

**REQUEST FOR PROPOSAL  
FOR  
AUDIT SERVICES**



Dania Beach Housing Authority  
4101 Ravenswood Road, Ste 320  
Fort Lauderdale, FL 33312  
Anne Castro  
Executive Director

August 26<sup>th</sup>, 2019

# DANIA BEACH HOUSING AUTHORITY

## REQUEST FOR PROPOSAL FOR AUDIT SERVICES

### A. INTRODUCTION

The Dania Beach Housing Authority (hereinafter “DBHA” or “Housing Authority”) is soliciting Statements of Proposals from experienced Certified Public Auditing firms for DBHA’s annual audit services for a three-year (3) period to include the fiscal year ending September 30, 2020 through the fiscal year ending September 30, 2022.

Respondents must provide evidence of qualifications and experience necessary to adequately and competently complete independent audits in accordance with all HUD, Federal Public Accounting, State and Local standards and requirements. Additional requirements and information concerning this solicitation are contained in the following sections of the Request for Proposals (RFP) to allow each Respondent an opportunity to respond in an acceptable and timely manner.

**Dania Beach Housing Authority used the Lindsey software system for Tenant Management, HQS, and Payroll, but does not include the General Ledger or Asset Management modules.**

**The Housing Authority and the and the selected firm(s) intend to enter into a three-year agreement, with the potential for two one-year renewal options, not to exceed five years in the aggregate. All extensions shall be in the form of a formal modification in writing to the contract. The Executive Director or his designee shall be authorized to meet and negotiate appropriate contract terms on an as-needed basis.**

### B. PROJECT DESCRIPTION

DBHA is a quasi-government body that is Federally funded and regulated by the United States Department of Agriculture, U.S. Housing Act of 1937 as amended (42 USC § 1437 et seq.) and was created as a Special District under Chapter 421, Florida Statutes. The DBHA is bound by Federal, State, and local laws.

The governing body of DBHA is a seven-person Commission, which provides overall oversight and control of the agency. Responsibility of the day-to-day operations are delegated to the Executive Director.

Dania Beach Housing Authority is responsible for the administration/management of the following programs and are subject to the audit;

Housing Choice Voucher Program	536 units
Affordable Housing Units (LIHTC) Extreme Low Income, Low Income & Market Rate	128 units
Project Based Vouchers - Seniors	44 units

Additionally, DBHA administers the following grants:

Capital Fund Program (HUD)

HOME Funds

Broward County Loan

Saratoga Crossings is a 9% LIHTC on land owned by DBHA and DBHA's non-profit Dania Beach Quality Housing Solutions is the in partnership with the development partner, Atlantic & Pacific Communities.

The primary source of funding for the operation of the various programs comes from the U.S. Department of Housing and Urban Development through Annual Contributions Contract. Additional funding comes as a result of grants, both local and federal and in collection of rents and related income stream from developments.

The audit is to be performed in accordance with generally accepted standards and the standards for fiscal audits for Public Housing Authorities as set forth, but not limited to the following authorities and guidelines: the U.S. General Accounting Office's (GAO) Government Accounting Standards, the provisions of the Federal Single Audit Act of 1984, and the Single Accounting Audit Act Amendments of 1997, and the U.S. Office of Management and Budget (OMB) Circular A-133 and/or any other prevailing laws, statutes or standards. The Auditor must be knowledgeable about and able to comply with the contents of PIH-96-32, 96-53, 97-30, and 98-14. The PIH Compliance supplement is available on the HUD-OIG home page under Audit guides. The Auditor must also be able to prepare the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS), Generally Accepted Auditing Standards (GAAS), and the American Institute of Certified Public Accountants (AICPA).

### **C. AUDIT OBJECTIVES AND SCOPE OF SERVICES**

It is the responsibility of the proposer to verify all audit requirements prior to submitting the proposal.

1. The audit report should include the following financial statements at all applicable funds;
  - a. Balance Sheet
  - b. Income Statement
  - c. Statement of Cash Flows
2. Management Discussion and Analysis

3. The auditor's study and evaluation of the entity's system of internal accounting control. The auditor's report shall identify any deficiencies uncovered and make appropriate recommendations to correct any deficiencies found to bring DBHA into compliance.
4. Compliance matters which may have a material effect on the financial statements reported up on shall be reported. Recommendations to correct shall be included.
5. A statement that the audit is made in accordance with generally accepted government auditing standards as well as all applicable laws, regulations and provisions.
6. The auditor in charge will conduct an entry and exit interview with the Executive Director as well as an interview with at least one member of the Board of Commissioners.
7. No audit shall be published until a draft submitted to the Executive Director is approved.
8. The auditor shall submit the final report the Federal Clearinghouse, the data collection form, SF-SAC, and copy of the reporting package. A copy of the reporting package submitted to the Federal Clearinghouse for the Single Audit shall also be submitted to the local HUD office.

Once the proposal is accepted, the firm should prepare an Audit Engagement letter in accordance with AICPA standards. The letter, subject to review and approval by the DBHA then be executed by DBHA. It should confirm the auditor's acceptance of the appointment and documents the agreed upon scope and terms of the engagement and shall become part of the ensuing contract between DBHA and the selected auditing firm. The basic elements of the letter shall include, but are not limited to:

- Names of the parties to the contract.
- Audit schedule
- Reporting package and its format

Please note, while the LIHTC units are managed by DBHA's development partner and subsequently by third party property management companies, with their own auditors, DBHA will receive cash flow, and while the third party primary audits are not in the scope of this RFP, review of those audits, are to be included in the DBHA audit, following the group audit guidelines of SAS No. 122, as discrete component units of the primary government entity under GASB's 14, 29, 61, and 80.

Auditor/DBHA relationship regarding changes in the kind or amount of work required to access to and ownership of the audit products include;

- At any time, DBHA may, by written notice, make changes in or additions to work or services within the general scope of the agreement, understanding that the cost of the audit may also be adjusted.
- If the auditors believe the change is beyond the general scope of the agreement, they must notify DBHA in writing within ten days of being notified to begin such work.
- The audit work papers prepared by the auditors during the audit are its own property subject the conditions mentioned below with respect to retention and access.

**The Audit Reporting should include;**

- An opinion of financial statements and schedule of expenditure of Federal awards.
- A report on Internal Controls
- A report on Compliance
- A schedule of recommendations, findings, and questioned practices or costs.

**The Audit Working Papers;**

- Retention of working papers and data: The auditors shall retain working papers for a minimum of 5 years after the date of issuance of the auditor's final report to DBHA, or longer is so statutorily required.
- Access to Working Papers: Auditors working papers shall be made available upon request to the cognizant or oversight agency for audit or its' designee. Access to working papers includes right of Federal agencies to obtain copies of working papers as reasonable and necessary.

**D. CONTACT & PROPOSAL SUBMISSIONS**

1. **Contact Person:** For additional information, please contact Anne Castro, Executive Director, Dania Beach Housing Authority at [acastro@daniabeachhousing.org](mailto:acastro@daniabeachhousing.org) or 954.920.9662, ext. 102.

Formal communications such as request for clarification and/or information concerning the solicitation shall be submitted in writing no later than Monday, September 22<sup>nd</sup>, 2019, and directed to the above person. Such requests and responses shall be published.

2. **Submissions: ONE original and THREE copies of the Statement of Proposal and the required forms must be submitted by 2 p.m. on Friday, September 27<sup>th</sup>, 2019.** Please note that fax or email proposals will not be accepted. All proposals must be submitted to the address below:

**ATTENTION: AUDIT SERVICES PROPOSAL**

Dania Beach Housing Authority  
Att: Anne Castro, Executive Director  
4101 Ravenswood Road  
Ste 320  
Fort Lauderdale, FL 33312

DBHA reserves the right to accept or reject any or all proposals; to waive technicalities and to award the contract to the most responsive proposal that best meets the needs of DBHA. DBHA will review proposals' compliance with submission requirements. Proposals that do not meet the submission requirements set forth will be determined to be non-responsive.

## **E. FORM OF PROPOSAL**

Each proposal should include:

### **1. STATEMENT OF RESPONDENTS QUALIFICATIONS AND EXPERIENCE**

- a. Describe your experience in auditing programs, activities and functions funded by the Department of Housing & Urban Development (HUD) in accordance with generally accepted standards for Public Housing Authorities (PHA's).
- b. Describe your technical approach to the audit as well as process. Provide details such as how much time would be spent off site vs on site. Also indicate if the firm allows electronic transmission of audit records/data utilizing such sites/tools such as Dropbox, iCloud, etc.
- c. Indicate whether your firm is local, regional or national and provide the principal address for your firm.
- d. Provide the names and biographies of the principals of the firm as well auditors that may be assigned to the DBHA audit.
- e. Affirm your organization is licensed and insured in the State of Florida as well as it meets all Standards for Audit of Government Organization, Programs, Activities, and Functions, published by the U.S. GAO, or any subsequent amendments or superseding revisions.
- f. Affirm that you and/or the members of your organization have not had licenses suspension and list any disciplinary actions for your principals or members of your organization.
- g. Indicate the number of people and by level who will handle DBHA's audit.
- h. Provide evidence of professional liability insurance and workman's compensation insurance.
- i. Provide a list of client references including a contact name, phone number, emails, for government organizations (PHA's).

### **2. FEE SCHEDULE**

Respondent should present cost information for a flat yearly fee for each of the one-year periods. Fee should include all REAC and Federal Audit Clearinghouse submissions as well as any costs associated with software company, fee accountant and bank interactions.

### **3. TRANSITION**

Each Respondent should detail how the Respondent intends to assume responsibility of upcoming audit for Fiscal Year Ending 2019, and audit should be completed with all final submission no later than April of the following year, unless DBHA has some unforeseen issue to prevent completion by that time.

#### **4. OTHER**

Respondent should also address the following in its submission:

##### **CERTIFICATIONS/ACKNOWLEDGEMENT**

- Evidence of professional liability and workman compensation insurance.
- Evidence of valid credentials to access HUD REAC system and Federal Audit Clearinghouse.
- Submit a completed DBE/MBE/WBE Certification (**ATTACHMENT A**).
- Submit a completed Section 3 Business Certification (**ATTACHMENT B**).
- Submit a completed a Certification of Respondent Regarding Disbarment, Suspension, Disciplinary Actions, and Other Responsibility Matters (**ATTACHMENT C**)
- Submit a completed Non-Collusive Affidavit (**ATTACHMENT D**).
- Submit a completed Sworn Statement Under Section 287.122(3)(A), Florida Statutes, on Public Entity Crimes (**ATTACHMENT E**).
- Submit a completed Certification Regarding Lobbying (**ATTACHMENT F**).
- Submit a completed Conflicts Certification (**ATTACHMENT G**).
- Submit a completed ACKNOWLEDGEMENT OF RECEIPT OF HUD FORMS 5369-B, 5370-C and 5369-C (**ATTACHMENT H**).
- Submit a completed and signed HUD form 5369-C (**see ATTACHMENT**)

#### **F. MINIMUM QUALIFICATIONS**

1. The qualifications the DBHA is seeking include the following:
  - a. Must be a Certified Public Accountant properly licensed to practice in the State of Florida.
  - b. Must have a minimum of five years of audit experience with Public Housing/HUD.
  - c. Confirm that there will be no subcontracting of firm's service for the DBHA audit.
  - d. Must meet independent standards established by GAO.
  - e. Must not have any professional disciplinary actions or license suspensions of principals or accountants within the past seven years.
  - f. Firms must have familiarity and experience with legal issues that Housing Authorities encounter in their normal course of business related to Public Housing, Section 8 HCV, RAD, PBV, and all other products and HUD federal regulations that govern these programs, grants and subsidies.
  - g. The Firm must provide proof of professional liability insurance.

- h. The Firm must be able to demonstrate that they consistently review their clients and cases to check for any potential conflicts with auditing DBHA.
- i. The selected Firm must comply with Federal Drug-Free Workplace Act.
- j. The Firm and any consultants or contractors hired by the firm shall comply with Executive Order 11246, as amended by Executive Order Executive Order 11275 as supplemented in the Department of Labor Regulations (41 CFR Part 60), as well as any County or City of Dania Beach antidiscrimination laws, codes, or policies.

**G. METHOD OF SELECTION AND EVALUATION**

DBHA will review and screen written proposals based on minimum qualifications and criteria for selection. DHBA may request interviews with some or all the Respondents with successful submissions. The number of interviews would be based on the number of responses received. The Executive Director, Technical Evaluation Panel, or the entire Board of Commissioners may participate in the scoring, interviewing and selection of the successful Respondent.

Specific criteria used for evaluation will also include:

- 1. Evidence of the firm’s ability to provide serviced indicated in timely manner with technical and professional competence, experience and facilities.
- 2. A broad and practical knowledge of HUD, State, County and City regulations, laws, rules relating to PHA’s normal course of business.
- 3. Evidence that accountants/auditors are currently registered and licensed absent any disciplinary issues reported for the attorneys or the firm.
- 4. Fee schedule

**H. CRITERIA FOR SELECTION**

- 1. Respondents must meet the minimum qualifications of this Request for Proposal.
- 2. DBHA will evaluate the elements of the Responses based on the following point assignments according to the same objective criteria:

a. Relevant Experience of the Firm. (HUD, State & Local Laws & Regulations)	35 points
b. Qualifications of individuals assigned Including public financing and accounting	10 points
c. Capacity and ability of the firm to complete the work on time schedule describer	15 points
d. Government Audit (PHA’s) experience of persons assigned to the audit/References	10 points
e. Proposed Fee Schedule	30 points

<b>Total Points</b>	<b>100 points</b>
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## **I. GENERAL**

1. All proposals and materials contained herein shall become the property of DBHA upon submittal.
2. Regardless of outcome, Respondents shall not hold DBHA responsible for any expense in preparation of its RFP submission or in negotiating towards a contract.
3. DBHA will reject any proposer who is prohibited by the U.S. Department of Housing and Urban Development (HUD) to provide services to HUD or any related agency such as a Housing Authority.
4. The determination of criteria, process, and evaluations culminating in a final decision as to who shall receive a contract award, or whether an award will be made as a result of this RFP shall be at the sole discretion of the DBHA and its' Board of Commissioners.
5. DBHA reserves the right to reject any and all proposals for any reason at its sole discretion.

### **TENATIVE SCHEDULE FOR SELECTION AND AWARD**

1. DBHA Board approval of the final RFP at the September Board Meeting on September 9<sup>th</sup>, 2019.
2. Advertisement for RFP will be placed on or before Friday, September 27, 2019.
3. RFP will be released to requestors and/or placed on public contracting sites such as DemandStar if available.
4. Responses are due by 2 p.m. EST on Friday, November 8, 2019 in accordance with the instructions included in this RFP.
5. Proposals will be reviewed by DBHA, selection committees and or the Board of Commissioners.
6. If required, oral presentations or interviews will be scheduled by DBHA.
7. DBHA Board of Commissioners will select the firm at the regularly scheduled December 2019 or January 2020 Board Meeting.
8. DBHA reserves the right to go to another submission/Respondent if a contract with the selected firm cannot be negotiated and completed.
9. The effective date of the contract will be on contract execution.

## ATTACHMENT A

### *Use of Disadvantaged Business Enterprises (DBEs), Minority Business Enterprises (MBEs), and Women's Business Enterprises (WBEs) and Section 3 Requirements*

#### **A. REQUIRED EFFORTS**

1. Consistent with Presidential Executive Order 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the Authority shall make efforts to ensure that small and minority-owned businesses, women's business enterprises, disadvantaged business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of an Authority project are used when possible. Such efforts shall include, but shall not be limited to:

- a. Including such firms, when qualified, on solicitation mailing lists;
- b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- d. Establishing delivery schedules, where possible, which encourage participation by such firms;
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- f. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment generated from the expenditure of Section 3 covered funds to Section 3 residents in the order of priority prescribed in 24 CFR 135.34(a), and to award Section 3 covered subcontracts to Section 3 business concerns in the order of priority set forth in 24 CFR 135.36(a), requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed herein.

2. Goals may be established periodically by the Authority for participation by small businesses, minority-owned businesses, women's business enterprises, disadvantaged business enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in the area of an Authority project, in the Authority's prime contracts and subcontracting opportunities.

#### **B. DEFINITIONS**

1. A small business concern is defined as a business which is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121.
2. A minority-owned business is defined as a business which is at least 51% owned by one (1) or more minority group members; or, in the case of a publicly-owned business, one (1) in which at least 51% of its voting stock is owned by one (1) or more minority group members, and whose management and daily business operations are controlled by one (1) or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans,

Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

3. A women's business enterprise is defined as a business that's at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business.
4. A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U. S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.
5. A Section 3 Business concern is defined as one (a) that is 51% or more owned by Section 3 Residents; or (b) whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 Residents, or within three (3) years of the date of first employment with the business concern were Section 3 Residents; or (c) that provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (a) or (b) in this definition of "Section 3 business concern."
6. A Disadvantaged Business Enterprise is a small business concern that is certified as being (a) at least 51 percent owned by one (1) or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it. "Socially and Economically Disadvantaged individuals" means those individuals who are citizens or lawfully admitted permanent residents of the United States and who are minorities or individuals found by the Small Business Administration pursuant to Section 8(a) of the Small Business Act to be disadvantaged.

### ***C. SECTION 3 REQUIREMENTS***

1. Section 3 Purpose - Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) (Section 3) requires the Authority to ensure that employment and other economic and business opportunities generated by HUD financial assistance, to the greatest extent feasible, are directed to public housing residents and other low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low- and very-low income persons.
2. Section 3 Contracting Policy and Procedure - All contractors/businesses seeking Section 3 preference must complete certifications, as appropriate, as acknowledgement of the Section 3 contracting and employment provisions required by this section. Such certifications shall be adequately supported with appropriate documentation as referenced in the form.
3. Resident Hiring Requirements - The Authority has adopted the following threshold for resident hiring that is to be used on all construction contracts, service contracts and professional service contracts that contain a labor component. It is expected that an appropriate number of Section 3 persons with particular qualifications or a willingness to begin unskilled labor will be able to participate in the Authority's contracted labor efforts. A prime contractor may satisfy the Authority's resident hiring requirements through its own work force, its subcontractors, or any combination thereof.

<b>CONTRACT THRESHOLD AMOUNT FOR CONSTRUCTION OR SERVICE CONTRACTS</b>	<b>SECTION 3 INVOLVEMENT AS A % OF TOTAL LABOR DOLLARS</b>
\$25,000 or more	5% of the labor dollars

4. It is expected that an appropriate number of Section 3 persons with particular qualifications or willingness to begin unskilled labor will be able to participate in contracted labor efforts. If that does not occur, a prime contractor, on its own or through its subcontractor(s), may satisfy the Section 3 requirement set forth above by doing the following:

- a. Subcontracting or joint venturing with a resident owned business. The business must be 51% or more owned by public housing residents, or subcontract/joint venture with a business that employs full-time, 30% or more public housing residents, or low and very-income individuals within the City of Pompano Beach or other qualified low income persons, or
- b. Direct hiring of public housing residents and/or low and very low-income neighborhood residents, or
- c. Incurring the cost of providing skilled training for public housing residents in an amount commensurate with 5% of the total contract amount, or

**DBE/MBE/WBE CERTIFICATION**

I, \_\_\_\_\_, hereby certify that said bidder/offeror has fully understood the Housing Authority of Pompano Beach's program requirements and certifies that bidder/offeror **has/has not** (circle one), in good faith-faith, performed outreach to DBEs, MBEs, and WBEs as described in the Bid/RFP documents.

Bidder/Offeror also certifies that upon the Authority's request, bidder/offeror shall provide all information, documents, records, and proofs verifying its DBE/MBE/WBE requirement.

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

\_\_\_\_\_  
Signature of Key Principal of Respondent

**EXHIBIT B**

**SECTION 3 BUSINESS CERTIFICATION**

I, (print name and title) \_\_\_\_\_ hereby certify that the business entity known as \_\_\_\_\_

(please check one) **satisfies** \_\_\_\_\_ **does not satisfy** \_\_\_\_\_ one or more of the definitions of a Section 3 Business Concern:

If you are a Section 3 Business Concern, please select the basis of your certification:

\_\_\_\_ Status as a Section 3 resident-owned enterprise (at least 51% owned by Section 3 residents);

\_\_\_\_ At least 30% of permanent, full-time employees are currently Section 3 Residents or were Section 3 residents within the past 3 years;

\_\_\_\_ Commitment to subcontract 25% of the dollar awarded to qualified Section 3 business (only applicable to prime contractors)

*I hereby certify that the information provided here is true and correct and understand that any falsification of any information provided could subject me to disqualification and punishment under the law.*

\_\_\_\_\_  
Authorized Name and Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Name and Signature

\_\_\_\_\_  
Date

ATTACHMENT C

**CERTIFICATION OF RESPONDENT REGARDING DEBARMENT,  
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

I, \_\_\_\_\_, hereby certify on behalf of \_\_\_\_\_

(insert name of Respondent) and its key principals that we:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by a Federal, State or Local department or agency; and
2. Have not, within a three (3) year period preceding this bid, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in Paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this bid, had one or more public transactions (Federal, State or Local) terminated for cause of default.

\_\_\_\_\_  
Signature of Key Principal of Respondent

**ATTACHMENT D**  
**NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ being first duly sworn, deposes, and says that:

he/she is \_\_\_\_\_,  
(Owner, Partner, Officer, Representative or Agent)

of the BIDDER and BIDDER is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

Such Bid is genuine and is not a collusive or sham Bid;

Neither the said BIDDER nor any of its officers, partners, owners, agents, representative, employees or parties in interest, including this affidavit, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other BIDDER, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted; or to refrain from bidding in connection with such Contract; or have in any manner, directly or indirectly, sought by agreement or collusion, or communications, or conference with any BIDDER, firm, or person to fix the price or prices in the attached Bid or any other BIDDER, or to fix any overhead, profit, or cost element of the Bid Price or the Bid Price of any other BIDDER, or to secure through any collusion conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Contract;

The price of items quoted in the attached Bid are fair and proper and are not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the BIDDER or any other of its agents, representatives, owners, employees, or parties in interest, including this affidavit.

By \_\_\_\_\_

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

\_\_\_\_\_  
Notary Public (Signature)

My Commission Expires:  
\_\_\_\_\_

**ATTACHMENT E**

**SWORN STATEMENT UNDER SECTION 287.133(3)(a), FLORIDA STATUTES, ON  
PUBLIC ENTITY CRIMES**

1. This sworn statement is submitted to the Dania Beach Housing Authority.
2. This sworn statement is submitted by \_\_\_\_\_ (name of firm) whose business address is: \_\_\_\_\_ and (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_. (If entity has no FEIN, include the Social Security Number of the individual signing this sworn statement:
3. My name is and my relationship to the entity named above is \_\_\_\_\_.
4. I understand that a "public entity crime" as defined in Section 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that "convicted" or "conviction" as defined in Section 287.133 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without adjudication of guilt, in any federal or state trial court of record, relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an "affiliate" as defined in Section 287.133(1) (a), Florida Statutes, means: (1) A predecessor or successor of a person convicted of a public entity crime; or (2) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
7. I understand that a "person" as defined in Section 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
8. Based on information and belief, that statement which I have marked below is true in relation to the entity submitting this sworn statement. [Please indicate which statement applies.]

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity, has been charged with and convicted of public entity crime subsequent to July 1, 1989.



\_\_\_\_ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. [Please attach a copy of the Final Order.]

\_\_\_\_ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. [Please attach a copy of the Final Order.]

\_\_\_\_ The person or affiliate has not been placed on the convicted vendor list. [Please describe any action taken by or pending with the Department of General Services.]

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

Signature: \_\_\_\_\_  
Name/Title

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of 2019,

by \_\_\_\_\_ as \_\_\_\_\_ for  
Name of Person Officer/Trustee/Attorney

\_\_\_\_\_  
Name of Firm/Business

(Seal)

\_\_\_\_\_  
Signature of Notary Public  
Print, Type/Stamp Name of Notary

Personally known: \_\_\_\_\_  
OR Produced Identification: \_\_\_\_\_  
Type of Identification Produced: \_\_\_\_\_

ATTACHMENT F

**CERTIFICATION REGARDING LOBBYING**

I, \_\_\_\_\_, hereby certify on behalf of

\_\_\_\_\_ (insert name of Respondent) and its key principals  
that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, or any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclosure accordingly.

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

\_\_\_\_\_  
Signature of Key Principal of Respondent

**ATTACHEMENT G**  
**CONFLICTS CERTIFICATION**

I, \_\_\_\_\_, hereby certify on behalf of

\_\_\_\_\_  
(name of firm/respondent)

and its key principals that:

1. No actual or apparent conflict of interest exists with regard to the Dania Beach Housing Authority,
2. No actual or apparent conflict exists with regard to Respondent's or its key principal's possible performance under this Request for Proposal, and
3. No actual or potential claim exists against the Dania Beach Housing Authority.

\_\_\_\_\_  
Signature of Key Principal of Respondent

**ATTACHMENT H**

**ACKNOWLEDGEMENT OF RECEIPT OF HUD FORMS**

1. HUD 5369-B, Instructions to Offerors Non-Construction
2. HUD 5369-C, Certifications and Representations of Offerors
3. HUD 5370-C, General Conditions for Non-Construction Contracts

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

\_\_\_\_\_  
Signature of Key Principal of Respondent

# Instructions to Offerors Non-Construction



## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 7. Contract Award

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

(b) The HA may

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

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

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

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

## 8. Service of Protest

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

## 9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

# Certifications and Representations of Offerors Non-Construction Contract

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

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

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

## 1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

## 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
  - (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
  - (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.
- (b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:
- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
  - (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);  
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

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

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

#### 4. Organizational Conflicts of Interest Certification

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

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

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

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

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

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

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

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

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

#### 6. Conflict of Interest

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

#### 7. Offeror's Signature

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

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Signature & Date:

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Typed or Printed Name:

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Title:

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# General Conditions for Non-Construction Contracts

## Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
Office of Labor Relations  
OMB Approval No. 2577-0157 (exp. 1/01/2014)

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

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

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

=====  
**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

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

### 2. Withholding of funds

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

### 3. Records

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

### 4. Apprentices and Trainees

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

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

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

#### 5. Disputes concerning labor standards

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

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

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.
  - (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.
- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

#### 6. Contract Work Hours and Safety Standards Act

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

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

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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.