Deduct for RAD Sites excluded	II.H	Per individual housing unit	
(H) Increase for GPNA all PHA Sites in (A) above excluding non-housing uses	I.H	Full Project Completion and Deliverables	
(I) Increase for GPNA all LIHTC Sites	I.H	Full Project Completion and Deliverables	
(J) Increase for RPCA all RAD Sites	I.G	Per individual housing unit	Increase for RPCA

For each of the above, please also provide the man-hours and rates attributable to the audit tasks, subcontractor costs (if applicable), and direct costs that make up the proposed cost to complete.

(ii) Energy Performance Contract Pricing:

Show costs (A) through (J) as a percentage of <u>unburdened</u> construction cost.	
	Maximum Percentage (%)
(A) Designs and specifications (A/E Fees)	
(B) Administration	

(C) Cost of Risk	
(D) Commissioning	
(E) Guarantee	
(F) Construction Management	
(G) Hazardous Waste Administration	
(H) Staff Training	
(I) Other overhead (specify)	
(J) Profit	
<p>NOTE: The above categories (ii) (A) – (J) can be revised / extended by the ESCo/ESP through the proposal. Unclear descriptions will be considered not in the best interest of PHA. PHA will not pay for any additional costs above the unburdened construction cost that are identified in this proposal.</p>	

(iii) Ongoing Project Management Pricing:

Show costs (A) through (F) as a percentage of <u>unburdened</u> construction cost.	
	Maximum Percentage (%)
(A) Yearly energy savings measurement and verification costs:	
(B) 5-Year Operation, Maintenance and Warranty Services	
(C) Yearly resident training costs.	
(D) Other yearly service fees (specify):	
(E) Other overhead (specify)	
(F) Profit	
<p>NOTE: The above categories (iii) (A) – (F) can be revised / extended by the ESCo/ESP through the proposal. Unclear descriptions will be considered not in the best interest of PHA. PHA will not pay for any additional costs above the unburdened construction cost that are identified in this proposal.</p>	

References

Please provide the name, address and telephone number of three references for whom the offeror performed work substantially similar to that required by the solicitation. Performance surveys (included in package) must be completed and accompany bids responses in separately sealed envelopes.

1.

2.

3.

List all items, other than the required proposal form and certifications, included as part of the offeror's proposal:

Acknowledgement of Amendments

The offeror hereby acknowledges the receipt of and obligation to perform pursuant to the following addenda to this RFP:

Addendum No.	_____	dated	_____
Addendum No.	_____	dated	_____
Addendum No.	_____	dated	_____

Binding Contract

The offeror acknowledges and agrees that no contract shall exist until signed by both parties, except that Section F.3 (Proposal Security) shall be binding on the offeror in accordance with its terms prior to the execution of a contract. In addition, until an agreement is signed by both parties, PHA may rescind any recommendation of award and the offeror will be deemed to have waived any and all rights to obtain a contract with PHA or seek damages against PHA.

Name of Offeror: _____

Federal Tax Identification Number _____ (if applicable)

State of incorporation _____ (if applicable)

Philadelphia Business A/C Number _____ (if applicable)

Social Security Number _____ (if offeror is an individual)

Official Address: _____

Signature: _____

Print Name and Title: _____

Date: _____

Witness: _____

PLACE CORPORATE SEAL HERE

IF A CORPORATION

I. CERTIFICATIONS AND REPRESENTATIONS OF OFFERORS

1. Offeror's Certification Of Eligibility

- (a) By the submission of this proposal, the offeror certifies that to the best of its knowledge and belief:
- (i) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, is ineligible to be awarded contracts by any agency of the United States Government, HUD, or the State in which this Contract is to be performed;
 - (ii) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, is ineligible to participate in HUD programs pursuant to 24 CFR Part 24;
 - (iii) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of any State Government or of the City of Philadelphia or the Philadelphia Housing Authority from doing business with such Department or Agency for the period beginning 5 years prior to the date of this certification;
 - (iv) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has experienced default or noncompliance under any contract for the U.S. Department of Housing and Urban Development, or any other governmental agency with which it has contracts for the period beginning 10 years prior to the date of this certification;
 - (v) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has unresolved findings raised as a result of HUD audits, management reviews or any other Governmental investigations concerning the offeror or any person or firm which has an interest in the offeror's firm under any of the offeror's contracts;
 - (vi) There has not been a suspension or termination of payments under any HUD contract in which the offeror has a legal or beneficial interest attributable to the offeror's fault or negligence;
 - (vii) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has defaulted on an obligation covered by a bond and have not been the subject of a claim under any fidelity bond.

- (viii) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has been found by HUD or the Commonwealth of Pennsylvania to be in noncompliance with any applicable civil rights laws.
 - (ix) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, is a Member of Congress or a Resident Commissioner or otherwise prohibited or limited by law from contracting with the Philadelphia Housing Authority.
 - (x) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm is an officer or employee or commissioner of the Philadelphia Housing Authority who is prohibited or limited by law from contracting with the PHA.
 - (xi) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has been convicted of a felony and are not presently the subject of a complaint or indictment charging a felony. (A felony is any offense punishable by imprisonment for more than one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less.)
- (b) Statements above to which the offeror cannot certify (if any) have been deleted by striking through the words with a pen. The offeror has initialed each deletion (if any) and has attached a true and accurate signed statement (if applicable) to explain the facts and circumstances which qualify the offeror as a responsible offeror for participation in this project.
- (c) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the offeror knowingly rendered an erroneous certification, the Contract may be terminated for default, and the offeror may be debarred or suspended from participation in HUD and PHA programs and other Federal contract programs.

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

The offeror represents and certifies as part of its 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.

Certifying Agency & Certification Number (if applicable):

- (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.

- (i) 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

- (ii) Certifying Agency & Certification Number (if applicable):
-

3. 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 the possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

4. Contingent Fee Representation and Agreement

- (a) The offeror represents and certifies as part of its offer that, except for full-time bona fide employees working solely for the offeror, the offeror:
- (i) has, has not employed or retained any person or company to solicit or obtain this Contract; and
- (ii) 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 offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.
- (c) Any misrepresentation by the 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.

5. Certificate of Independent Price Determination

- (a) The offeror certifies that –
 - (i) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit a offer, or (iii) the methods or factors used to calculate the prices offered;
 - (ii) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other 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
 - (iii) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory:
 - (i) Is the person in the 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)(i) through (a)(iii) above; or
 - (ii)
 - (1) 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)(i) through (a)(iii) above (insert full name of person(s) in the offeror’s organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror’s organization):

- (2) 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)(i) through (a)(iii) above; and
- (3) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(i) through (a)(iii) above.
- (c) If the offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.
- (d) The offeror further certifies that he/she has not been convicted or found liable for any act prohibited by state or federal law involving conspiracy or collusion with respect to proposing or bidding on any public contract within the last three years. Such act or conviction does not automatically disqualify an offeror, but may be grounds for administrative suspension or grounds for consideration by PHA as to whether PHA should decline to award a contract to such an offeror on the basis of a lack of responsibility. If offeror has been convicted of any act prohibited by State or Federal law involving collusion with respect to proposing or bidding on any public contract within the past three years, offeror should attach an explanation of the circumstances surrounding that conviction.
- (e) [check if following paragraph is applicable]

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

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

- (ii) A fully executed “Non-collusive Affidavit” [] is, [] is not included with the bid. (See page I-12 for Affidavit form).

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

- (a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its proposal, hereby certifies to the best of his or her knowledge and belief as of _____, 20__, that:
 - (i) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;
 - (ii) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the proposer shall complete and submit, with its proposal, OMB standard form LLL, “Disclosure of Lobbying Activities;” and
 - (iii) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
 - (iv) Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

7. Certification Of Non-segregated Facilities (applicable to contracts exceeding \$10,000)

- (a) The offeror’s attention is called to the clause entitled “Equal Employment Opportunity” of Section I of the Terms and Conditions of the Contract.

- (b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.
- (c) By the submission of this proposal, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the Contract.
- (d) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will
 - (i) Obtain identical certifications from the proposed subcontractors;
 - (ii) Retain the certifications in its files; and
 - (iii) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF
REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED
FACILITIES.**

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

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

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

The offeror certifies that (check the block applicable):

- (a) Any facility to be used in the performance of this Contract [] is [] is not listed on the Environmental Protection Agency List of Violating Facilities:
- (b) The offeror will immediately notify the PHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the offeror proposes to use for the performance of the Contract is under consideration to be listed on the EPA List of Violating Facilities; and,
- (c) The offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

9. Drug-Free Workplace Certification

By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds \$10,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, other than a contract for the procurement of commercial items, it will - no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed -

- (a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (b) Establish an ongoing drug-free awareness program to inform such employees about:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Provide all employees engaged in the performance of the Contract with a copy of the statement required by subparagraph (a) of this provision;
- (d) Notify such employees in writing in the statement required by subparagraph (a) of this provision that, as a condition of continued employment on the Contract resulting from this solicitation, the employee will:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) calendar days after such conviction;
- (iii) Notify the Contracting Officer in writing within ten (10) calendar days after receiving notice under Subdivision (d)(2) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and
- (iv) Within thirty (30) calendar days after receiving notice under subdivision (d)(2) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (1) Take appropriate personnel action against such employee, up to and including termination; or
 - (2) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- (e) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (a) through (d) of this provision.
- (f) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.
- (g) In addition to other remedies available to the PHA, the certifications required by this provision concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under title 18, United States Code, section 1001.

10. PHA Fraud Policy

The offeror certifies that he/she has read the following PHA Fraud Policy, will adhere to it, and is aware of the penalties for failure to comply:

- (a) For purposes of this policy, and in concurrence with the PHA Office of Inspector General's (OIG) mandate, "fraud" includes: fraudulent activity by any person employed by or contracting with the PHA; bribery and official

corruption; theft of PHA funds, property or benefits; and serious breaches of integrity. Some examples of activities covered include: extortion/extortion attempts by PHA employees or officials; acceptance or solicitation of bribes; submission of fraudulent documents; employee collusion with contractors or vendors; material misstatements of facts in contracts or documents, relating to services performed or materials provided; bid rigging; and disclosure of confidential information.

(b) Covered Parties

- (i) All PHA employees and officials.
- (ii) All contractors, subcontractors, vendors and consultants doing business with the PHA -

NOTE: Contractors are responsible for compliance with this Fraud Policy by their subcontractors.

- (iii) All owners of housing who receive subsidies from PHA.
- (iv) Any other individual or entity doing business with or seeking to do business with the PHA.

(c) Responsibilities

- (i) All “covered” parties” must report any type of fraud when they become aware of such activity, and they must cooperate fully with the OIG in any ensuing investigation.
- (ii) “Fraud” must be reported to a representative of the PHA’s OIG, 1101 Market Street, Suite 1320, Philadelphia, PA 19107, (215) 684-8300.
- (iii) Management officials will support the Fraud Policy and ensure compliance with this policy by persons they supervise, and/or individuals and business entities that they deal with.

(d) Penalties For Failure To Report Fraud

Penalties for failure to timely report fraud can include: loss of contract and/or debarment from future contracts by contractors, subcontractors, vendors, and any other individual or entity doing business with the PHA; and other action deemed appropriate by PHA officials.

(e) Confidentiality

All information reported to the OIG is confidential, and the identity of those reporting information to the OIG will be protected.

(f) Whistle Blower Protection

- (i) Anyone who provides information to the OIG may not be discharged, demoted or otherwise subject to any adverse action as a result of reporting wrongdoing. Any person who retaliates against someone for reporting wrongdoing may be subject to civil liabilities and penalties.
- (ii) PHA Management supports the position that “whistle blowers” will be protected and commended for their honesty and dedication to the PHA.

(g) Authorized Negotiators

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):

11. Offeror’s Signature

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the information contained in the foregoing certifications and representations is true and correct.

Signature & Date

Typed or Printed Name

Title

NON-COLLUSIVE AFFIDAVIT
(required if Certification & Representation Clause 5(e) is selected)

State of _____

County of _____

_____, being first sworn, deposes and

says: That he/she is _____ (president, sole owner, partner,

etc.) of _____ (firm name) the party making the forgoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that no one conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of the affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, to secure any advantage against the Philadelphia Housing Authority or any person interested in the proposed contract: and that all statements in said proposal or bid are true.

By _____

Title _____
(Affix Corporate Seal if required)

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

My commission expires _____

(Notary Seal Required)

PHILADELPHIA HOUSING AUTHORITY
SECTION J
AFFIRMATIVE ACTION SECTION

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PART I: GENERAL

1.1 POLICY

As a requirement for receiving federal funds, the U.S. Department of Housing and Urban Development ('HUD') requires that the Philadelphia Housing Authority (hereinafter 'Authority') implement an Affirmative Action Contract Compliance Program under Executive Order Nos. 11246, 12432, 12138, 11625, to promote the development of certified Minority Business Enterprises (hereinafter 'MBE'), and certified Women Business Enterprises (hereinafter 'WBE'). This program will also comply with the requirements of Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 d & e, as amended, and HUD Regulations 24 C.F.R. § 85.36(e).

The Authority by this policy affirms its commitment to maximize the utilization of certified MBEs/WBEs in Authority contracts and subcontracts. To this end, the Authority will provide such assistance as will be needed to achieve this goal.

The aim of this policy is to discover and deter any present discrimination by bidders who seek contracts with the Authority. MBE/WBE minimum participation goals (hereinafter 'MPGs') shall be used as a screening device to determine whether discrimination may have occurred. Minimum goals of MBE/WBE participation will be indicated for each contract in the bid documents, and will be based upon availability of certified MBEs/WBEs. The MPGs are a means of determining whether or not a contractor shall be presumed to have engaged in discrimination. If the information furnished is below the MPGs, the bid package shall be subject to further review, in accordance with criteria set forth in this policy, to determine whether or not there was actual discrimination.

1.2 APPLICABILITY

This program shall apply to all nonexempt contracts awarded by the Authority which are connected with federally funded or federally assisted programs. Exemptions are more fully described in Part VI of this program.

1.3 DEFINITIONS

- A. **AAO:** Affirmative Action Officer, Director of the Authority's Affirmative Action Department.
- B. **Authority:** Any department, division, unit or office of the Philadelphia Housing Authority, including the Board of Commissioners.

- C. **BIDS:** A quotation, proposal, solicitation or offer by a Bidder or a Proposer to provide labor, materials, equipment, supplies or services to the Authority.
- D. **BIDDER:** Any person or entity that submits a quotation, bid or proposal to provide Labor, materials, equipment, supplies or services to the Authority.
- E. **BIDDER/PROPOSER AFFIRMATIVE ACTION IMPLEMENTATION PLAN:** Schedule of Participation and Binding Commitments Form and other documents submitted by Bidder /Proposer to support their Affirmative Action Plan. These submissions become an enforceable provision of the awarded contract.
- F. **CERTIFIED:** Any business that has, after application to a recognized certifying agency, been determined to be owned, controlled and managed by minority(s), women, or disadvantaged person(s).
- G. **CERTIFYING AGENCY:** Federal, state, local governmental or quasi-governmental agencies or authorities authorized by law to certify MBE/WBE's qualifications in terms of ownership, management and control.
- H. **COMPLIANCE:** A contractor or subcontractor who performs under an Authority contract in accordance with this Affirmative Action Contract Compliance Program shall be determined to be in compliance.
- I. **CONTRACTS:** Any Authority contract which is covered by this Affirmative Action Contract Compliance Program, whether competitively bid or negotiated, including contracts in the following areas:
 - 1. **VENDING:** for Material, Equipment, Services, and Supplies.
 - 2. **CONSTRUCTION:** for all types of construction; and
 - 3. **PERSONAL AND PROFESSIONAL SERVICES.**
- J. **DEBARMENT:** Exclusion from Authority contracting or subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure or the inadequacy of performance.
- K. **DISCRIMINATION:** Any action or pattern of disparate treatment experienced in the solicitation for bids/proposals or in the award of a contract/subcontract because of: Race, Color, Sex, National Origin, Disability, or Religion.
- L. **EXEMPTION:** Any bid/proposal in which the minimum participation goal(s) have been excluded.

- M. JOINT VENTURE:** A contractual partnership between the prime contractor and a certified minority-owned business enterprise and/or a certified women-owned business enterprise, which must be executed prior to the submittal of the bid/proposal.
- N. MINIMUM PARTICIPATION GOAL (MPG):** The level of participation of certified MBE/WBEs set by the AAO. MPGs shall reflect the availability of certified MBE/WBEs in the subject area, and the level, which should be attained absent discrimination. MPGs are stated as a percentage. A Bidder/Proposer will not be rejected as not responsible solely because they fail to reach the MPGs.
- O. MINORITY BUSINESS ENTERPRISE (MBE):** A business enterprise certified as a Minority Owned Business that is owned, managed and controlled by one or more socially or economically disadvantaged person(s). Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such person(s) include, but are not limited to: Blacks/African-Americans, Puerto Ricans and other Hispanics, American Indians/Native Americans, Eskimos, Aleuts, Hasidic Jews, Asian Pacific Americans, and Asian Indians.
- P. OWNED, MANAGED AND CONTROLLED:** Possession of at least fifty-one percent (51%) of the ownership of the business. Management and control of the daily for profit business operation or nonprofit organization held by one or more persons who are classified as a member of a minority group or a woman, as defined herein.
- 1 Q.PRIME CONTRACTOR/CONTRACTOR/BIDDER OR PROPOSER:** Any person or business entity that is a party or potential party to a contract with the Authority.
- R. RESPONSIBLE:** The Bidder's/Proposer's submissions of a written commitment to meet or exceed the MPG set forth in the bid, or in the absence of meeting or exceeding the MPG, a full and complete explanation therefore in accordance with this program.
- S. RESPONSIVENESS:** The Bidder's/Proposer's submission of (in addition to the submission of any other required documentation), documentary evidence of certified MBE/WBEs who have been contacted and who are to be used on the contract. Documentation must be submitted with the bid/proposal and failure to submit evidence of "Best Efforts" and binding commitments will result in rejection of the bid/proposal and a determination made of non-responsiveness.

- T. WOMEN BUSINESS ENTERPRISE: A business enterprise certified as a Woman Owned Business that is owned controlled and managed by a woman.**

1.4 CERTIFICATION – A LEGITIMATE MBE/WBE

- A. To ensure that only businesses which are owned, managed and controlled in both form and substance by MBE/WBEs are participating in the Authority’s Affirmative Action Contract Compliance Program. MBE/WBE businesses, including joint ventures and nonprofit organizations, must be certified by a governmental entity authorized to certify such enterprises.**
- B. MBE/WBE certification shall not be determinative of a Bidder’s or Contractor’s financial or technical ability to perform specified work. The Authority reserves the right to evaluate the Bidder’s/Proposer’s, Contractor’s or Subcontractor’s ability to satisfy financial, technical or other criteria separate and apart from certification before or after bid opening.**
- C. The Authority recognizes that certified MBE/WBEs might be de-certified by the certifying governmental entity. Any business, which has been de-certified, shall not participate in the Authority’s Affirmative Action Contract Compliance Program.**
- D. The Authority reserves the right, if there is cause, to refuse a certification provided by a certifying agency.**

1.5 SUBSTITUTION OF CERTIFIED MBE/WBEs

Commitments to certified MBE/WBE firms made at the time of bidding must be maintained throughout the term of the contract, unless a change in commitment is pre-approved by the Authority’s AAO. If at any time after a bid/proposal is opened by the Authority, a Contractor is unable to meet the obligations of the Contractor’s Affirmative Action implementation Plan, as indicated on the Schedule of Participation and Binding Commitments Form, such Contractor may be required to present for approval to the AAO a substitute implementation Plan.

1.6 GUIDELINES FOR JOINT VENTURING

Joint Venture partnership(s) with either a certified MBE or a certified WBE must meet the following criteria in order to receive credit towards the minimum participation goals (MPGs):

- A. The MBE/WBE partner(s) must be certified by a governmental entity authorized by law to certify such enterprises prior to bid/proposal submittals.**

- B. The MBE/WBE partner(s) must be substantially involved in all phases of the contract including, but not limited to, the performance, with its own work force, a portion of the onsite work, and administrative responsibilities such as bidding, planning, staffing and daily management.**
- C. The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interests).**
- D. If the certified partner(s) is a MBE, its participation may be credited to the extent of the partner's ownership interest in the joint venture, however, it will still be required to meet the WBE goal or vice versa.**

1.7 CONTRACT LANGUAGE

Authority contracts subject to these procedures shall include language providing that compliance with MBE/WBE provisions have been met, and cooperation with the Authority on contractual matters is material to the Authority's contract. The successful Bidder's/Proposer's Affirmative Action Plan submissions will become an enforceable provision of the contract. Failure to comply with the Authority's Affirmative Action Contract Compliance Program or otherwise comply with the Bidder's/Proposer's submissions, may be grounds for a finding of contractor non-responsibility.

1.8 AMENDMENT

These procedures may be amended as may be necessary. Any amendment shall become effective upon the approval and adoption by the Philadelphia Housing Authority Board of Commissioners.

1.9 SEVERABILITY

The provisions of these procedures are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of these procedures, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of the procedures or their application to other persons.

5 PART II: RESPONSIBILITIES

2.1 AFFIRMATIVE ACTION OFFICER

The AAO reports directly to the General Manager of Contracts/Procurement for the Philadelphia Housing Authority. The AAO is authorized and shall perform functions, which include, but are not limited to:

- A. Establish or modify minimum participation goals (MPGs) for Authority contracts based upon the dictates of market availability of certified MBE/WBEs and/or applicable laws and regulations to perform various elements of the contract.
- B. The AAO will engage in the review of bid/proposal packages to ensure that the packages provide maximum opportunity for certified MBE/WBE participation and shall have the authority to recommend approval or disapproval of any bid package to ensure compliance with this program.
- C. Attend all Pre-bid and Pre-construction meetings.
- D. Monitor and audit contractor's performance including site and business office visits to ascertain whether the contractor has discriminated or has practices which have had a disparaging or discriminating effect, and to determine that the certified MBE/WBE is performing its function in accordance with authorized standard industry practices.
- E. Maintain participation records and prepare periodic reports that include, but are not limited to the following data:
 - 1. A summary of contracts awarded specifying the percentage of participation.
 - 2. A survey comparing past and current contract participation goals of certified businesses.
 - 3. Any relevant recommendation that may enhance efficiency and effectiveness of the Affirmative Action Contract Compliance Program.
- F. For Comprehensive Improvement Modernization Program (hereinafter "CIAP") funded contracts, prepare and report the Authority's MBE/WBE progress on HUD Form #2516 – Contract and Subcontract Activity Report for Public and Indian Housing Programs.
- G. Receive, document and evaluate complaints relative to violations of the Affirmative Action Contract Compliance Program.

H. Report findings of discrimination, in writing, to the Executive Director through the General Manager of Contracts/Procurement.

I. Interact with city, state, and federal agencies involved in the administration of certified MBE/WBE programs.

2.2 CONTRACTING OFFICER

A. SOLICITATION – The Authority’s Contracting Officer shall actively solicit certified MBE/WBEs to compete for contracting opportunities as Prime/General Contractors.

B. REPORTS – The Affirmative Action Officer shall gather information required to prepare various reports that detail:

1. The original total dollar amount of each contract awarded according to the categories of vending, construction, personal services and professional services, including the total dollar amount of each contract resulting from any contract amendment or change orders subsequent to award.

2. The original total dollar amount of each contract awarded to each certified MBE/WBE as a Prime/General Contractor, as well as the actual dollar amount of each contract including contract amendments or change order(s).

2.3 COORDINATION WITH CONTRACT CONTROL SPECIALISTS

A. The AAO shall coordinate with the Contract Control Specialist for information as may be required in the performance of the AAO function. Such information may include, but is not limited to:

1. Explanation of the elements of the work to be performed under a contract.

2. A reasonable estimate of costs, type(s) and quantity of supplies, materials and equipment required for performance under a contract.

3. A reasonable estimate of employees and their classifications required for performance under a contract.

B. The Authority’s Contracting Officer shall also do the following, with or without coordination with the AAO:

- 1. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by certified MBE/WBEs.**
- 2. Establish delivery schedules, where the requirement permits, which encourage participation by certified MBE/WBEs.**
- 3. Use the services and assistance of the Small Business Administration and Minority Business Development Agency of the Department Commerce.**

**6 PART III: BIDDER/PROPOSER AFFIRMATIVE ACTION
IMPLEMENTATION PLAN**

3.1 GENERAL REQUIREMENTS

Each Bidder's/Proposer's Affirmative Action implementation Plan shall include the following:

- A. The business name, address, contact person, telephone number, certification number, certifying agency(s), and Internal Revenue Service Employer's Identification Number (E.I.N.).**
- B. A description of the work that will be performed by each designated contractor/subcontractor.**
- C. The date of solicitation, contact person's name, whether contact was by phone or mail, and if a quote was received from the designated MBE/WBE.**
- D. Confirmation of commitment made as to the level of certified MBE/WBE participation described as a percentage of the total base contract proposal dollar amount and percentage of commitments.**
- E. If no commitment is made to meet or exceed the stated MPGs, the Bidder/Proposer must provide documentation that the following steps were taken:**
 - 1. Requested and attended a briefing and information meeting with the Authority staff designed to explain the Affirmative Action Contract Compliance Program pertaining to certified MBE/WBE participation.**
 - 2. Advertised in general circulation, media, trade association publications, and minority/women-focused media concerning subcontracting and supplier opportunities.**
 - 3. Participated in Authority sponsored conferences and seminars designed specifically for the promotion of the Authority's Affirmative Action Contract Compliance Program pertaining to certified MBE/WBE participation.**
 - 4. Notified certified MBE/WBEs and solicited their participation in the reference contract. The names, addresses, telephone numbers, and contact persons of the firms notified must be provided.**

- 5. Provided complete information about plans, specifications, and requirements of the contract to interested certified MBE/WBEs.**
 - 6. Made reasonable efforts to negotiate with certified MBE/WBEs for specific sub-bids. All such contacts must be fully documented. If a sub-bid of a certified MBE/WBE is rejected, the Bidder/Proposer must document and explain the reason for the rejection. Rejection based solely on the initial response from a certified MBE/WBE will not be sufficient to establish non-discrimination and “Best Efforts” toward compliance.**
- F. Attest to the fact that the certified MBE/WBE will perform work, which is necessary and required for contractor to fulfill their obligation under the applicable contract and specification.**

7 PART IV: CONSTRUCTION CONTRACT AFFIRMATIVE ACTION
8 IMPLEMENTATION PLAN

4.1 MINIMUM PARTICIPATION GOALS

The AAO shall set MPGs for Specifications/Contracts/Request for Proposals.

(MODERNIZATION FUNDS)

The MPGs which have been set by the AAO as of the date of implementation of this program, are and shall be, until or unless they are revised, as follows:

<u>MBE</u>	<u>WBE</u>
20%	10%

- A. A Bidder/Proposer will not be rejected as non-responsive solely because they fail to reach the MPGs. However, a contractor may be considered not responsive if the MPGs are not met and no acceptable justification is offered for a lack of compliance.
- B. When a firm/company contracts with an enterprise that is both a certified MBE and a certified WBE, credit toward the MPG will be received for one category only. Bidders/Proposers shall indicate in their plan which category is being credited.
- C. A certified MBE/WBE firm bidding as a prime/general contractor shall still be required to submit an Affirmative Action Implementation Plan. However, where the primary contract is awarded to either a certified MBE or a certified WBE the Authority shall count the entire dollar amount of the contract towards meeting the MPG.
- D. Certified MBE/WBE subcontractors shall perform at least seventy-five percent (75%) of the cost of the subcontract, not including cost of materials, with their own employees. This provision shall not apply to suppliers or distributors.

4.2 CONSTRUCTION CONTRACT BIDDER/PROPOSER RESPONSIVENESS

- A. Bidders/Proposers must submit information indicating certified MBE/WBE firms, which have been solicited, quotes that have received (solicited and unsolicited), and firms to which commitments have been made. Documentation of such solicitations, quotes, and commitments must be submitted concurrently with the bid/proposal. Failure to submit the required information is sufficient cause for rejection of the bid as non-responsive.
- B. Mailings to large numbers of certified MBE/WBEs which are intended to provide notice of a contractor's interest in bidding on a construction

contract will not be deemed solicitation, but will be treated as informational notification only.

- C. A Bidder/Proposer should only solicit certified MBE/WBE subcontractors, manufacturers or supplies whose work, materials or supplies are within the project scope and are related to project line items or portions thereof, and which the Bidder/Proposer reasonable believes it will choose to subcontract with or purchase from.
- D. Bidders/Proposers failing to meet the MPGs must submit concurrently with the bid submissions, the information required under Part III, Section E, of the Affirmative Action Contract Compliance Program.

4.3 CONSTRUCTION CONTRACT BIDDER/PROPOSER RESPONSIBILITY

The submittals of each Bidder/Proposer are subject to review to determine whether the Bidder/Proposer has discriminated in the selection of manufacturers, subcontractors or suppliers, or has taken affirmative steps in the utilization of certified MBE/WBEs to ensure compliance with this policy. If a Bidder/Proposer has met the MPGs, the Authority's Contracting Officer may presume that the Bidder has not discriminated in its selections. A Bidder/Proposer who fails to meet the MPGs shall satisfactorily provide the documentation set forth in Part III, Section E, of this program. The AAO shall perform a review of the submitted documentation to determine whether discrimination has occurred. If appropriate, the AAO may invoke the provisions of Part VII, Section 7.3 (Willful Non-Compliance) and recommend sanctions contained therein.

**9 PART V: VENDING AND PERSONAL/PROFESSIONAL
SERVICES CONTRACT AFFIRMATIVE ACTION
IMPLEMENTATION PLAN**

5.1 MINIMUM PARTICIPATION GOALS

The AAO shall set MPGs for Specifications/Contracts/Request for Proposals.

(MANAGEMENT FUNDS)

The MPGs which have been set by the AAO as of the date of implementation of this program, are and shall be until or unless they are revised, as follows:

<u>MBE</u>	<u>WBE</u>
10%	10%

- A. A Bidder/Proposer will not be rejected as non-responsive solely because they fail to reach the MPGs. However, a contractor may be considered non-responsible if the MPGs are not met, and they are not in compliance with Part III, Section E.
- B. When a firm/company contracts with an enterprise that is both a certified MBE and a certified WBE, credit toward the MPG will be received for one category only. Bidders/Proposers shall indicate in their Plan which category is being credited.
- C. A certified MBE/WBE firm bidding as a prime contractor shall still be required to submit an Affirmative Action Implementation Plan. However, where the primary contract is awarded to either a certified MBE or a certified WBE the Authority shall count the entire dollar amount of the contract towards meeting the MPG.

**5.2 VENDING AND PERSONAL/PROFESSIONAL SERVICES CONTRACT
AFFIRMATIVE ACTION BIDDER/PROPOSER RESPONSIVENESS**

- A. Bidders/Proposers must complete and submit with the bid/proposal, certified MBE/WBE Schedule of Participation and Binding Commitments Form. Failure to submit these forms with the bid/proposal may result in the bid being rejected as non-responsive.
- B. Mailings to large number of certified MBE/WBE's which are intended to provide notice of a contractor's interest in bidding on a vending and personal/professional service contract will not be deemed solicitation, but will be treated as informational notification only.
- C. A Bidder/Proposer should only solicit certified MBE/WBE subcontractors, vendors, manufacturers or suppliers whose services, materials or supplies are

within the scope of work bidded on, and which the Bidder/Proposer reasonably believes it will choose to subcontract with or purchase from.

- D. Bidders/Proposers failing to meet the MPGs must submit concurrently with the bid submissions the information required under Part III, Section E, of the Affirmative Action Contract Compliance Program.

5.3 VENDING AND PERSONAL/PROFESSIONAL SERVICE CONTRACT AFFIRMATIVE ACTION BIDDER/PROPOSER RESPONSIBILITY

The submittals of each Bidder/Proposer are subject to review to determine whether the Bidder/Proposer has discriminated in the selection of manufacturers, subcontractors or suppliers, or has taken affirmative steps in the utilization of certified MBE/WBEs to ensure compliance with this policy. If a Bidder/Proposer has met the MPGs, the Authority's Contracting Officer may presume that the Bidder/Proposer has not discriminated in its selections. A Bidder/Proposer who fails to meet the MPGs shall satisfactorily provide the documentation set forth in Part III, Section E, of this program. The AAO shall perform a review of the submitted documentation to determine whether discrimination has occurred. If appropriate, the AAO may invoke the provisions of Part VII, Section 7.3 (Willful Non-Compliance) and recommend sanctions contained therein.

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14 PART VI: EXEMPTIONS

6.1 EXEMPTED CONTRACTS

The Authority recognizes that in certain limited circumstances, compliance with this Affirmative Action Contract Compliance Program will not be feasible, nor in the best interest of the Authority or its residents. With the approval of the Executive Director, Contracting Officer and the Affirmative Action Officer, the following contracts may be exempted:

- A. A vending contract, for equipment, materials, services and supplies where the total dollar amount of the contract is less than Ten Thousand Dollars (\$10,000.00).
- B. A construction contract where the total dollar amount of the contract is less than Ten Thousand Dollars (\$10,000.00).
- C. A professional or personal services contract where the total dollar amount of the contract is less than Ten Thousand Dollars (\$ 10,000.00).
- D. Any public exigency or emergency contract where the nature of the emergency will not allow for a delay, which would occur from competitive solicitation.

15 PART VII: COMPLIANCE REVIEW

7.1 STANDARDS FOR REASONABLE CAUSE:

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AFTER A CONTRACT HAS BEEN AWARDED

- A. The AAO may find that a Contractor is not in compliance with contract requirements for reasons, which include, but are not limited to:
1. Documentation of information furnished by the contractor, which does not demonstrate that, a certified MBE/WBE is performing the work actually contracted.
 2. Failure or refusal by a contractor to furnish information requested by the Authority.
 3. Discovery of information, which is contrary to compliance information previously submitted by the contractor.
 4. Contractor's failure, neglect or refusal to pay certified MBE/WBE subcontractor(s) for completed and approved work within seven (7) working days after payment by the Authority to the contractor.
 5. Other facts discovered by the Authority's AAO.
- B. Whenever the AAO determines it has reasonable cause to believe that a contractor is not in compliance or that the contractor has discriminated against certified WBE/MBEs, the AAO shall promptly prepare a written notice to be signed by the Contracting Officer and sent by certified mail to the contractor. The notice shall state the reasons for the AAO's belief that the contractor is not in compliance and/or has discriminated against certified MBE/WBEs. In response to said notice, the contractor shall be required to show cause within seven (7) working days why it should not be found:
1. In breach of contract, or
 2. To have discriminated against certified MBE/WBEs.
- C. Based upon information supplied by the contractor, if any, and other documentation and/or information, and with the approval of the General Manager of Contracts/Procurement, the AAO shall proceed expeditiously with an investigatory, evaluative review to clarify the allegations. In the event that the allegations are found to be valid by the AAO, said officer shall notify the Contracting Officer and Executive Director who shall send notification of such finding(s) to the contractor setting forth the appropriate remedial action.

7.2 GOOD FAITH NON-COMPLIANCE

- A. In cases where the AAO has cause to believe that a contractor, acting in good faith, has failed to comply with the provisions of the procedures, the AAO with the assistance and involvement of the Authority's Contracting Officer shall attempt to resolve the non-compliance through conciliation and persuasion.**
- B. In conciliation, the contractor must satisfy the Authority that they have made their "Best Efforts" to achieve the agreed upon participation goals by certified MBE/WBEs. "Best Efforts" on the part of the contractor include:**
 - 1. Entering a contractual relationship with the designated MBE/WBE in a timely manner, and fulfilling all contractual requirements.**
 - 2. Notifying both the certified MBE/WBEs subcontractor and the Authority's AAO of any problems in a timely manner.**
 - 3. Requesting assistance from the AAO in resolving any problems with certified MBE/WBEs.**
 - 4. Making every reasonable effort to assist the certified MBE/WBE in the performance of its contract with the Authority.**

7.3 WILLFUL NON-COMPLIANCE

- A. In cases where the AAO has cause to believe that any Bidder, Proposer, or Contractor has failed to comply with the provisions of these procedures, said officer shall be empowered to conduct an investigation subsequent to written direction of the General Manager of Contracting/Procurement.**
- B. After affording the Bidder, Proposer or Contractor notice and an opportunity to be heard, the AAO will be authorized to recommend sanctions for each violation of these procedures. Such sanctions may include, but are not limited to:**
 - 1. Declare the bid or proposal as non-responsible and the Bidder/Proposer ineligible to receive the award of the contract or any other future contracts.**
 - 2. Suspension from doing business with the Authority for a set period of time.**
 - 3. Debarment.**
 - 4. Withholding of payments under the contract.**
 - 5. Other relief the AAO deems necessary, proper, and in the best interest of the Authority.**

PART VIII: APPEALS

**8.1 STANDARDS OF APPEAL:
AFTER THE CONTRACT HAS BEEN AWARDED**

A Bidder, Proposer, or Contractor may appeal a decision pursuant to any action taken under the provisions of Part VII: Compliance Review, by filing a written grievance with the AAO. An appeal by the Bidder, Proposer or Contractor under this section shall not stay the AAO's finding(s).

8.2 WRITTEN GRIEVANCE

- A. The grievance shall set forth the reasons supporting it. The grievance shall be filed within ten (10) working days of the date that the finding, recommendation, proposal or other relief becomes effective. Failure to grieve in a timely manner shall be deemed a waiver of said right or breach of the conditions of this policy.**
- B. If a person requests a hearing at the time the grievance is filed, the AAO shall schedule a hearing within seven (7) working days of the date the grievance is filed, unless the person requesting a hearing agrees to a continuance provided it is not contrary to best interest of the Authority to permit the delay. The AAO shall notify in writing, the person filing the grievance, of the date, time and place of the hearing.**
- C. If a hearing is not requested, the AAO shall make a determination and notify the contractor within (7) working days.**

8.3 HEARING

Five (5) working days prior to a scheduled hearing, the AAO shall issue and serve a written notice, together with a copy of the grievance as filed, to all persons named in the grievance. Such persons may be required to appear before a hearing panel at the date, time and place specific in the notice.

8.3.1 PANEL

- A. The Executive Director shall designate a panel of three (3) or more individuals, one (1) of whom will be a member of the Affirmative Action Oversight Committee, to preside at such hearing, and to render a written decision on the grievance.**
- B. A party may request testimony from any person when it is determined that such testimony may assist in the resolution of the grievance. All proceedings will be transcribed and a record shall be maintained.**
- C. Any person or heads of departments named in the grievance may file a written answer to the grievance, and may appear at such hearing in person.**
- D. The panel shall not be bound by the strict rules of evidence prevailing in the courts of law or equity.**

8.3.2 TESTIMONY

- A. The testimony taken at the hearing shall be under oath.**
- B. The parties have a right to request that the notes of testimony be transcribed.**
- C. Testimony shall be taken by the panel and the person filing the grievance and person (s) and heads of departments named in the grievance shall be given an opportunity to be heard.**

8.4 DECISION

- A. Within twenty (20) working days after the conclusion of the hearing, the panel shall render a written decision as to the validity of the grievance, as well as an appropriate recommendation.**
- B. A copy of the decision shall be sent by U.S. certified mail, returned receipt requested, to the grievant.**

8.5 EFFECT OF A PENDING DECISION

Pending a decision by the panel, the Philadelphia Housing Authority's Executive Director may stay any action pertaining to the grievance, if such stay is determined to be in the best interest of the Authority.

The Philadelphia Housing Authority Board of Commissioners shall appoint an Affirmative Action Oversight Committee to monitor and evaluate the implementation and administration of the Affirmative Action Contract Compliance Program. The Oversight Committee shall have as its membership, at least one (1) member of the Board of Commissioners, Executive Director, General Counsel, and other individuals from the Authority's community at large. The Committee will prepare periodic reports for the Board and address related issues as requested by the Board of Commissioners.

**SCHEDULE OF PARTICIPATION
"CERTIFICATION OF BEST EFFORTS"**

Specification Number: _____

Name of Bidder: _____

MBE/WBE	Detailed Description of Work	M/WBE PARTICIPATION		
		DOLLAR AMOUNT \$	MBE%	WBE%
NAME: ADDRESS: PHONE NO: IRS ID#: CERT. NO.: CERT. AGCY:	<p align="center"> YES NO <input type="checkbox"/> <input type="checkbox"/> Will any of this work be subcontracted by the M/WBE? (See Note #3) <input type="checkbox"/> <input type="checkbox"/> Will bidder assist M/WBE with any of this work? (See Note #4) </p>			
NAME: ADDRESS: PHONE NO: IRS ID#: CERT. NO.: CERT AGCY:	<p align="center"> YES NO <input type="checkbox"/> <input type="checkbox"/> Will any of this work be subcontracted by the M/WBE? (See Note#3) <input type="checkbox"/> <input type="checkbox"/> Will bidder assist M/WBE with any of this work? (See Note #4) </p>			

DUPLICATE THIS FORM IF YOU ARE LISTING MORE THAN TWO (2) M/WBE SUBCONTRACTORS

PLEASE NOTE:

1. A binding commitment must have been achieved with the M/WBE for the detailed work and dollar amount stated on this form.
2. M/WBE listed above must be certified by a certifying agency in order to be credited towards the required minimum participation goals.
3. If the M/WBE intends to subcontract more than 10% of the work detailed on this form, such subcontractors, description of work, and dollar amount must be listed on a duplicate copy of this form.
4. If the bidder plans to supply the M/WBE with materials, personnel or equipment, such assistance must be listed on this form in the block marked "Detailed Description of work."
5. Any change to this schedule (the named M/WBE, description of work, or dollar amount) must be approved in advance by the Affirmative Action Officer (AAO).

DOCUMENTATION OF BEST EFFORTS

**Specification
Number:** _____

**Name
of Bidder:** _____

**CERTIFIED MINORITY/WOMEN OWNED BUSINESSES
UNAVAILABLE TO PARTICIPATE IN THE CONTRACT.**

List below the name of all certified minority/women owned businesses whose interest in the contract were solicited, but who were unavailable to work on this project or were unable to prepare a quote. State the reasons for the unavailability of certified minority/women owned businesses. In order to facilitate verification and avoid delays in contract awards, it is requested that each business listed below be identified on the "Affidavit of Unavailability of Certified Minority/Women Owned Businesses" (Page K-28).

**INFORMATION AND ASSISTANCE PROVIDED TO CERTIFIED
MINORITY/WOMEN OWNED BUSINESSES.**

Include names and addresses of all certified minority/women owned businesses that you provided with plans, specifications, and requirements of the contract. Detail all assistance you provided to interested certified minority/women owned businesses and all your efforts at negotiation for specific sub-bids, and include any advertisements soliciting their participation.

I do hereby attest that I have exerted best efforts, but have been unable to obtain the required minimum participation goals for the following reason: *

Company Name

Specification Number

Name (Signature)

Title

***You may attach supplemental pages and documentation if necessary.**

GUIDELINES FOR JOINT VENTURING

BETWEEN A PRIME CONTRACTOR AND A CERTIFIED MINORITY/WOMAN-OWNED BUSINESS ENTERPRISE

If a Prime Contractor has made arrangements to enter into a joint venture partnership with either a certified MBE or WBE, the following criteria must be met in order to receive credit towards the minimum participation goals (MPGs):

- A. The MBE/WBE partner(s) must be certified by a governmental entity authorized by law to certify such enterprises prior to bid/proposal submittals.**
- B. The MBE/WBE partner(s) must be substantially involved in all phases of the contract including, but not limited to, the performance, with its own work force, a portion of the on-site work, and administrative responsibilities such as bidding, planning, staffing and daily management.**
- C. The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interests).**
- D. If the certified partner(s) is a MBE, its participation may be credited to the extent of the partner's ownership interest in the joint venture. However, it will still be required to meet the WBE goal or vice versa.**

18 JOINT VENTURE QUESTIONNAIRE

If you intend to receive credit towards the minimum participation goals (MPGs) by entering into a joint venture partnership with a certified MBE/WBE, you must complete this questionnaire and submit it along with your bid/proposal.

1. NAME OF THE JOINT VENTURE _____

2. ADDRESS OF THE JOINT VENTURE _____

3. TELEPHONE NUMBER () _____

4. CONTACT PERSON & TITLE _____

5. IDENTIFY BELOW ALL OF THE FIRMS WHICH COMPRISE THE JOINT VENTURE PARTNERSHIP(S). IDENTIFY WHETHER THE FIRM IS A CERTIFIED MBE/WBE. INCLUDE CERTIFICATION NUMBER AND AGENCY WHERE APPLICABLE, AND INDICATE THE PERCENTAGE OF JOINT OWNERSHIP INTEREST.

NAME:

ADDRESS:

TELEPHONE NUMBER:

MBE _____ WBE _____

IRS ID#

CERTIFICATION NUMBER:

**PERCENTAGE
OF OWNERSHIP _____**

CERTIFYING AGENCY:

NAME:

ADDRESS:

TELEPHONE NUMBER:

MBE _____ WBE _____

IRS ID#

CERTIFICATION NUMBER:

**PERCENTAGE
OF OWNERSHIP _____**

CERTIFYING AGENCY:

NAME:

ADDRESS:

TELEPHONE NUMBER:

MBE _____ WBE _____

IRS ID#

CERTIFICATION NUMBER:

**PERCENTAGE
OF OWNERSHIP _____**

CERTIFYING AGENCY:

6. DESCRIBE, IN DETAIL, THE BUSINESS PURPOSE OF THE JOINT VENTURE PARTNERSHIP AND THE ROLE OF EACH FIRM IN THE JOINT VENTURE. INCLUDE INFORMATION REGARDING DAILY MANAGEMENT, BIDDING, PLANNING, ON-SITE WORK, AND STAFFING. ATTACH SUPPLEMENTAL PAGES IF NECESSARY.

7. ATTACH A COPY OF THE JOINT VENTURE AGREEMENT.

Any changes to the joint venture agreement attached hereto or to this questionnaire, including changes in any of the arrangements described herein, must be approved in advance by the Authority's Affirmative Action Officer.

Each undersigned does hereby attest that the foregoing statements are true and correct.

NAME OF FIRM

NAME OF FIRM

SIGNATURE OF FIRM'S
AUTHORIZED AGENT

SIGNATURE OF FIRM'S
AUTHORIZED AGENT

PRINTED NAME

PRINTED NAME

TITLE

TITLE

DATE

DATE

PHILADELPHIA
HOUSING
AUTHORITY

SECTION 3 POLICIES AND FORMS

REVISED AUGUST 2013



Philadelphia Housing Authority
Building Beyond Expectations

INTRODUCTION

This Policy Statement and Forms Package:

- Sets forth the policy, goals, and preferences of the Philadelphia Housing Authority (“PHA”) in the administration of its Section 3 program, which is intended to ensure that employment and other economic opportunities generated by certain financial assistance provided by the U.S. Department of Housing and Urban Development (“HUD”) shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, and to business concerns which provide economic opportunities to low- and very low-income persons;
- Summarizes the standards and procedures to be followed to ensure that the objectives of Section 3 are met that are set out in 24 C.F.R Part 135;
- Provides the guidelines for contractors to follow; and
- Contains forms for contractors to demonstrate compliance.

Special emphasis is given to hiring residents of PHA communities. The requirements and forms follow.

For more information visit HUD’s website at:

<http://www.hud.gov/section3>

or visit PHA’s website at:

<http://www.pha.phila.gov/section3jobs>

Educational workshops for residents, vendors and prospective businesses are available.

Workshops include Section 3 Policies and Procedures, as well as Contracting Process review. Sessions and times can be found at:

<http://www.pha.phila.gov/business-opportunities.aspx>



Philadelphia Housing Authority
Building Beyond Expectations

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I. BID OR PROPOSAL EVALUATION

Vendors who fail to address Section 3 requirements may be deemed nonresponsive. To avoid being nonresponsive, the proposal or bid documents submitted to the PHA must include the Contractor's Affidavit and Compliance Commitment, and all applicable attachments and supporting documentation, supporting claims of compliance by hiring, contracting, or other economic opportunities, in the proposal or bid documents submitted to the PHA.

A vendor who fails to address Section 3 requirements sufficiently may receive a written notice from the PHA specifying the defects in the Section 3 information. Vendors receiving such notice will be given no more than 5 business days to address the deficiencies and provide all required documents. Failure to respond within the 5 days will result in PHA declaring the bidder or respondent non-responsive. The contract or bid will then be awarded to the next lowest bidder or to the respondent with the next highest score. Where the selection is based procurement, PHA will award to the firm that is the next highest ranked.

In evaluating proposals, PHA will give credit to firms that employ Section 3 Residents that are not new hires and that will be assigned to the Section 3 Covered Project for which the proposal is submitted.



FORMS – PRIOR TO BID

The following forms should be submitted prior to or at the time of a bid in anticipation of receiving a contract award to document Section 3 efforts and compliance.

Form 1 – Existing Employee List. This list identifies who will work on the PHA project. Any workers added after initiation of work will be assumed to be new hires.

Form 2 – Hiring Plan. This form requires the contractor to specify all positions anticipated to be involved in work. Included is a narrative statement regarding plans.

Form 3 – Hiring and Contracting Goals Narrative. This form is used to describe the efforts made in order to comply with Section 3 Hiring and Contracting goals.

Form 4 – Contracting Plan Worksheet. This form lists each contract to be used and applies Section 3 and other criteria to the contracts.

Form 5 - Subcontractor Activity. This form applies if subcontracting will be performed. Subcontractors will be listed, along with Section 3 information.

***Form 6** – Section 3 Residency Self Certification Form. This form is to be filed out for each Section 3 Resident currently hired or hired in the future.

***Form 7** – Section 3 Business Concerns. This worksheet provides backup information regarding Section 3 Business Concerns involved in performance of work.

Form 10 – Utilization Plans. If Tier 3 is selected, contractors shall provide the information in this form.

***Only complete forms if requesting Section 3 Business Concern Preference in proposal evaluation**



FORMS – DURING CONTRACT

The following forms should be submitted after a contract is issued or during the contract lifespan as required (such as personnel changes) to document Section 3 efforts and compliance:

Form 6 – Resident Affidavit. This form is to be filed out for each Section 3 Resident currently hired or hired in the future.

Form 7 – Section 3 Business Concerns. This worksheet provides backup information regarding Section 3 Business Concerns involved in performance of work.

Form 8 – Employee Termination Tracking Form. This form collects information on termination of Section 3 Residents.

Form 9 – Resident and Business Concern Affidavit. This affidavit is to be executed by the Contractor and/or subcontractor to demonstrate Section 3 qualifications.

Form 11 -FTE Report. This document tracks employees, trades, hours worked, and projects. This form should be completed monthly for construction projects and quarterly for non-construction projects.

FORM - 1
EXISTING EMPLOYEE LIST

A. PROJECT NAME AND LOCATION: _____ C. DATE: _____

B. DEVELOPER/CONTRACTOR /APPLICANT: _____

EMPLOYEE NAME/ADDRESS	SOCIAL SECURITY NUMBER (LAST 4 DIGITS)	JOB CATEGORY/TRADE

CONTRACTING PLAN (if applicable)

FORM-4

List Each and Describe Briefly Subcontractor (A)	Approximate Dollar Value (B)	Construction (C) or Non-Construction (NC) (C)	Section 3 Business Concern (Y/N) (D)	Ethnic Racial Code (E)	Female Owned/ Minority Owned Business (Y/N) (F)
1.	\$			(E)	(F)
2.	\$				
3.	\$				
4.	\$				
5.	\$				
6.	\$				
7.	\$				

Ethnic/Racial Codes:

1. White American
2. African American
3. Native American
4. Hispanic American
5. Asian Pacific American
6. Hasidic Jew

**SUBCONTRACTOR ACTIVITY REPORT (if applicable)
FORM-5**

Contract Number:		HUD Funding Source:		Date:		
(A)	(B)	(C)				
Contractor:		Address:				
(D)						
Project Name and Location:			Actual Construction Start Date:			
(E)	(F)					
Name of Subcontractor Complete Address and Tax I. D. Number	Amount of Contract	Ethnic/Racial Code	Gender Code	Section 3 Business Concern (Y/N)	Type (s) of Services Provided (Including Supplies)	Anticipated Start and Completion Date:
(G)	(H)	(I)	(J)	(K)	(L)	(M)
	\$					From: To:
#:	\$					From: To:
#:	\$					From: To:
#:	\$					From: To:
#:	\$					From: To:

Ethnic/Racial Codes:

1. White American
2. African American
3. Hispanic American
4. Asian Pacific American



**PHILADELPHIA HOUSING AUTHORITY
SECTION 3 RESIDENCY
SELF-CERTIFICATION FORM
FORM - 6**

INSTRUCTIONS: Please complete this form to verify your qualification as a Section 3 resident.

1) I, _____, (PRINT NAME) am a legal resident of the City of Philadelphia and am either a resident of Philadelphia Housing Authority (“PHA”) housing or meet the income eligibility guidelines for a low or very low income person, as set forth on the next page.

2) **I certify that I am a Section 3 resident because (check all that apply):**

I am a PHA resident and my Client ID # is: _____, or

I am City of Philadelphia resident who lives within ½ mile radius of a site where Section 3 contracted work is being performed; there are a total of _____ people living in my household and with my total annual household income is \$_____.

3) My home address and phone number are:

(MUST BE A **STREET** ADDRESS NOT A P.O. BOX #) (APT. NUMBER)

(PHA SITE NAME – IF APPLICABLE)

(CITY) (STATE) (ZIP) (HOME TEL.) (CELL NO.)

4) The last four digits of my social security number are: _____

I certify that all of the information given above is true and correct. If found to be inaccurate, I understand that I may be disqualified as an applicant and/or a certified Section 3 individual which may be grounds for termination of training, employment, or contracts that resulted from this certification. I attest under penalty of perjury that my total household income annually, based on my total household size as listed above is at or below the income amount for that specific size at the time of this document is being signed. I understand that proof of this statement may be requested in the future.

Signature

Date



SECTION 3 HUD INCOME LIMITS (Effective 7/22/14)

All residents of public housing developments of the Philadelphia Housing Authority qualify as Section 3 residents.* Additionally, individuals residing in the City of Philadelphia within a ½ mile radius of a site where Section 3 contracted work is being performed, who meet the income limits set forth below, can also qualify for Section 3 status

Eligibility Guideline		
Number in Household	Very Low Income	Low Income
1 individual	\$ 27,600	\$ 44,150
2 individuals	\$ 31,550	\$ 50,450
3 individuals	\$ 35,500	\$ 56,750
4 individuals	\$ 39,400	\$ 63,050
5 individuals	\$ 42,600	\$ 68,100
6 individuals	\$ 45,750	\$ 73,150
7 individuals	\$ 48,900	\$ 78,200
8 individuals	\$ 52,050	\$ 83,250

* Section 3 is a provision in the Housing and Urban Development Act of 1968 (12 U.S.C. Section 1701u and 24 C.F.R. Section 135.1). Its purpose is to ensure that economic opportunities, to the greatest extent feasible, are given to low and very low-income persons, particularly to recipients of government housing assistance. Section 3 job opportunities relate to new hiring due to contracts with PHA. Section 3 residents are PHA residents, or persons who live within ½ mile radius where a Section 3 contract is being performed and who have a household income that is low income or very low income under HUD's income limits.



The Company hereby agrees to provide, upon request, additional documents verifying the information provided above.



Under penalty of perjury, I certify that I am the _____ (Title) of the Company, that I am authorized by the Company to execute this affidavit on the Company's behalf, that I have personal knowledge of the certifications made in this affidavit and that the same are true.

Signature

(Corporate Seal)

Name

F.

Commonwealth of Pennsylvania

County of _____

Subscribed and sworn to before me this _____ day of _____, _____

Notary Public

My Commission expires: _____



**SECTION 3 BUSINESS CONCERN AFFIDAVIT
FORM – 9B**

I, _____, the Developer/Contractor or the authorized representative of the Developer/Contractor, hereby attests that the Business identified below is a Section 3 Business Concern. I also attest that the proofs supplied and representations made for Section 3 status are accurate as required by Section 3 of the U.S. Housing and Urban Development Act of 1968, as amended and the regulations.

Name of Section Business

Contract No.

Dollar Amount of Contract

Contact Person

Phone Number

Reporting Period

Project Name

This Section 3 Business Concern is:

_____ Corporation

_____ Partnership

_____ Sole Proprietorship

_____ Joint Venture

Qualifying Business:

1. _____ 51% owned by Section 3 low income residents.
2. _____ 30% Section 3 low income residents dollar award.
3. _____ 25% of contract work committed to subcontract to Section 3 Business Concerns.

I do certify that the above information is correct.

Signature

Title



Philadelphia Housing Authority
Building Beyond Expectations

Acceptance / Approval By:

Senior Manager, Contract Compliance

Date