



HOUSING AUTHORITY

of the City of Beaumont, Texas

REQUEST FOR QUALIFICATIONS Housing Authority of the City of Beaumont, Texas (HACB) Request for Qualifications (RFQ) for Master Developer

RFQ # 16-006

General

The HACB is seeking statements of qualifications from local and national for-profit and/or non-profit entities to serve as Master Developer for the:

- Procurement, demolition and replacement of affordable housing sites using a potential combination of mixed-income projects such as LIHTC, federal, state, private sector; or other financing options and any other available funds.
- Option to negotiate future contracts contingent upon receipt of grant money.

The RFQ may be downloaded from the Housing Authority of the City of Beaumont (HACB) web site www.bmtha.org; or you may request a copy from Tammy Shelton, Procurement Department by sending an e-mail sheltonta@bmtha.org; or by fax at 409.951.7273.

Due Date

Submissions in response to this RFQ are due no later than 3:00 PM (Local Time) **December 19, 2016**. Late proposals will not be considered and will not be opened. Respondents are solely and entirely responsible for ensuring that submissions are received before the stated due date and time. Submissions should be addressed as follows:

REQUEST FOR QUALIFICATIONS FOR MASTER DEVELOPER
Housing Authority of the City of Beaumont
1890 Laurel Street
Beaumont, Texas 77701
Attention: **Tammy Shelton, Procurement Department**

Questions

Questions regarding this RFQ should be directed in writing to Tammy Shelton, Procurement Dept. by email to sheltonta@bmtha.org or by fax to 409-951-7273 on or before December 9, 2016 at Close of Business.

HACB Rights

The HACB reserves the right to reject any or all proposals, to advertise for new proposals or proceed to accomplish this solicitation by any means determined to be in the best interest of the HACB. HACB will evaluate proposals to determine which best satisfies the needs of the Authority and community.



HOUSING AUTHORITY

of the City of Beaumont, Texas

RFQ Schedule

RFQ available	December 1, 2016
Final day to submit written questions	December 9, 2016
Submissions are due	December 19, 2016
Oral Interview (if required)	December 21, 2016
Selection of highest ranked respondent (estimate)	December 27, 2016

Housing Authority of the City of Beaumont, Texas

REQUEST FOR QUALIFICATIONS
RFQ # 16-006

**MASTER DEVELOPER FOR THE PROCUREMENT,
DEMOLITION AND REPLACEMENT OF PUBLIC HOUSING
SITES WITH MIXED-FINANCE/MIXED-INCOME UNITS**

This project involves:

Demolition of public housing sites to be replaced with mixed-income properties utilizing LIHTC, federal, state, private sector; or other financing options and available funds.

BHA has two public housing developments that will be our first priority for redevelopment. BHA is also interested in acquiring land in a non-impacted area to build a third mixed finance development.

The first priority developments are Concord Homes and Grand Pine, each a public housing development. Concord Homes is a 100 unit multi-family development. Grand Pine is a 94 unit all elderly development. The desire is to demolish and rebuild on the same footprint as mixed finance with 49% public Housing and 51% Tax Credit units.

Robert L. Reyna, Executive Director
Beaumont Housing Authority
1890 Laurel Street
Beaumont, Texas 77701
Fax 409-951-7271

December 1, 2016

Submissions are due no later than 3:00 PM (local time) on December 19, 2016.

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I. INTRODUCTION

The Housing Authority of the City of Beaumont (“HACB” or “The Authority”) hereby announces a Request for Qualifications to select a Master Developer for the procurement and demolition of public housing sites and replacement with mixed-income properties in the City of Beaumont.

Purpose of Solicitation

The HACB is seeking statements of qualifications from local and national for-profit and/or nonprofit entities to serve as Master Developer for the:

Demolition of public housing sites and replacement with mixed-income properties utilizing LIHTC, Tax Exempt Bonds, federal, state, private sector funds; or other financing options and available funds.

HACB is soliciting a Master Developer Partner with strong experience in both affordable housing and economic development in large-scale, mixed-use, mixed-income redevelopment projects in urban settings. The selected Master Developer will be responsible for predevelopment and development activities including, but not limited to, master planning and design, securing financing, obtaining necessary permits and approvals, and directing construction for all phases of the development program. HACB intends to negotiate one Master Development Agreement that will govern all phases of these projects.

Project Goals

HACB has been diligently working with a number of public and private partners to determine the need for affordable housing and to identify ways in which they can serve as a catalyst to facilitate the rebuilding, replacement or construction of affordable housing in the region. HACB wishes to use HUD’s Mixed-Finance and any and all other finance methods for these projects.

To compete successfully for LIHTC, HACB requires the assistance of an experienced multifamily rental housing developer who can certify the required experience under TDHCA scoring guidelines. HACB will require the selected master developer to review this work, to the greatest reasonable extent, adopt the program and activities undertaken by HACB for the developer’s submission of a demolition and replacement Application, as well as to provide the Experience Certification prior to the QAP deadline.

Background of HACB

HACB is a non-profit public housing agency (PHA) subject to the Housing Authorities Law, codified in the Texas Local Government Code. HACB manages and operates 642 public housing units, 705 non-public housing units (LIHTC, CDBG, Section 8 New Construction), and 2,067 Section 8 rental assistance units that provide decent, safe, sanitary and affordable housing to low income families with funding from the U.S. Department of Housing and Urban Development (HUD).

HACB enters into and executes contracts and other instruments that are necessary and convenient to the exercise of its powers. HACB maintains contractual arrangements with HUD to manage and operate its conventional public housing program and administer the Section 8 Housing Assistance Payments Programs. HACB programs are federally funded, although additional funding comes from development grants and rental property income. HACB and its properties are exempt from taxes, including sales tax.

HACB is governed by a (5) five member Board of Commissioners appointed by the Mayor of the City of Beaumont. The Chief Executive Officer of the Agency, the Executive Director, is employed by the Board. HACB currently employs 40 regular full time employees. The total operating and development budget for fiscal year 2016 is approximately \$13 million.

Background on Beaumont, Texas

Downtown Beaumont is the seat of the city and county governments. It is the site of commercial, special, and general-purpose office space and governmental buildings.

Approximately 3,500 hotel/motel rooms are located in Beaumont; and downtown Beaumont is the site of historical centers such as the historic July Rogers Theatre and Jefferson Theatre. The entertainment portion of downtown, Crockett Street contains retail shops as well as restaurants that feature live entertainment.

I. PROGRAM GOALS

HACB has established the following goals to guide the mixed-income, mixed-finance program to be developed in response to this RFQ.

1. Create vibrant, safe, communities of high quality design that meet or exceed industry standards, and that attract and retain a broad income mix of residents and function as cohesive communities.
2. Create sustainable, lively environments featuring a mixture of uses and tenure that include family and senior/handicapped housing, rental and homeownership, residential, retail and commercial uses.
3. Integrate the development program into the City and neighborhood housing and Project plans.
4. Maximize the leverage of public housing funds and minimize dependence on public housing resources through the creative use of the mixed-finance process, private financing, federal and state, Low Income Housing Tax Credits (LIHTC) and other sources of financing and subsidies.
5. Maximize economic development opportunity for public housing residents of Beaumont, and women- and minority-owned businesses.

6. Actively engage the participation of the Beaumont community in planning, demolition and replacement of the housing units.
7. Produce public housing and affordable units in mixed-income developments preferably on the existing footprint and land of the demolished development, where these units are indistinguishable from unrestricted income (market-rate) units; are dispersed throughout the development.
8. Maintain long-term affordability of public housing and affordable units within the economic constraints of funding available for development and operation of public/affordable housing.
9. Aggressively promote all phases of the program and ensure long-term financial stability of developments.
10. Promptly achieve milestones and deliver development products.
11. Maintain high quality property management.
12. Comply with all applicable federal, state and local laws, regulations, policies, edicts, approval requirements, and court orders.

III. PROGRAM GUIDELINES AND INFORMATION

Transaction Elements

HACB envisions that the terms of a Master Developer Agreement (MDA) with the Master Developer will be negotiated as soon as possible. HACB understands that the Master Developer must be adequately compensated for the risk involved in producing housing developments in Beaumont. HACB must also ensure that the Project initiatives comply with business terms allowable under governing statutes, regulations and policies and that it protects its interests.

Fees and cost limitations. HUD policies and regulations prescribe how public housing funds may be used. They set limits for developer, contractor and property management fees, govern the use of, contribution to, and pay out of reserves and developer fees, control HACB's contribution to funding predevelopment activities, and determine how much public housing funding can be provided to fund a project. Public housing funds will be provided for the project in accordance with regulatory and policy restrictions. Many of the important restrictions on the use public housing funds are contained in HUD's Cost Control and Safe Harbor Guidelines (see Exhibit VI).

Predevelopment agreement. After selection of the Master Developer, HACB will seek to enter into a Predevelopment Agreement that will stipulate terms and conditions governing the use of public housing funds. Terms of the Predevelopment Agreement will abide by the HUD Cost Control and Safe Harbor Guidelines.

Development guaranty. For every development phase, the Master Developer shall provide an unlimited guaranty of completion and performance from a financially responsible entity satisfactory to HACB to ensure that the project is completed. The guaranty shall cover project costs in excess of contingencies agreed to by HACB. Further details of the guaranty will be negotiated and included in the Master Development Agreement.

Return on HACB investment. In consideration of its contribution of resources including funding and land, HACB expects a return on its investment for each development. The form of this return can include any mechanisms proposed by the Master Developer and acceptable to HACB.

Right of first refusal and/or purchase option. HACB will be provided a right of first refusal and purchase option using the minimum purchase price permitted under federal tax law to secure the right to purchase public housing units and/or the mixed-income rental developments in which they are a part upon expiration of mortgages, refinancing, or notification of interest/readiness to sell housing developments.

IV. ROLES AND RESPONSIBILITIES

Role of the HACB

The HACB will play an essential role in the development effort. Staff will assist with administrative tasks to facilitate the closing of the projects. The HACB encourages the Master Developer to propose creative forms of partnerships that benefit both the development team and the HACB.

Land owner. HACB envisions leasing its land to a limited partnership or limited liability company established by the Master Developer who will be responsible for developing the physical improvements, where HACB-controlled land is required for development. The Authority will also consider disposition by sale, where it is appropriate. HACB will be concerned about preserving long-term asset value through attentive property management, and ensuring that the applicable HUD and HACB management requirements are being met. HACB expects that a private management firm will manage the new rental housing.

Obtain PILOT and Cooperation Agreements. HACB will be responsible for obtaining PILOT and Cooperation Agreements for the projects with the City.

Asset manager. HACB will continue to have asset management responsibilities related to the public housing units in any development. As part of its asset management responsibilities, HACB will monitor and enforce the terms of the Regulatory and Operating Agreement and any Ground Lease with the Developer, and monitor compliance with applicable statutory, regulatory and policy provisions of public housing.

Coordination of public housing residents' programs. HACB will be responsible for coordinating supportive services to families living in public housing units in mixed-income developments. However, the Master Developer shall assist HACB in developing human services programs and operations targeted to public housing residents in the new mixed-income developments. Respondents are encouraged to develop creative methods, programs and partnerships that would directly involve the Master Developer/property manager in funding and delivery of human services to public housing residents in their developments.

Role of the HACB Construction Coordinator

HACB employs a Construction Coordinator, to assist with administration of the development program and offer technical assistance to the Authority on mixed-finance planning and development. The Coordinator is responsible for coordinating the development program. The Coordinator will assist the Master Developer in preparing certain documentation required for HUD approval, such as the Rental Term Sheet and Mixed-Finance Proposal, and will assist the Authority in its attempt to expedite the development process. The Coordinator will provide advice to HACB in negotiating deal terms and developing contract documents and will monitor and enforce the terms of the contract between HACB and the Master Developer. The Coordinator will also monitor and advise HACB on design and construction.

Role of the HACB Legal Advisor

The Authority will retain mixed-finance legal counsel to represent and protect its interest in contracts and documents related to mixed-finance development and closing. The legal advisor will prepare all contracts to which the HACB will be a party, including, but not limited to, the Master Developer Agreement, all ground leases and loan documents concerning HACB funds and other HUD evidentiary for which HACB is responsible, and will be principal point of contact with HUD's Office of General Counsel and will represent HACB in connection with all closings. The Master Developer shall provide its own legal counsel to provide advice and counsel regarding closing requirements and evidentiary and other documents required for implementation of the mixed-finance development program.

Role of the Master Developer

The Master Developer will be expected to immediately move forward with implementation of a development program, participate in the master planning process, implement the master plan, and retain an ownership interest and risk position in mixed-income rental properties developed as a result of this initiative.

Development manager. The Master Developer will manage and coordinate implementation of the master plan including monitoring timely achievement of milestones, coordinating implementation of all master planning phases and ensuring that program phasing and implementation is deployed in a manner that fosters opportunities for local businesses and individuals.

Owner/developer. The Master Developer will have an ownership stake in mixed-finance, mixed income developments and in that role; the Master Developer's responsibilities shall include, but are not limited to, those described below and in Section IV. As owner/developer, the Master Developer will:

- produce an overall financing plan which maximizes the leveraging of public housing funds;
- obtain leveraged financing for the developments and prepare project term sheets and Mixed-Finance Proposals for HUD submission as directed by HACB;
- design a competitive process for the selection of tax credit investors which includes a role for HACB in reviewing investor submissions and reviewing investor selection;
- identify and obtain additional development sites;
- prepare a market analysis;
- develop architectural plans and specifications;
- obtain all required building, construction, zoning and environmental approvals and any other federal, state and local approvals (except those that must be processed and obtained by a government entity);
- arrange for all necessary financial guarantees, assurances and closings;
- procure all goods and services necessary for the successful completion of the project;
- supervise site preparation and construction;
- ensure successful lease-up and long-term viability of the developments;
- create economic opportunities for local businesses and individuals and ensure compliance with minority, women and disadvantaged business contracting goals and local hire targets for the project.

V. SUBMISSION REQUIREMENTS

Due Date

Submissions in response to this RFQ are due no later than 3:00 PM (CST) **December 19, 2016**. Late proposals will not be considered and will not be opened. Respondents are solely and entirely responsible for ensuring that submissions are received before the stated due date and time. Proposals must be identified as follows:

REQUEST FOR QUALIFICATIONS FOR MASTER DEVELOPER

Housing Authority of the City of Beaumont

1890 Laurel Street

Beaumont, Texas 77701

Attention: Tammy Shelton, Procurement Department

Respondents must submit five (5) bound and secured copies of their Statement of Qualifications in response to this solicitation. Faxed or electronic copies of submissions will not be accepted. Documents should be in 8 1/2" x 11", single-sided format. One copy should be clearly identified as containing documents with original signatures. The respondent will be responsible for all costs incurred in preparing a response to this RFQ. All material and documents submitted by prospective developer(s) will become the property of HACB and will not be returned. The developer(s) selected for further interviews and negotiations will be responsible for all costs incurred during these processes.

Questions

Questions regarding this RFQ should be directed **in writing** to Tammy Shelton, Procurement Dept. by e-mail to sheltona@bmtha.org or by fax to 409-951-7273 on or before Close of Business December 9, 2016.

HACB Rights

The HACB reserves the right to reject any or all proposals, to advertise for new proposals or proceed to accomplish this solicitation by any means determined to be in the best interest of the HACB including the right to assign primary responsibility for the master planning task to the PM. In this case, the master developer will participate in the formulation of the master plan but will not lead the master planning process or be the primary author of the plan. HACB will evaluate proposals to determine which best satisfies the needs of the Authority and community in accordance with the provisions of this RFQ.

Content of Submission

Respondents must submit the following documentation in the order listed below. **Failure to comply with these submission requirements may be cause for rejection of the submission.**

1. ***Letter of Interest.*** The letter of interest (not to exceed four pages excluding attachment of the Letter(s) of Participation) should:
 - i. Introduce the respondent team, specifying roles and responsibilities of team members and identifying the authorized representative (with contact address, telephone number and e-mail address included) who will serve as the primary contact throughout the selection process. Include information for a contact alternate in the event that the authorized representative is absent or unavailable.
 - ii. Describe the team's understanding of its role as Master Developer and why it will be successful in implementation.
 - iii. Attach a Letter of Participation addressed to the HACB from each separate entity that comprises the development team. The letter should be on firm letterhead, acknowledge participation of the team member and authorize use of the individual's/firm's qualifications to compete under this RFQ.
2. ***Qualifications.***
 - i. ***Organization of respondent team.*** A description of the respondent team's organization should include:
 - a) An organizational chart that shows all legal entities on the respondent team, illustrating the roles and responsibilities of all team members and identifying key staff in each role or responsibility. Attach a contact list with address, telephone and e-mail information for all entities indicated on the organizational chart; and
 - b) A narrative statement of the relationship between team members revealing any ownership interest and describing previous collaboration and/or interaction between the team members. The narrative statement should identify important roles and

responsibilities, if any, that will be filled by additional team members selected by the Master Developer in the future.

- ii. Experience and capabilities. Selected developer must have successfully developed (as owner, general partner or developer at least 100 tax credit units. Provide a description of relevant previous experience within the past ten (10) years for all members of the team focusing on:
- a) Development and operation of rental housing, especially mixed-use development for mixed-income families and seniors with social service programs and use of mixed-finance development that involves public housing funds and a variety of other private and public sources of financing;
 - b) Implementation of complex revitalization or development programs, and the implementation of such programs in challenging urban settings; and
 - c) Conduct of strategic and master planning exercises involving participation of a broad range of stakeholders.
 - d) Demonstrated ability of working with TDHCA staff to successfully prepare and submit winning applications.
 - e) Demonstrated ability to bring projects in on time and on budget so as not to incur penalties or downward adjusters from funders.
 - f) Not being listed on HUD's debarred list of contractors or developers.
- For each project described, include:
- a) name of the project;
 - b) date of completion or anticipated completion;
 - c) location;
 - d) size and type of project (project cost or financial value, square footage, mixed-use description – residential, commercial and/or retail, residential description – public housing, affordable, market, senior, family, disabled, rental, homeownership, etc.);
 - e) development time frame (including major milestones);
 - f) client; and,
 - g) sources of funds.
- iii. Key personnel. Provide a roster of key personnel proposed to have direct responsibility for each member of the respondent team; describe their roles and responsibilities; provide the percentage of their time anticipated to be committed to the HACB program; provide the address of the office from which services will be provided; and include their resumes.
- iv. Capacity. Provide a chart listing all existing commitments for key team members, the size of projects (value, acreage, floor area, and number of dwelling units), percent of time and resources (staff time) devoted to the project, and anticipated date of completion. The chart should demonstrate that there would be adequate organizational capacity and resources to undertake the HACB development role if selected.
- v. References. For the primary member of the team and any guarantors, provide five (5) corporate references, including at least one banking (credit) reference and two current or recent client references (including

investors, lenders or other fund providers) for projects executed in the last five years. Include three professional references for all other legal entities on the development team.

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- vi. Financial statement. Include two (2) copies of audited financial statements for the last three years for the primary member of the team and any guarantors. The statements should reveal the balance sheet as well as income and expense information, and should indicate the existence of resources to fund predevelopment activities, completion guarantees and any equity participation.
 - vii. Developer Experience Certification. Include two original completed copies. The Certification of the selected developer will be submitted as part of the LIHTC application process by the TDHCA required deadline. For more information, please check the TDHCA web site at www.tdhca.state.tx.us.
3. **Certifications and Assurances.**
- i. Certifications and assurances. Respondents must complete all certifications, affidavits, assurances and forms included as Attachments and/or required in the text of this solicitation.

VI. SELECTION PROCESS

Initial Review

Each submission received by the deadline will be internally reviewed to establish responsiveness. The reviewer will ensure that all required materials are included and no obvious deficiencies are evident. HACB reserves the right, in its sole discretion, to waive any informalities or minor irregularities and/or permit the cure of such deficiencies if it serves its best interests to do so. Any submission that fails to include all materials requested under this solicitation may be deemed non-responsive, and if determined to be non-responsive by HACB will not be rated or ranked.

Selection Panel Review

Each responsive submission will be rated and ranked by a Selection Panel. The Selection Panel will recommend finalists among the respondents based on scores and rankings. At HACB's discretion, the Selection Panel shall interview finalists. At any time during the selection process, HACB may require further information from respondents to aid in the deliberation of the Selection Panel. The Selection Panel will use both its initial scoring and the oral interviews as well as any further information to determine the final scores and assign final rankings. HACB reserves the right to request Best and Final Offers if deemed necessary. The Selection Panel will make a recommendation to the HACB Executive Director based on respondent's submissions, interviews, and any additional information gathered during the selection process.

HACB reserves the right to accept or reject individual members of any respondent team. No contractual rights shall arise from the process of negotiation until such time as the HACB and the selected Developer have signed a Master Development Agreement. If, for any reason, a Master Development Agreement cannot be negotiated with the highest ranked respondent, HACB reserves the right, but shall be under no legal obligation, to

select the next highest respondent for negotiation of a contract. HACB may continue to negotiate with respondents in the order of rankings until a contract is finalized. Work under the Master Development Agreement shall commence immediately upon its execution. The parties further concur that HUD must approve the Master Development Agreement and agree to work diligently to implement changes as may be required by HUD.

Communication During the Procurement Process

During the solicitation period and subsequent evaluation process, respondents may not make any contact regarding this RFQ with Board Members, the Program Manager, the Legal Advisor, residents, or HACB staff other than the HACB staff member designated as the point of contact. The activities of the Selection Panel are confidential and any contact with members of the above groups will create the impression of unfair access or conflict of interest. Contact prior to selection may lead to a nullification of the results of the RFQ, or a dismissal of the offending respondent's submission, or it may result in the contacted party being required to recuse himself or herself from consideration of the respondent's submission.

Schedule

The anticipated schedule for the RFQ is as follows:

	<u>Completion Date</u>
RFQ available	December 1, 2016
Final day to submit written questions	December 9, 2016
Submissions are due	December 19, 2016
Oral interview (if required)	December 21, 2016
Selection of highest ranked respondent	December 27, 2016

VII. EVALUATION CRITERIA

Criteria

The Selection Panel will evaluate and score each responsive submission using a 100-point system. The following criteria will be used to award points for both written submissions and interviews:

Points Available	Evaluation Criteria	Description of Criteria
50 points	1. Experience	<ul style="list-style-type: none"> • Ability to provide Experience Certification for Multifamily Rental Applications per the Texas Department of Housing and Community Affairs Qualified Allocation Plan (QAP). • Successful experience in the planning and construction of mixed-use, mixed-income and mixed-finance development projects of comparable size and complexity; • Proven ability to obtain, structure and implement layered financing using a variety of private and public sources of financing; • Demonstrated ability to complete projects of similar complexity with reasonable promptness; • Degree of team's familiarity with state and local rules, practices, conditions and/or personnel which are important to the success of the development; and, • The degree to which the Development Partner demonstrates quality, long-term viability and successful experience with ownership, property management and services delivery for mixed-use, mixed-income and mixed-finance developments of similar size.
30 points	2. Financial Capacity	<ul style="list-style-type: none"> • The financial capacity (as Master Developer and provider of guarantees) as evidenced by audited financial statements, the firm's bank and client references, and the Master Developer's discussion of how it intends to honor all guarantees should the need arise.
20 points	3. Organizational Capacity	<ul style="list-style-type: none"> • Creativity and flexibility of the team, demonstrated by examples of or proposals of unique collaborative relationships; • Cohesion of the team, as demonstrated by previous experience working together, and coherence of their technical response; • Capacity of the team members to accommodate the time, resources and effort necessary to successfully accomplish the program in a timely fashion and with undue strain; and, • Experience of key staff in managing tasks associated with their roles and responsibilities.
Mandatory		<ul style="list-style-type: none"> • The complete execution and submittal of all Certifications and Assurances referenced in Section 4.

VIII. CONTRACTING REQUIREMENTS

Compliance with Laws and HUD Regulations.

The selected respondent shall comply with all local, state and federal laws and regulations in performance of services pursuant to this solicitation, including but not limited to:

1. ***Uniform Administration Requirements*** contained in 24 CFR 85.1 et seq., as amended;
2. ***Executive Order 11246*** of September 24, 1965 entitled “Equal Employment Opportunity” as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR 60) (*all construction contracts in excess of \$10,000*)
3. ***Sections 103 and 107 of the Contract Work Hours and Safety Standards Act*** (40 U.S.C. 327-330) as supplemented by department of Labor regulations (29 CFR Part 5). (*Construction contracts in excess of \$2,000, and in excess of \$2,500 for other contracts that involve the employment of mechanics and laborers*)
4. ***All applicable standards, orders and requirements issued under Section 306 of the Clean Air Act*** (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants in excess of \$100,00)
5. ***Copeland “Anti-Kickback” Act*** (18 U.S.C. 8754) as supplemented in Department of Labor regulations (29 CFR Part 3). (*All contracts and subgrants for construction or repairs*)
6. ***The Americans with Disability Act of 1990 (H.R. 2273, 8.933)***; Sections 501 and 504 of the Rehabilitation Act of 1973, as amended; the Architectural Barriers’ implementing regulations (24 CFR 40). (*All construction contracts*)
7. ***All applicable standards, orders and/or requirements established by and/or pursuant to:***
 - i. The Solid Waste Disposal Act as amended by the Resources Conservation and Recovery Act of 1976 (42 U.S.C. 6901, et seq.), and any amendments thereto;
 - ii. The Toxic Substance Control Act (15 U.S.C. 2601, et seq.), and any amendments thereto;
 - iii. Occupational Safety and Health Administration regulations, and any amendments thereto;
 - iv. The Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. 9601, et seq.), and any amendments thereto;
 - v. The National Environmental Policy Act (42 U.S.C. 4321 et seq.) and implementing regulations (24 CFR Parts 50 and 58), and any amendments thereto;

- vi. Executive Order 11738 and the U.S. Environmental Protection Agency's implementing regulations (40 CFR Part 15), and any amendments thereto.

Liability and Insurance Requirements

The selected respondent will be required to maintain General Liability with an aggregate amount of \$1 million, Worker's Compensation, Automobile Liability, Professional Liability, and other form of insurance, with firms authorized to do business in the State of Texas, during the duration of performance of activities pursuant to this RFQ. The Master Developer will also be required to indemnify the HACB against claims and obligations due to actions and activities of the Master Developer and not arising from negligence or misconduct of HACB and its employees. Terms of required insurance and indemnification will be included in the MDA.

Conflict of Interest

By responding to this RFQ with a submission, the respondent warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, it does not have any organizational conflict of interest. Conflict of interest is understood as a situation in which the nature of the work under this solicitation and the organizational, contractual and financial interest of the respondent are such that:

1. The respondent may have an unfair advantage; or
2. The respondent's objectivity in performing work pursuant to this RFQ may be compromised.

Respondents should note that a conflict of interest arises if an employee, officer or agent of HACB, a member of his/her immediate family, his/her partner, or an organization that employs or is about to employ any of the above (the employee/officer/agent, his or her immediate family or partner) has financial or other interest in the respondent.

Certifications and Assurances

- Attachment A-1: HUD form 5369-B Instruction to Offerors
- Attachment A-2: HUD form 5369-A Certifications & Representation
- Attachment A-3: Non-Collusion Affidavit
- Attachment A-4: Bidders Qualification
- Attachment A-5: Form 2992 Debarment and Suspensions
- Attachment A-6: HUD form 5370-C General Contract Conditions
- Attachment A-7: M/WBE Participation
- Attachment A-8: TDHCA Developer Experience Certification

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:]

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

**Representations, Certifications,
and Other Statements of Bidders**
Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

(1) Is the person in the bidder'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's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder'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 deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[] [Contracting Officer check if following paragraph is applicable]

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

(1) 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.

(2) A fully executed "Non-collusive Affidavit" [] is, [] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

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

(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.

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

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

3. 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 bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) 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;

(2) 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 bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) 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.

(c) 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.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
(b) Impair the bidder's objectivity in performing the contract work.
[] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

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

The bidder 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 business enterprise. "Women-owned business enterprise," as used in this provision, means a 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 business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|------------------------|------------------------------|
| [] Black Americans | [] Asian Pacific Americans |
| [] Hispanic Americans | [] Asian Indian Americans |
| [] Native Americans | [] Hasidic Jewish Americans |

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [] is, [] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [] is, [] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

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

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder'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).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any 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).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(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 bid, the bidder 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 bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder 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:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) 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 Nonsegregated 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.

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

The bidder certifies that:

(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 bidder will immediately notify the PHA/IHA 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 bidder 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 bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

12. Previous Participation Certificate (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [] is, [] is not included with the bid.

13. Bidder's Signature

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

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

FORM OF NON-COLLUSIVE AFFIDAVIT

STATE OF TEXAS

COUNTY OF JEFFERSON

_____, being first duly sworn, deposes and says that
he/she is

(a partner or officer of the firm of, etc.)

the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person to fix the bid price or affiant or of any other bidder, or to fix any overhead, profit, or cost element of said bid price, or of that of any other bidder, or to secure any advantage against

THE HOUSING AUTHORITY OF THE CITY OF BEAUMONT

of any person interested in the proposed Contract; and that all statements in said proposal or bid are true.

Signature of Bidder, if Bidder is an individual

Signature of Bidder, if Bidder is a Partnership

Signature of Officer, if Bidder is a Corporation

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

Notary Public

My Commission expires _____

Certification Regarding Debarment and Suspension

U.S. Department of Housing
and Urban Development

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

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

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

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

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

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

Instructions for Certification (A)

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

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

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

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

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

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

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

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant	Date
Signature of Authorized Certifying Official	Title

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

M/WBE PARTICIPATION

M/WBE PARTICIPATION: The contractor agrees to subcontract with minority Business enterprises and/or women business enterprises (herein called W/MBE) certified as such or recognized by HACB as a certified M/WBE.

USING BEST EFFORTS TO FULFILL M/WBE REQUIREMENT: In the event HACB has a reasonable belief that Contractor will not use his/her/its best efforts to meet the M/WBE participation goal, HACB reserves the right to pull work from the contract. Best efforts may be established by a showing that Contractor has contacted and solicited bids/quotes from subcontractors and worked with the Housing Authority to seek assistance in identifying M/WBEs.

FAILURE TO USE YOUR BEST EFFORTS TO MEET THE M/WBE PARTICIPATION GOAL MAY CONSTITUTE BREACH OF CONTRACT AND SUBJECT THE CONTRACT TO TERMINATION.

NOTIFICATION OF M/WBE PARTICIPATION: Contractor agrees to promptly complete and return all M/WBE Confirmation of Participation and M/WBE Confirmation of Payment forms utilized by HACB to confirm M/WBE subcontractor by submitting copies of checks made payable to the respective M/WBE subcontractor signed by the Contractor.

CONTRACTOR SIGNATURE

DATE

Note: This form must bear a signature.

2016 EXPERIENCE CERTIFICATE REQUEST FORM

Section 1.

APPLICANT INFORMATION		
Name to Appear in the Certification:	_____	
Return Certificate C/O:	_____	
Address:	_____	
City:	State: _____	Zip: _____
Contact Phone:	_____	Contact Fax: _____
Contact Email:	_____	

Section 2.

The applicant above certifies to the following (applicant must **INITIAL** each that applies):

- _____ The individual to be named on the Experience Certificate will be one of the Principals of the Development Owner, General Partner or Developer of a 2016 application for multifamily funding, including Housing Tax Credits.
- _____ The individual to be named on the Experience Certificate was a Principal of the Development Owner, General Partner or Developer of the 150 units submitted for experience **or** had authority equal to that of a Principal per written agreement (agreement must allot said authority directly to the individual).
- _____ The individual to be named on the Experience Certificate is eligible to be an Applicant.
- _____ The individual to be named on the Experience Certificate **has NOT** at any time within the preceding **three years** been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Forms 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

Section 3.

Provide one or more of the following documents verifying the number of units constructed or rehabilitated, that the units were completed and that the individual to be named either WAS a Principal or had the authority of a Principal during the construction or rehabilitation of those units. Mark the checkbox to identify the document(s) provided:

- 2014 or 2015 Experience Certification Letter. (**No earlier certifications are acceptable.**)
- American Institute of Architects (AIA) Document (A102) or (A103) 2007 Standard Form of Agreement between Owner & Contractor
- AIA Document G704 -- Certificate of Substantial Construction
- AIA Document G702 -- Application and Certificate for Payment
- Certificate of Occupancy
- IRS Form 8609 (only one for development is required)
- HUD Form 9822
- Development agreement
- Partnership agreement; or
- Other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner or Developer has the required experience. If documents are over 30 pages, highlight the relevant information. All documents should serve a purpose. Excess documentation should be avoided.



Remember to attach supplemental information checked above behind this form in order to establish previous experience.

INSURANCE

Contractor shall furnish HACB with evidence of all appropriate and applicable insurance coverage carried by the firm, including policy coverage periods. Contractor shall furnish HACB with certificates of insurance showing that the following insurance is in force and will insure all operations under this IFB, and name HACB as an additional insured. Required insurance levels are as follows:

Workers' compensation in accordance with the State of Texas rules and regulations.

General liability insurance with a single limit for bodily injury of \$1,000,000 per occurrence and property damage limit of no less than \$1,000,000 per occurrence. The insurance may have a combined aggregate of coverage amounting to no less than \$1,000,000. Such insurance shall protect Contractor against claims of bodily injury or death and property damage to others. The insurance shall cover the use of all equipment and vehicles used on the site(s) not covered by Contractor's automobile liability. If Contractor has a "claims 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 Agreement and the extended reporting period may not be less than five years following the completion date of the Agreement.

Automobile liability on owned and non-owned motor vehicles used on the site(s) or in connection herewith for a combined single limit of bodily injury and property damage of not less than \$1,000,000 per occurrence.

All insurance shall be carried with companies that are financially responsible and admitted to do business in the State of Texas. Contractor shall not permit the insurance policies required to lapse during the period for which the Agreement is in effect. All certificates of insurance shall provide that no coverage may be cancelled or non-renewed by the insurance company until at least thirty- (30) day's prior written notice has been given to HACB.