

REQUEST FOR PROPOSALS

MOVING TO WORK (MTW) CONSULTANT

PROPOSAL #1449

For

Louisville Metro Housing Authority

420 South 8th Street

Louisville, Kentucky 40203

Tim Barry

Executive Director and Contracting Officer

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I. REQUEST FOR PROPOSALS

REQUEST FOR PROPOSALS

FOR

MOVING TO WORK (MTW) CONSULTANT

Proposal #1449

The Louisville Metro Housing Authority (LMHA) is requesting proposals to provide services in connection with the above referenced project. Interested parties should contact Vickie Fields at (502) 569-3420 to receive a Request For Proposal (RFP) booklet which contains all pertinent information and forms needed to submit a responsive proposal. Proposal booklets may also be obtained at the Louisville Metro Housing Authority offices at 420 South 8th Street / Louisville, Kentucky 40203 or electronically at www.lmha1.org under "Bid Opportunities." Offerors who obtain a proposal packet on-line should e-mail their contact information (including company name, address, project manager name, e-mail, phone, and fax) to fields@lmha1.org to receive notice of any addenda that might be issued to this RFP.

The contract consists of providing technical assistance for the Housing Authority's Moving to Work (MTW) Program – including preparation of the MTW Annual Plan and MTW Annual Report - and working on various special projects as directed.

Proposals must be received at the Louisville Metro Housing Authority by 2:00 p.m. local time, Tuesday, December 5, 2017. Address proposals to:

Attn: Vickie Fields
Louisville Metro Housing Authority
3223 South Seventh Street Road
Louisville, Kentucky 40216

The Louisville Metro Housing Authority reserves the right to accept or reject any or all proposals and/or waive any informalities in the procurement process. LMHA is an equal opportunity employer and is committed to affirmative action in the involvement of minority businesses to the maximum extent possible. LMHA encourage MBE firms or individuals to respond. Non-minority firms or individuals are requested to seek participation of minority businesses as sub-consultants or in partnership arrangements to the maximum extent possible.

II. REQUIRED CERTIFICATIONS
(HUD-5369-A)

**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)

III. INSTRUCTIONS TO OFFERORS
(HUD-5369-B)

Instructions to Offerors Non-Construction

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



- 03291 -

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:]

IV. GENERAL CONDITIONS FOR NON-
CONSTRUCTION CONTRACTS
(HUD-5370-C)

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. 3/31/2020)

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. 20410-3800; 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

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 thereof 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 80 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 debatement 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.

V. PROJECT SPECIFIC INFORMATION

- A. Program Summary & Scope of Services
- B. Instructions and Notice to Proposers
- C. Evaluation Factors for Award
- D. Selection Process
- E. Request For Proposals (RFP) Interpretation
- F. LMHA Options

PROJECT SPECIFIC INFORMATION

*Louisville Metro Housing Authority
420 South 8th Street
Louisville, Kentucky 40203
Tim Barry, Executive Director*

Issue Date: November 22, 2017

Submission Date: December 5, 2017

A. PROGRAM SUMMARY & SCOPE OF SERVICES

The Louisville Metro Housing Authority (LMHA) is a high-performing public housing authority, which as of July 2017, operated nearly 4,500 public housing units and administered rental assistance for approximately 9,300 families through its Section 8 programs.

LMHA is seeking proposals to provide consultant services for its Moving to Work (MTW) Program, including but not limited to the preparation of its MTW Annual Plan and MTW Annual Report. HUD's MTW Demonstration Program provides a small group of 39 Public Housing Agencies across the country the opportunity to design and test innovative, locally-designed housing and self-sufficiency strategies for low-income families. The program allows exemptions from existing low-income public housing (Section 9) and Housing Choice Voucher (Section 8) rules, and it permits LMHA to combine public housing operating and capital funds, along with Housing Choice Voucher rental assistance funds, into a single agency-wide funding source.

Services shall also include assistance with compliance tasks (such as updates to the Housing Authority's admissions, occupancy, and administrative policies) and/or special projects as requested.

Services shall be performed in accordance with the contract which shall be executed between the LMHA and service provider. The initial contract will be for a period of one year. It may be extended up to four additional years in accordance with the terms contained within the contract.

Specific services may include:

- Consultant will provide policy and implementation support for the agency's MTW Program, including preparing the agency's MTW Annual Plan and MTW Annual Report for submission to HUD in accordance with the guidelines described in Form HUD-50900.
- Consultant will provide assistance identifying potential beneficial uses of available MTW regulatory flexibilities and make recommendations regarding same to senior staff.
- Consultant will assist with development and implementation of new MTW activities, including methods for tracking HUD-required standard metrics.
- Consultant will coordinate public review and comment processes; draft Board resolutions; prepare MTW Annual Plan amendments; and update major housing policy and administrative documents (such as Public Housing Admissions and Occupancy Policies (ACOP); Public Housing Lease; Tenant Selection Plans; and the agency's Housing Choice Voucher (HCV) / Section 8 Administrative Plan) as necessary to implement new or amend existing MTW activities.
- Consultant should have a working knowledge of the MTW Program, as well as HUD rules related to Section 8 programs (HCV, PBV, Mod Rehab, etc.) and the Public Housing Program.

Familiarity with additional federal housing programs, such as HOPE VI, the Choice Neighborhoods Initiative, and the Low-Income Housing Tax Credit Program, is preferred.

- Consultant should have a desire and means to acquire working knowledge of local communities, populations, and issues.
- Consultant may also be asked to assist with other compliance tasks or special projects.

B. INSTRUCTIONS AND NOTICE TO PROPOSERS

1. GENERAL

The instructions that follow provide guidance for the preparation and submission of proposals. Their purpose is to establish the requirements, format, and content of proposals so that proposals are complete, contain all essential information and can be evaluated fairly.

2. SUBMISSION & CONTENT OF PROPOSAL

a. Inquiries

Inquiries concerning the Request for Proposals (RFP) should be submitted in writing to the issuing office as follows:

Attn: Vickie Fields, Executive Secretary
Louisville Metro Housing Authority
420 South 8th Street
Louisville, Kentucky 40203

Inquiries can also be made via email to fields@lmha1.org.

b. Submission Date

Proposals shall be submitted in original and three (3) additional paper copies, prepared in the format and detailed as outlined below, to enable the Authority to make a thorough evaluation.

Proposals shall be submitted in sealed envelopes and marked "**Proposal for Moving to Work (MTW) Consultant – Proposal #1449**". All proposals must be received no later than 2:00 p.m. local time on December 5, 2017. **Proposals are to be submitted either by mail or delivery to the following location:**

**Attn: Vickie Fields
Louisville Metro Housing Authority
3223 South Seventh Street Road
Louisville, Kentucky 40216**

Faxed or e-mailed proposals will not be accepted. All proposals will be valid for sixty (60) days.

c. Submission Contents

The proposal shall be numbered and divided into tabbed sections, as follows:

- **HUD-5369-A** (See Part II of this RFP document.)
- **Response to Evaluation Factors For Award** (See Part V, Section C of this RFP document)
- **MBE Submittals** (See Part VII of this RFP document)

3. ACKNOWLEDGEMENT OF AMENDMENTS

The proposer shall acknowledge in their proposal, receipt of any amendment(s) to this RFP. The proposer's failure to acknowledge an amendment may result in rejection of the offer.

4. COMPLETE AND ACCURATE SUBMISSION

A proposer's failure to provide accurate information in response to this RFP may disqualify the proposer from further participation in the selection process.

A proposal may be corrected, modified, or withdrawn, provided the correction, modification, or request for withdrawal is made by the proposer in writing and is received at the location and time designated in the RFP for final receipt of proposals. After such date and time, the proposer may not change any provision of its proposal in a manner prejudicial to the interest of the LMHA and /or fair competition.

5. RETENTION

All proposals are the property of LMHA and shall be retained by LMHA. Therefore, proposals will not be returned.

6. CANCELLATION/WAIVER

LMHA reserves the right to cancel this RFP or to reject, in whole or in part, any and all proposals received in response to this RFP, upon its determination that such cancellation or rejection is in the best interest of LMHA. LMHA further reserves the right to waive any minor informalities in any proposals received, if it be in the public interest to do so. The decision as to who shall receive a contract award or whether or not an award shall be made as a result of this RFP shall be at the absolute sole discretion of LMHA. In addition, multiple awards may be made.

7. KEY PERSONNEL

The key personnel specified by the successful consultant are considered essential to the work being performed under the contract. Prior to diverting any of the key personnel for any reason(s), the consultant shall notify LMHA in writing, at least thirty (30) calendar days in advance, and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract. The consultant shall not change the names of these personnel, before or after contract award, without written permission from LMHA.

8. PART OF CONTRACT

The contents of the proposal submitted by the successful proposer(s) may become part of any contract award at the sole discretion of LMHA.

9. NO COMPENSATION FOR RESPONSE

Respondent will not be compensated for work or costs related to preparation and submission of this proposal.

C. EVALUATION FACTORS FOR AWARD

All proposals will be initially reviewed to determine compliance with the proposal format requirements specified within this RFP. Proposals that do not comply with these requirements may be rejected without further review. All remaining proposals will be evaluated based on the evaluation criteria outlined below:

1. Experience & Qualifications (maximum points – 45)

Evidence of ability to perform the work, as indicated by profile of professional and technical competence (i.e. work on other HUD projects, work on other federally funded projects). Ability to provide services as noted in Section V.A, PROGRAM SUMMARY & SCOPE OF SERVICES.

2. Fee Proposal Submittal (maximum points – 20)

Fee proposed shall be submitted in the form of hourly rates for all personnel that could be assigned to work on an LMHA project. The contract amount shall not exceed \$100,000 and shall only be extended with the express authorization of the LMHA and shall be on an hourly basis for the services requested and rendered. The hourly fee will be fixed for the first two years of the contract. If LMHA desires to exercise the option and extend the contract beyond the second year, the hourly fee can be negotiated at the discretion of the LMHA.

3. Timeliness (maximum points – 5)

Demonstrated history of compliance with schedules and meeting deadlines.

4. Knowledge of HUD MTW Program; HUD Subsidized Housing Programs (Section 8 / Public Housing); HUD Grant Programs (Such as HOPE VI and Choice Neighborhoods Initiative); and Affordable Housing Development (maximum points – 10)

5. Satisfaction of Current Clients (maximum points – 10)

Name and contact information of at least three references.

6. Local Familiarity (maximum points – 10)

Information regarding consultant's working knowledge of Louisville's housing market.

7. MBE, FBE, DBE Proposed Utilization (no rating)

D. SELECTION PROCESS

The purpose of this RFP is to solicit quality proposals so that LMHA may select the one that meets its needs and requirements. It is further desired that the RFP process will ensure competitiveness among offerors. LMHA urges all interested offerors to carefully review the requirements of this RFP. Written proposals containing the requested information will serve as the primary basis for selection and possibly supplemented by other means as described below.

All proposals will be reviewed by LMHA based on the evaluation criteria contained in this RFP. LMHA will select the top firm(s) based upon the evaluation criteria and LMHA's particular needs. The LMHA reserves the right to include interviews by telephone or in person if it determines this is necessary.

In order to be considered, proposals must be received at the location listed in Section V.B.2.b. no later than 2:00 p.m. local time, on December 5, 2017 via mail or delivery. Proposals must be sealed, marked with the title of this RFP, and the offeror's name, address, and telephone number. All material must be submitted on as 8½" X 11" format. Submit an original and three (3) additional paper copies.

The above stated deadline is firm as to date and hour. An offeror may select any mode of delivery; however, the risk of no-delivery shall remain with the offeror. LMHA will treat as ineligible for consideration, and will return unopened, any submission that is received after the deadline.

Faxed or e-mailed submissions will not be accepted. All timely submissions become the property of LMHA and will not be returned. Proposals will be held in confidence and not released in any manner until after contract award.

E. Request For Proposals Interpretation

The intent of this RFP is to establish the general scope of work for the services needed and to provide prospective offerors with sufficient information to enable them to provide an acceptable response to this RFP. Every effort has been made to outline requirements and to provide information in a format that is clear and concise. Nevertheless, questions may arise or additional information may be needed. Questions and inquiries regarding this RFP must be submitted in writing. All inquiries must be received no later than 4:00 p.m. local time on November 29, 2017 and should be submitted to:

Vickie Fields, Executive Secretary
Louisville Metro Housing Authority
420 South 8th Street
Louisville, KY 40203
or
fields@lmha1.org

Answers will be provided as written addenda to this RFP, issued by fax and/or e-mail to all firms who have requested the RFP.

LMHA will endeavor to provide copies of addenda to all potential offerors that have acquired this RFP, but it will be the responsibility of each offeror to make inquiry as to the existence and content of addenda, as the same shall become part of this RFP and all offerors will be bound thereby, whether or not the addenda are actually received by the offeror.

F. LMHA OPTIONS

LMHA reserves the right to cancel this RFP, or to reject, in whole or in part, any and all proposals received in response to this RFP, upon its determination that such cancellation or rejection is in the best interest of LMHA. LMHA further reserves the right to waive any minor informalities, or the failure of any offeror to comply therewith, if it is in the public interest to do so. LMHA will pay no compensation to any proposer for any costs related to preparation or submittal of this proposal.

LMHA will reject the proposal of any offeror who is suspended and/or debarred by the U.S. Department of Housing and Urban Development (HUD) from providing services to public housing authorities, and reserves the right to reject the proposal of any offeror who has previously failed to perform any contract properly for LMHA.

The determination of the criteria and process whereby proposals are evaluated and the decision as to who shall receive a contract award shall be at the sole and absolute discretion of LMHA.

Option for Contract Extension:

Generally: This article provides a mechanism for extending the contract for four 365 consecutive calendar day periods. Options may be exercised at the discretion of the Louisville Metro Housing Authority. The option provision exists solely for LMHA's convenience. If LMHA exercises one or

multiple options, the Consultant shall, during the option period, continue to perform as prescribed by the contract.

Duration: If LMHA exercises the extension option the initial extension shall begin immediately upon the expiration of the first contract term of 365 days and shall extend for a second 365 calendar days. The total combined duration of the original contract term, plus the maximum of four extension terms, shall be 1825 consecutive calendar days from the date of the original Notice to Proceed.

Price Increase: The consultant's fees will be fixed for the first two years of the contract. If LMHA desires to exercise the option and extend the contract beyond the second year, the consultant shall propose a maximum amount, expressed as a percentage, by which the offeror may wish to increase its unit prices (assuming the offeror was awarded a contract in the first place).

LMHA may consider the proposed maximum option increase percentage as a factor in assessing the benefit of extending the contract by option – as opposed to issuing a public RFP to secure services for what would otherwise be the option period – as the original contract term nears its end. Naturally, this would be a consideration only if the offeror were awarded the contract in the first place. Offerors are not required to propose increasing their rates or fees.

If LMHA notifies the Consultant that LMHA intends to exercise the option, the Consultant and LMHA shall, within 10 consecutive business days, meet to negotiate an option increase percentage, if any, that will be applied to the Consultant's rates and fees during the option term. Negotiations shall proceed from the premise that no increase shall be granted except upon the Consultant's showing of good cause.

Total Fee Not-To-Exceed \$500,000: Under no circumstances, unless otherwise established by written modification, shall the total fee for services provided during each option extension exceed \$100,000. The total fee paid to the Consultant for services rendered during the original contract period and the four option periods shall not exceed \$500,000.

CONDITIONS FOR EXERCISE OF OPTION

Exercise at LMHA's Sole Discretion: Any option provision contained in this agreement may be exercised only by the Louisville Metro Housing Authority and no language or provision of this instrument, nor any statement or promise by any LMHA agent or employee, shall be construed as establishing any right in the Consultant to independently trigger or exercise the option.

Notice of LMHA's Decision: At least thirty consecutive calendar days before the expiration date of the original contract term, LMHA will inform the Consultant of LMHA's intention to exercise or not exercise the extension option.

If LMHA chooses to exercise the extension option, the Consultant shall, within 10 consecutive business days after receiving LMHA's notice, meet with LMHA's Contracting Officer or the Contracting Officer's Designee to negotiate the actual option increase percentage, if any. After the actual option increase percentage, if any, is determined and LMHA Board approval is acquired, LMHA shall deliver to the Consultant a modification form memorializing the extension agreement. The modification form shall include an updated Fee Schedule (if any) representing the fees and rates that will apply during the option term. LMHA's delivery of the modification form shall bind the Consultant to the extension agreement. If LMHA chooses not to exercise the extension option, the Consultant shall complete its performance under the contract as otherwise prescribed.

Option Dependent Upon Consultant's Responsibility: The Consultant shall take such steps as may be required to maintain its qualifications and ability to at all times during the term of this agreement and to lawfully meet its obligations under this agreement. The Consultant shall, forty-five days prior to the expiration date of the original contract term, provide the following written certification to LMHA:

I _____ hereby certify that _____ has
(principal's name) (company name)

taken all necessary steps to maintain its qualifications and ability to lawfully provide the services required under Proposal #1449 during the term of the option extension, should LMHA choose to exercise the extension option.

Date: _____ Signed: _____

VI. Form of Contract

SPECIAL PROJECTS CONSULTANT

FORM OF CONTRACT

This agreement made this ____ day of _____, 2017 by and between the LOUISVILLE METRO HOUSING AUTHORITY, 420 South Eighth Street, Louisville Kentucky 40203 (herein after referred to as the "LMHA"), and _____ (hereinafter referred to as the "Consultant").

WITNESETH:

WHEREAS, the LMHA desires to have the services of a Moving to Work (MTW) Consultant for policy and implementation assistance for its MTW Program and various special projects.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. TERM:

The term of this agreement shall commence on _____, 2017 and Terminate on _____, 2018. At the end of the 1-year period, the contract may continue upon mutual agreement of the parties for up to four (4) additional one (1) year renewals.

2. SERVICES AND DUTIES TO BE PERFORMED BY CONSULTANT:

The Consultant, having satisfied itself that all costs associated with the work under the contract are included in this contract, shall furnish all labor, materials, equipment and services to complete all work required in strict accordance with the *Request For Proposals* and HUD requirements which comprise the total Contract Documents in the project titled: *MOVING TO WORK (MTW) CONSULTANT – Proposal #1449*.

3. CONTRACT PRICE:

A. For services performed hereunder, the LMHA shall pay the Consultant an hourly rate of \$_____ per hour for an annual fee not to exceed \$100,000. The LMHA shall pay the consultant for the performance of the Contract in accordance with the terms and conditions of the Contract Documents, in current funds.

B. The consultant shall furnish the LMHA, as requested, with daily time sheets and invoice once each month. Such invoices are to be emailed, mailed or delivered to the LMHA at 420 South Eighth Street.

C. The Consultant shall pay all salaries and expenses of (and all Federal, Social Security Taxes, Federal and State unemployment Taxes and any similar taxes relating to) employees. The Consultant further agrees to comply with all Federal, State and Local Wage and Hour Laws applicable to all personnel furnished under this Agreement.

4. LMHA STANDARDS:

Without limiting responsibility of the Consultant for the proper conduct of its employees, conduct is to be guided by a set of standard rules as agreed upon between the Consultant and the LMHA, and such special other instructions applicable to the services as may be directed by the LMHA from time to time through its designated agents, all of which must be in writing and made a part of the Agreement.

5. REPRESENTATIONS AND WARRANTIES OF CONSULTANT AND LMHA:

- A. The Consultant is an Equal Opportunity Employer and it will not intentionally violate any part of Title VII of the Civil Rights Act of 1967 or any of the Executive Orders Issued thereunder.
- B. The Consultant is responsible for the direct supervision of their employees Through its designated representatives at the premises to which this Agreement Relates and such representatives will, in turn, be available at all reasonable times to report to and confer with the designated agents of the LMHA with respect to the services to be rendered hereunder.
- C. The LMHA and the Consultant agree to not hire each other's employees for a period of ninety days after termination of the employee or termination of this contract, whichever is longer.

6. INDEMNIFICATION:

Consultant agrees to reimburse, indemnify and hold harmless LMHA for any claim made against it or cost (including attorney's fees) incurred by Consultant as a result of the willful misconduct or negligence of any consultant employee or as a result of any claim filed or asserted by any consultant employee.

7. RELATIONSHIP OF THE PARTIES:

- A. The parties intend that an independent consultant-employer relationship be created by this Agreement. Consultant understands that it is not an employee of the LMHA and the Consultant is not to be considered an agent or employee of the LMHA for any purpose, except as specifically set forth herein.
- B. Consultant does not have any authority to bind LMHA as an agent.
- C. None of the benefits provided by the LMHA to its employees, including, but not limited to worker's compensation, unemployment insurance, group health and/or life insurance, or pension plan participation shall be available to Consultant or Consultant's employees.

8. TERMINATION:

LMHA may, upon 10 day written notice, immediately terminate this Agreement for cause, convenience, or funding out.

9. ENTIRE AGREEMENT:

This Agreement consists of the following component parts:

- Proposal # 1449
Proposal Issue Date: November 22, 2017
Titled: *MOVING TO WORK (MTW) CONSULTANT*
- This instrument: *MOVING TO WORK (MTW) CONSULTANT / FORM OF CONTRACT*

This agreement supersedes all prior agreements, contracts, and understandings whether written or otherwise, between the parties relating to the subject matter. Any amendments or additions to this Agreement shall not be binding unless in writing and signed by both parties.

10. GOVERNING LAW:

This Agreement shall be governed by the laws of the Commonwealth of Kentucky.

11. NOTICES:

All notices under this Agreement shall be in writing and shall be serviced by personal service of registered mail, return receipt requested. Notice by mail shall be addressed to each part at its address set forth above.

WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in three (3) original counterparts as of the day and year first above written.

CONSULTANT

BY: _____
(Authorized Representative)

(Printed Name and Title)

BUSINESS ADDRESS: _____

Attest: _____
(Signature of Notary)

SEAL OF NOTARY

My commission expires: _____

LOUISVILLE METRO HOUSING AUTHORITY / Louisville, Kentucky

BY: _____
Tim Barry – Executive Director

BUSINESS ADDRESS: 420 South Eighth Street
Louisville, Kentucky 40203

Attest: _____
(Signature of Notary)

SEAL OF NOTARY

My commission expires: _____

VII. MBE, Section 3, & EEO

LMHA Minority Business Enterprise (MBE), Female Business Enterprise (FBE), Disabled Business Enterprise (DBE) and Section 3 Programs

ALL bidders should submit any MBE, FBE, and/or DBE certification, as applicable.

Bidders who will engage one or more subcontractors and/or hire one or more new employees to perform any portion of this contract, must comply with the requirements of LMHA's MBE and Section 3 Programs to be considered responsive.

Bidders who will not engage subcontractors and who will not hire new employees to perform any portion of this contract do not need to complete the forms included in this section of the bid packet. However, they should still submit any MBE, FBE, and/or DBE certification, as applicable.

THE PARTICIPATION PERCENTAGE GOALS FOR THIS PROJECT ARE:
MBE - TWENTY-FIVE PERCENT (25%)
FBE – TEN PERCENT (10%)
DBE – ONE HALF OF ONE PERCENT (.5%)

SECTION 3 REQUIRED NUMERICAL GOALS:

- AWARD AT LEAST 10% OF THE TOTAL DOLLAR AMOUNT OF THE CONTRACT TO SECTION 3 BUSINESS CONCERNS
- HIRING SECTION 3 RESIDENTS IN A NUMBER EQUAL TO AT LEAST 30% OF THE AGGREGATE NUMBER OF NEW HIRES

I. LMHA Minority Business Enterprise (MBE), Female Business Enterprise (FBE), and Disabled Business Enterprise (DBE) Programs

A. Generally

This contract includes provisions regarding **MINORITY BUSINESS ENTERPRISE (MBE), FEMALE BUSINESS ENTERPRISE (FBE), and DISABLED BUSINESS ENTERPRISE (DBE)** solicitation and employment for firms wishing to participate in LMHA federally funded procurement activities that have potential for MBE, FBE, or DBE involvement in accordance with Executive Order 11625

All bidders must comply with the requirements of LMHA's MBE Program to be considered responsive.

THE PARTICIPATION PERCENTAGE GOALS For THIS PROJECT ARE:
MBE - TWENTY-FIVE PERCENT (25%)
FBE – TEN PERCENT (10%)
DBE – ONE HALF OF ONE PERCENT (.5%)

**FAILURE TO MEET THE MBE GOAL MAY HAVE A SERIOUS IMPACT
ON THE EVALUATION OF A BIDDER'S RESPONSIVENESS!**

B. Definitions

The following definitions are used throughout the bid documents and Contract Documents:

1. **MBE** - Means Minority Business Enterprise. That is, a business which is fifty-one percent (51%), or more, owned by one or more persons who are members of a racial minority ("Racial Minority" is defined below), and in which such persons share economic interests and have proportionate control over management, interest in capital, and interest in earnings (minority/non-minority joint ventures are addressed elsewhere in these documents).
2. **FBE** - Means Female Business Enterprise. That is, a business which is at least fifty-one percent (51%) owned by one or more females, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more females; is managed by, and the daily business operations are controlled by one or more females; and is a domestic corporation with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm or other business.
3. **DBE** - Means Disabled Business Enterprise. That is, a business which is fifty-one percent (51%), or more, owned by one or more disabled individuals, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more disabled individuals; is managed by, and the daily business operations are controlled by one or more disabled individual; and is a domestic corporation with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm or other business.
4. **MBE Certification** -- All MBE, FBE, and DBE firms must be certified through either the **Tri-State Minority Supplier Development Council**, the **Louisville and Jefferson County Human Relations Commission**, or **MSD's Minority and Woman Business Enterprise Program**, or must provide evidence satisfactory to LMHA of minority ownership.
5. **Racial Minority** - Also called "Minority," means any United States Citizen who is:
 - a) **African American** (racial classification 2) - All persons of origins in any black African racial group not of Hispanic origin; or,
 - b) **Hispanic American** (racial classification 3) - All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish descended culture or origin, regardless of race; or,

- c) **Asian American** (racial classification 4) - All persons having origins in any of the Pre-Magellanic peoples of the Far East, Southeast Asia, the Indian Sub-Continent, or the Pacific Islands; or,
 - d) **American Indian or Native Alaskan** (racial classification 5) - All persons having origins in any of the Pre-Colombian peoples of North America, including Alaska, who maintain identifiable tribal affiliations, through membership and participation or community-identification; or,
 - e) **Hasidic Jew** (racial classification 6) - All persons having origins in the Hasidic Jewish culture, who maintain identifiable cultural affiliations, through membership and participation or community-identification.
6. **Disabled Person** - Means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, or has a record of such an impairment, or is regarded as having such an impairment.
7. **Woman** - Means a person born with the physical and genetic characteristics commonly associated with the female gender as currently defined by the professional medical community.

Women and disabled persons are not "Minority" persons, for the purposes of this project, unless they also meet one of the above-indicated definitions of a "Racial Minority."

C. *MBE, FBE, and DBE Certification*

All MBE, FBE, and DBE firms must be certified through the **Tri-State Minority Supplier Development Council**, 600 W. Main Street, Louisville, Kentucky 40202, (502) 625-0159, or the **Louisville and Jefferson County Human Relations Commission**, 410 West Chestnut Street, Louisville, Kentucky 40202, (502)574-3631; or **MSD's Minority and Woman Business Enterprise Program**, 700 West Liberty Street, Louisville, Kentucky 40202, www.msdlouky.org. Certifications from other agencies will be reviewed on a case by case basis. A copy of the certification must be submitted upon request. **Questions concerning MBE participation may be directed to the Louisville Metro Housing Authority's MBE/Section 3 Coordinator, Phillip Stepteau, at (502) 569-4922.**

1. Certification through one or more of the listed agencies indicates that a firm meets or exceeds the certifying agency's requirements for MBE, FBE, or DBE certification, however, it should not be construed as implying LMHA approval of such MBE, FBE, or DBE. MBE, FBE, or DBE certification is not indicative of any qualification to perform the work for which the Bidder has proposed the MBE firm. It is the Bidder's inherent responsibility to ensure, **prior to submitting a bid**, that **ALL** proposed subcontractors are qualified.

D. MBE, FBE, and DBE Participation in LMHA Contracts

This policy applies to LMHA projects for construction, demolition, renovation, abatement, and similar activities. HUD mandates that the primary procurement responsibility of PHAs is to secure the best goods or services at the best price. However, MBE, FBE, and DBE participation is an integral and highly important part of LMHA's contracting activities. A minimum MBE, FBE, and DBE participation percentage goal has been established for this project and set forth above. The potential for achieving the MBE, FBE, and DBE participation percentage goal may depend upon the relative availability of MBE, FBE, and DBE firms in the categories of work anticipated. The Contract will be awarded to the responsible and responsive bidder who submits the lowest price, provided award serves LMHA's best interests.

1. **IN ORDER TO BE CONSIDERED RESPONSIVE**, a bidder must either meet the goals or provide evidence conclusively demonstrating that it made a strenuous, albeit unsuccessful, good faith effort to meet the goals. **Failure to aggressively respond to these requirements** is grounds for rejection of bid as non-responsive.
2. Law prohibits public housing agencies, including LMHA, from mandating MBE, FBE, or DBE participation. Bidders on LMHA projects are not obligated to use MBE, FBE, or DBE goods or services simply to meet the MBE, FBE, or DBE participation goal if the goods or services are available from non-MBE, non-FBE, or non-DBE sources at lower cost or using the MBE, FBE, or DBE would increase the cost of performance. Likewise, this policy shall not be construed as endorsing the representation of MBE, FBE, or DBE participation, when in fact a substantial portion of the participation proposed to be performed by an MBE, FBE, or DBE will be performed by the Contractor or by a third tier, non-MBE, non-FBE, or non-DBE subcontractor. For example:

If, on the *List of Proposed Subcontractors*, the bidder indicates that an MBE, FBE, or DBE will provide case work and trim carpentry services; and, the MBE, FBE, or DBE intends to, or commonly does, subcontract a substantial portion of its work to third tier non-MBE, non-FBE, or non-DBE subcontractors; such conditions would conflict with the intent of LMHA's MBE, FBE, and DBE Policy and the bidder's MBE, FBE, or DBE participation percentage would be reduced commensurately and its responsiveness reevaluated accordingly. The foregoing statements should not be construed as diminishing LMHA's commitment to MBE, FBE, or DBE participation. LMHA is committed to MBE, FBE, and DBE participation and expects contractors to employ MBE, FBE, and DBE firms to the fullest extent feasible.

E. Calculating MBE Participation

1. General -- An MBE's, FBE's, and DBE's participation in the Contract may count toward the goal to the extent that the MBE, FBE, or DBE performs

Contract work with its own forces or through an MBE, FBE, or DBE subcontractor that uses its own forces. Work that an MBE, FBE, or DBE subcontracts to a non-MBE, non-FBE, or non-DBE subcontractor does not count toward the goal. Any contractor, subcontractor, or joint venture, that claims MBE, FBE, or DBE participation may be required, at any time, to produce evidence that the portion of the total contract price claimed was actually awarded to, performed, or supplied by MBE, FBE, or DBE firms.

2. MBE, FBE, and DBE Qualifications -- For their participation to count toward the goal, MBE, FBE, and DBE firms must be currently certified as MBE, FBE, or DBE firms at the time of the bid opening. MBE, FBE, and DBE firms, to participate in the Contract, must meet all the responsiveness and responsibility requirements imposed on other contractors and subcontractors under the Contract.
3. Commercial Utility -- The participation of an MBE, FBE, or DBE may count toward the goal only if the MBE, FBE, or DBE performs a commercially useful function in executing the Contract work.
 - a) An MBE, FBE, or DBE firm's function may be commercially useful if it includes direct, day-to-day responsibility for significant work of the Contract and the MBE, FBE, or DBE actually fulfills its responsibilities by performing, managing, and supervising that work.
 - b) Responsibility for negotiating prices, determining quality and quantities, ordering, installing, and paying for materials and supplies involved in the MBE's, FBE's, or DBE's portion of the Contract work may, also, indicate commercial utility.
 - c) An MBE's, FBE's, or DBE's function is not commercially useful if the firm's actual role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to present the appearance of MBE, FBE, or DBE participation. In determining whether a firm is an extra participant, LMHA may examine similar transactions, contracts, or projects, particularly those in which MBE, FBE, or DBE firms do not participate.
 - d) An MBE, FBE, or DBE that does not perform, or bear and exercise responsibility for, at least 12 percent of the total cost of its Contract work with its own forces, or that subcontracts a greater portion of its Contract work than would be expected under normal industry practice for the type of work involved, is preemptively not performing a commercially useful function. An MBE, FBE, or DBE may challenge the presumption that it is not performing a commercially useful function. Because no privity can exist between LMHA and a subcontractor, MBE, FBE, and DBE subcontractors must assert such challenges through the prime contractor.
 - e) LMHA may evaluate industry practices, the amount and type of work awarded to the MBE, FBE, or DBE, and any other factors LMHA

deems appropriate, to determine whether a function is commercially useful.

4. MBE, FBE, or DBE Prime Contractors -- MBE, FBE, or DBE firms are under the same obligations as any other prime contractor with respect to LMHA's MBE, FBE, or DBE goals. To receive MBE, FBE, or DBE participation credit, an MBE, FBE, or DBE prime contractor must perform at least 12% of the Contract work with its own forces. MBE, FBE, or DBE prime contractors may be credited with MBE, FBE, or DBE participation to the extent that they perform the Contract work with their own forces and employ MBE, FBE, or DBE subcontractors pursuant to the provisions of this policy. For example:

If an MBE, FBE, or DBE prime contractor will perform \$12,000-worth of work with its own forces, and the total contract price is \$100,000, MBE, FBE, or DBE participation would be 12%. Thus, if the MBE, FBE, or DBE participation goal was 20%, the MBE, FBE, or DBE prime contractor would be short of the goal and required to either obtain another 8% participation or demonstrate fruitless good faith efforts to obtain another 8% and request a waiver of that portion of the goal.

5. Non-MBE, FBE, or DBE Prime Contractors - may be credited with MBE, FBE, or DBE participation based on the dollar value of that portion of the total contract work subcontracted to MBE, FBE, or DBE firms and performed by such MBE, FBE, or DBE firms using their own forces or through third tier MBE, FBE, or DBE subcontractors that use their own forces. For example:

If a non-MBE, FBE, or DBE prime contractor subcontracts \$15,000-worth of the total contract work to one or more MBE, FBE, or DBE subcontractors, and the total contract price is \$75,000, MBE, FBE, or DBE participation would be 20% ($\$15,000/\$75,000$).

6. MBE, FBE, or DBE Subcontractors -- To receive MBE, FBE, or DBE participation credit, an MBE, FBE, or DBE subcontractor must perform at least 12% of its portion of the Contract work with its own forces. An MBE, FBE, or DBE subcontractor's participation in the Contract counts toward the goal to the extent that the MBE, FBE, or DBE performs Contract work with its own forces and through third-tier MBE, FBE, or DBE subcontractors that use their own forces. Work that an MBE, FBE, or DBE subcontractor subcontracts to a non-MBE, FBE, or DBE subcontractor does not count toward the goal. For example:

If an MBE, FBE, or DBE firm is subcontracted to fabricate and supply equipment for this project, at least 12% of the fabrication must be performed by the MBE, FBE, or DBE firms own forces, in its own facility.

- a) A prime contractor shall receive no credit for the participation of an MBE, FBE, or DBE subcontractor unless the prime contractor, before the start of work, delivers to LMHA a fully executed original

counterpart of the agreement between the prime contractor and the MBE, FBE, or DBE subcontractor.

- b) Such agreement must bear the prime contractor's and MBE, FBE, or DBE subcontractor's notarized signatures, must state the price the MBE, FBE, or DBE will receive for its work, and must include a reasonably detailed description of the work the subcontractor will perform.

- 7. Joint Ventures - Joint ventures between an MBE, FBE, or DBE and a non-MBE, FBE, or DBE, bidding and performing as a joint venture prime contractor or sub-contractor, may count toward the goal to the extent of the dollar value of the Contract work performed with the MBE, FBE, or DBE party's forces. For example:

If the joint venture will perform \$35,000-worth of the total contract work with its joint forces, and the MBE, FBE, or DBE party's forces will perform \$15,000-worth of that work, and the total contract price is \$100,000, MBE, FBE, or DBE participation would be 15% ($\$15,000/\$100,000$).

If, in the preceding example, the joint venture were the prime contractor and employed MBE, FBE, or DBE, FBE, or DBE subcontractors to perform \$10,000-worth of the remaining total contract work, MBE, FBE, or DBE participation would be 25% ($(\$15,000 + \$10,000)/\$100,000$).

- a) A joint venture shall receive no MBE, FBE, or DBE participation credit unless, before the start of work, it delivers to LMHA a fully executed original counterpart of the joint venture agreement.
- b) Such agreement must bear the notarized signatures of all parties to the agreement, must state the sum each party will receive for its work, and must include a reasonably detailed description of the work each party will perform.
- c) To be counted at all, the MBE, FBE, or DBE party's portion of the dollar value of the work must be distinct and clearly defined.

- 8. Materials and Supplies -- Any contractor or subcontractor may, under certain conditions, claim MBE, FBE, or DBE participation credit for MBE, FBE, or DBE suppliers who provide materials for the Contract work. MBE, FBE, or DBE supplier participation is based, generally, on the dollar value of the goods purchased from the MBE, FBE, or DBE supplier. For example: Subject to the conditions following this example, if a non-minority prime contractor purchases \$20,000-worth of supplies from an MBE, FBE, or DBE supplier, and the total contract price is \$100,000, MBE, FBE, or DBE participation would be 20% ($\$20,000/\$100,000$). Materials and supplies purchased from MBE, FBE, or DBE firms for use in the Contract may count toward the goal as follows:

- a) If the materials or supplies are purchased from an MBE, FBE, or DBE manufacturer, 100 percent of the cost of the materials or supplies may count toward the goal.
 - (1) For the purposes of these provisions, a “manufacturer” is a business entity that operates or maintains a factory or production facility that routinely produces, on its premises and in the normal course of its business, materials, supplies, articles or equipment required under the Contract.
 - b) Materials and supplies purchased from MBE, FBE, or DBE firms who are regular retail or wholesale dealers will only be counted toward the goal at 60 percent of their cost.
 - (1) For the purposes of these provisions, a “regular retail or wholesale dealer” is a business entity that:
 - (a) owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles or equipment required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the normal course of business; and
 - (b) is an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the items required under the Contract.
 - (2) A person may be a regular retail or wholesale dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as described above, if the person owns and operates distribution equipment for distribution of such products.
 - (3) Long-term lease agreements by which a regular retail or wholesale dealer supplements its own distribution equipment may be acceptable as to the goal, but ad hoc or contract-by-contract agreements for that purpose are not.
 - (4) Packagers, brokers, manufacturers’ representatives, and other persons who arrange or expedite transactions are not regular retail or wholesale dealers within the meaning of these provisions. Such persons’ or entities’ participation shall not count toward the MBE, FBE, or DBE or DBE goal.
9. Fees or commissions -- charged by an MBE, FBE, or DBE that is neither a manufacturer nor a regular retail or wholesale dealer, for assistance in procuring materials or supplies, or for feed or transportation charges for delivering materials or supplies required under the Contract, may count

toward the goal, provided LMHA finds such fees or commissions are reasonable and not excessive in comparison to fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves shall count toward the goal under these circumstances, unless they qualify under one of the other provisions of this subsection.

10. Professional Services -- Fees or commissions charged by an MBE, FBE, or DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Contract, may count toward the goal, if LMHA finds them reasonable and not excessive in comparison to fees customarily allowed for similar services.
11. Any contractor, subcontractor, or joint venture that claims MBE, FBE, or DBE participation may, at any time, be required to produce evidence that the portion of the total contract price claimed was actually awarded to, and performed or supplied, by MBE, FBE, or DBE firms.

F. Required Forms

Bidders must submit the following two (2) forms, among others, as a part of the bid proposal, regarding proposed employment of MBE, FBE, or DBE firms on this project:

1. *Schedule of Minority Business Participation*
 - a) The Bidder shall list, on this form, all MBE, FBE, or DBE firms proposed to perform as prime contractors or subcontractors for this project; the type of work to be performed; the anticipated start and completion dates for the work to be performed; and the agreed upon price for the work.
 - b) The Bidder, by completing this form, represents that, if awarded this contract, it will enter into formal contracts (provided each MBE, FBE, or DBE is accepted, in writing, by LMHA), in the amounts indicated, with the MBE, FBE, or DBE firms listed on this form.
2. *Schedule of MBE, FBE, or DBE Unavailability*
 - a) In the event the Bidder is unable to achieve the MBE, FBE, or DBE participation percentage goal, the Bidder shall list on this form all MBE, FBE, or DBE firms contacted and/or considered, but not proposed to participate in this project, and the reasons they are not proposed to participate.

FAILURE TO SATISFY THE MBE, FBE, or DBE PARTICIPATION PERCENTAGE GOALS MAY HAVE A SIGNIFICANT ADVERSE IMPACT ON A BIDDER'S RESPONSIVENESS!

G. Evidence of Responsiveness

As evidence that the Bidder has made a significant good faith effort to involve MBE, FBE, or DBE firms in this project, the Contractor, upon request, shall make available to the Louisville Metro Housing Authority such documentation as is described below.

Bidders that fail to meet MBE, FBE, or DBE goals and fail to demonstrate sufficient good faith efforts to merit a waiver, may be required to forfeit their bid guaranty as agreed liquidated damages.

H. Waiver of MBE, FBE, or DBE Goals

Minority Business Enterprise participation is a priority objective of this agency and LMHA's MBE, FBE, and DBE policy applies to all construction and abatement contracts. If, because of extreme circumstances, a bidder cannot meet the MBE, FBE, or DBE participation percentage goal, LMHA may grant a full or partial waiver of the goal. LMHA will, however, grant a waiver of the MBE, FBE, or DBE participation percentage goal only upon receipt of persuasive evidence that a bidder has made diligent, albeit ultimately unsuccessful, efforts to meet the MBE, FBE, or DBE participation percentage goal (as further explained below).

1. **Bidders must make every reasonable effort to meet the MBE, FBE, or DBE goals.**

Limited or merely formalistic efforts are not considered "good faith" efforts. The bidder must demonstrate that, given all relevant circumstances, it actively and aggressively endeavored to meet the MBE, FBE, or DBE goals.

2. **In the event a bidder finds that it cannot fully satisfy the MBE, FBE, or DBE goals** of this solicitation, the bidder must submit a written request for a full or partial waiver of the goals and receive approval prior to submission of bid. **All requests for waivers for MBE, FBE, and DBE must be submitted at least 7 days prior to bid opening.** Such a request to LMHA must be signed by the bidder's authorized agent and addressed to:

Phillip Stepteau, MBE /Section 3 Coordinator
Louisville Metro Housing Authority
420 South Eighth Street
Louisville, KY 40203

If the bidder will not use any subcontractors or has met the full MBE, FBE, and DBE goals, it is not necessary to request a waiver.

- a) The written request for a waiver must explain how the bidder views and evaluates the subcontractable components of a project and why the bidder was unable to attain the MBE, FBE, or DBE participation percentage goal. The request must also include detailed narrative statements describing the bidder's "good faith" efforts to secure MBE, FBE, and DBE participation. If bidder has requested such waiver from LMHA within the last five (5) years, submit copies of all waiver requests.

3. Examples of "good faith efforts" to attain the MBE, FBE, or DBE goal include, but are not necessarily limited to:
- a) **Attending scheduled meetings**, regarding the project.
 - b) **Providing written notice**, (preferably certified mail) to a reasonable number of MBE, FBE, and DBE firms requesting bids. *A reasonable number means at least as many MBE, FBE, or DBE firms as non-MBE, FBE, or DBE firms, in each trade category, must be contacted.* Copies of certified letters sent to MBE, FBE, or DBE firms requesting bids, and original, signed, receipts, or copies of telegrams soliciting bids from MBE, FBE, or DBE firms, indicating the date of delivery, would be considered evidence of such efforts.
 - c) **Allowing sufficient time** (five working days, or more, as time permits) **for MBE, FBE, and DBE firms to respond** to a written notice. *Sufficient time means initiating contact with MBE, FBE, or DBE firms at least as far in advance of the bid date as contact is initiated with non-MBE, FBE, or DBE firms.* Original responses from MBE, FBE, or DBE firms indicating the reasons why they do not wish to participate in this project and bids received from MBE, FBE, or DBE firms on those firms letterhead or standard bid forms would be considered evidence of such efforts.
 - d) **Following up** written notification by **telephone or other means**. Date-stamped copies of telephone conversation records and faxed letters would be considered evidence of such efforts.
 - e) **Contacting MBE, FBE, and DBE assistance agencies** and organizations (see Section J of Official Bid Package for lists) and the LMHA's MBE/Section 3 Coordinator at (502) 569-4922, for assistance in locating qualified MBE, FBE, or DBE firms. Date-stamped copies of telephone conversation records and faxed or mailed letters would be considered evidence of such efforts.
 - f) **Selecting portions of the work to be performed by MBE, FBE, and DBE firms** in order to increase the likelihood of meeting the MBE, FBE, or DBE goals. Documentation demonstrating that extra effort was made to solicit MBE, FBE, or DBE bids for categories of work in which MBE, FBE, or DBE firms are particularly well represented in the geographical area of the project would be considered evidence of such efforts.
 - g) **Providing MBE, FBE, and DBE firms with adequate information about the project** when requesting quotations (i.e., identifying potential subtrades involved in the project and identifying a potential dollar range for those subtrades). Copies of certified letters sent to MBE, FBE, and DBE firms, and original, signed, receipts, date-stamped copies of telephone records and faxed or mailed follow-up letters, or copies of

telegrams sent to MBE, FBE, and DBE firms, would be considered evidence of such efforts.

- h) **Advertising in general circulation media (e.g., Courier-Journal), and media aimed at minorities** (e.g., Louisville Defender), at least 20 days before bids are due. Or, if 20 days are not available, publication for a shorter, but maximum available, period is acceptable. Copies of legal advertisements published as an attempt to obtain MBE, FBE, and DBE involvement would be considered evidence of such efforts.
 - i) **Making efforts to assist MBE, FBE, or DBE firms** in obtaining bonding, credit, or insurance. Date-stamped copies of telephone conversation records and faxed or mailed letters to MBE, FBE, or DBE firms and/or bondsmen, creditors, or insurers would be considered evidence of such efforts.
 - j) **Making efforts to meet and negotiate** with potential MBE, FBE, and DBE Bidders prior to the bid opening. Copies of certified letters sent to MBE, FBE, and DBE firms and original, signed, receipts, date-stamped copies of telephone records and faxed or mailed follow-up letters, or copies of telegrams sent to MBE, FBE, and DBE firms, would be considered evidence of such efforts.
 - k) **Efforts made by the Bidder to expand its search** for MBE, FBE, and DBE firms, beyond the usual geographic boundaries. Documentation demonstrating that such efforts were made would be considered evidence of such efforts.
4. LMHA reserves the right to examine the Bidder's bid preparation materials, including all requests for bids the Bidder issued to potential subcontractors, the Bidder's bid calculation work sheets, and the Bidder's telephone records, notes, and any other information LMHA believes may be helpful in verifying the Bidder's assertions.
5. The bidder's **delivery of a request** for waiver **does not**, in and of itself, **ensure** that such a **request will be granted**.
- a) A full or partial waiver may be granted only after the Louisville Metro Housing Authority has thoroughly reviewed the project's MBE, FBE, or DBE participation potential. Documentation supporting a request for waiver, if such evidence exists, may be presented to the Louisville Metro Housing Authority's Executive Director for a final decision.
 - b) If a waiver is granted, and there are no other impediments to the award of the contract, the contract award process may proceed.
 - c) If a waiver is not granted, or if no request for waiver is received, and the bid is otherwise acceptable, the Louisville Metro Housing Authority may require the Bidder to satisfy the total MBE, FBE, and DBE goals at

no additional cost to the Louisville Metro Housing Authority or may deem the Bidder non-responsive.

I. Replacing MBE, FBE, or DBE Subcontractors

1. Any contractor who proposes to replace a proposed or accepted MBE, FBE, or DBE subcontractor must maintain the MBE, FBE, or DBE participation percentage that existed prior to the replacement of that subcontractor, or, if possible, achieve an even greater MBE, FBE, or DBE participation percentage. If the contractor finds it cannot satisfy these requirements, it must submit a request for waiver of the MBE, FBE, or DBE participation percentage goal, as prescribed above.
2. LMHA reserves the right to conduct compliance reviews on minority and non-minority contractors that utilize MBE, FBE, or DBE subcontractors, or perform as joint ventures. Contractors shall maintain records of all MBE, FBE, or DBE participation for three (3) years following completion of the project. Failure on the part of the contractor to comply with these requirements could result in the withholding of payment, termination of the Contractor's right to proceed with the work, legal fines, imprisonment, or all of the above.

J. Assistance to MBE, FBE, and DBE firms

The Louisville Metro Housing Authority actively works to assist minority vendors and contractors/subcontractors. LMHA is committed to providing equal opportunities for Minority Business Enterprises (MBE, FBE, and DBE firms).

Such opportunities are advertised through newsletters and newspapers, including minority newspapers, minority purchasing councils, and the Department of Housing and Urban Development.

When requested, LMHA will provide special assistance, to the fullest extent possible, to MBE, FBE, and DBE firms, by providing instruction on the preparation of bids, MBE, FBE, and DBE policy, and any other requirements related to LMHA's MBE, FBE, and DBE program, in connection with activities including but not necessarily limited to:

1. Architectural, Engineering, and similar Professional Services contracts;
2. Construction and Maintenance contracts;
3. Purchase Contracts; and,
4. Bank Deposits.

MBE, FBE, or DBE firms, and others, seeking assistance in these areas should first contact:

1. Tri-State Minority Supplier Development Council, 600 West Main Street, Louisville, KY 40202.
Contact: (502) 625-0159

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2. Kentucky Cabinet for Economic Development, Department of Existing Business & Industry, Minority Business Division, 2201 Capital Plaza Tower, Frankfort, KY 40601.
Contact: (502) 564-2064

3. Louisville and Jefferson County Human Relations Commission, 410 West Chestnut Street, Suite 300A, Louisville, KY 40202.
Contact: (502) 574-3631

NOTE: The following forms on pages 15-25 shall be completely filled out and submitted with the bid.

If requesting Section 3 status, complete and submit pages 39-41 with bid.

LIST OF PROPOSED SUBCONTRACTORS

The following list of proposed subcontractors is required to be submitted with each bidder's proposal, in accordance with the requirements of Section C of this solicitation. All subcontractors are subject to the approval of LMHA. **PROPOSED SUBCONTRACTORS AND SUBCONTRACT AMOUNTS SHALL NOT BE CHANGED, NOR SHALL ANY ADDITIONAL SUBCONTRACTORS BE EMPLOYED, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE LOUISVILLE METRO HOUSING AUTHORITY.**

<u>NAME OF SUBCONTRACTOR</u>	<u>CATEGORY OF WORK</u>	<u>\$ Amount</u>
1. _____		
2. _____		
3. _____		
4. _____		
5. _____		
6. _____		

(Employer ID numbers must be provided upon request)

Use Additional Sheets If Necessary

**THIS FORM MUST BE COMPLETED AND SUBMITTED WITH
THE OFFICIAL BID PACKAGE.**

NOTE: WITHIN TWO WEEKS OF CONTRACT EXECUTION, THE GENERAL CONTRACTOR SHALL SUBMIT, FOR THIS CONTRACT, COPIES OF ALL SUBCONTRACTOR CONTRACTS OR WRITTEN AGREEMENTS TO THE LOUISVILLE METRO HOUSING AUTHORITY

<p>NOTE: If third tier subcontracts are intended, the information on the following page must be provided for <u>each</u> proposed subcontractor.</p>

NON-MBE, FBE, DBE SUBCONTRACTOR/SUPPLIER FORM

**ONE FORM FOR EVERY PROPOSED NON-MBE, FBE, AND DBE
SUBCONTRACTOR/SUPPLIER MUST BE COMPLETED AND SUBMITTED WITH THE
OFFICIAL BID PACKAGE.**

In addition to conforming to all other requirements of the Invitation to Bid, to be considered responsive, a Bidder must submit this form, fully completed, for every non-minority business enterprise subcontractor/supplier proposed.

Company Name, Address, Telephone Number, and Point of Contact:

Dollar Value of Proposed Subcontract/Purchase Order:

\$ _____

Description of Proposed Services and/or Materials:

The penalty for making false statements in offers (10 year imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

NOTE: Failure to complete and submit THIS form or comply with directions therein is ground for bid rejection.

Instructions for Completing EMPLOYMENT DEMOGRAPHICS Form

1. **Duty to Submit Form** -- Every bidder shall complete the *Employment Demographics* form (hereafter, the Form). Every bidder shall ensure that each of its sub-bidders also completes the Form. The Bidder shall submit fully executed Forms for itself and each sub-bidder, with its bid, in the package labeled "Supplemental Bid Information."
2. **Space Constraints/Additional Forms** -- If the space provided on a single Form is insufficient to list every employee (see definition below) of the bidder or sub-bidder completing the Form (hereafter, the Entity), such Entity shall use additional Forms. Said Entity shall, however, ensure that each separate Form is dated, signed, and notarized. Each Official Bid Package contains one (1) blank copy of the Form. From that, the Bidder shall make as many copies as needed to ensure compliance with the preceding requirements.
3. **Completing the Form** -- The Form is divided into six numbered columns. Write the appropriate name and check the appropriate box at the top of the Form, then complete each column as follows:

Columns 1 and 2 -- Identify, by name, each and every employee, officer, principal, and agent of the Entity. Identify every such person (hereafter, the employee), whether or not intended to perform work under or related to this Contract. Be careful to list each employee by last name first. List only proper, legal names, do not list nicknames. Do not list names of persons the Entity employs as independent contractors. If the employee routinely works less than 37 and 1/2 hours per week, write the letter "P" in the left margin adjacent to the employee's name.

Column 3 -- State the employee's job title (e.g., secretary, laborer, carpenter, CEO). Use the job titles the Entity actually, routinely uses to describe the employee.

Column 4 -- State the date upon which the Entity hired the employee. If the employee has left the Entity's employ in the past and returned to work for the Entity again, state the most recent date of hire.

Column 5 -- Describe the nature of the work the employee routinely performs for the Entity. For example, if the employee's job title is "Laborer," the employee's work may be described as "performs unskilled physical labor." Or, a "Secretary" might be described as doing "filing, typing, etc." Use additional lines if necessary to provide a clear description of an employee's duties.

Column 6 -- State the employee's race. Use the racial classifications provided in page 2, Section M. If you write "other" or a similar classification in Column 6, attach a signed statement explaining in detail exactly what is meant by such description. Attach a separate signed statement for each employee so described, tailoring each such statement to the employee to whom it refers.

4. Each Form shall be signed and dated by an authorized officer of the Entity and shall be notarized.

AGREEMENT TO NOTIFY LMHA OF JOB OPENINGS

|| This form to be completed and submitted by prime contractor and all subcontractors. ||

By my signature below, _____ (hereafter “the Company”), agrees to the
(Company’s Name)
following conditions:

1. The Company shall, if awarded the contract for which this Bid is offered, give LMHA notice of any and all job openings that may arise at the Company during the course of that contract.
2. Such notice shall be in writing and mailed, first class, to LMHA via the U.S. Postal Service within two business days after such opening arises. The notice shall describe the minimum qualifications and requirements of the job, the nature of the work, the expected pay rate or range, the place and manner of submitting applications, the name, address and telephone number of the person to contact to obtain an application or additional information, and the date by which applications must be submitted.
3. LMHA will notify its residents of such job openings and encourage qualified residents to submit applications for employment.
4. The Company will, if it receives an application from a qualified LMHA resident, give that application and applicant the same opportunity and consideration for the job as would be given any other, similarly qualified applicant and, if such applicant is the most qualified applicant and there is no bar to employing the applicant, the Company will hire the applicant for the job if it hires anyone for the job.

Date: _____

By: _____
(Authorized Officer’s Signature)

In witness whereof, I hereunto set my hand and official seal:

(Notary’s Signature)

(Notary’s printed name)

My commission expires _____.

**AFFIX
NOTARY’S
SEAL**

**STATEMENT OF INTENT TO PERFORM AS A
MINORITY BUSINESS ENTERPRISE CONTRACTOR/SUBCONTRACTOR**

(Separate form required for each MBE, FBE, and DBE prime or sub-bidder)

Name of Prime Bidder: _____

Name of MBE firm completing this form: _____

The undersigned wishes to perform work in connection with the above referenced project as:

Individual Corporation Partnership Joint Venture

The undersigned hereby confirms its status as a Minority Business Enterprise as defined by LMHA and that **a copy of the certification from the agency specified in Section C of this solicitation, or other evidence, is attached hereto.**

The undersigned intends to perform the following work in connection with this project (specify, in detail, the work to be performed):

Bid amount to be entered by sub-contractor \$ _____

The undersigned MBE projects its start and completion dates for the work as follows:

Project Start: _____ Project Completion: _____

BY: _____
(Signature of MBE's Principal) (Name and Title)

THIS FORM MUST BE COMPLETED, and included in this *Supplemental Bid Information* package, by each and every MBE contractor or subcontractor proposed to participate in this project.

The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

**MBE, SECTION 3 AND EEO
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AFFIDAVIT OF MINORITY BUSINESS ENTERPRISE

(Separate form required for each MBE, FBE, and DBE proposed)

State of _____ County of _____

I hereby declare and affirm that _____ is a Minority
(Bidder's printed company name)

Business Enterprise (MBE), as defined by LMHA in the bid solicitation and that I am an officer of the above referenced MBE firm, and that I am authorized to provide information required by LMHA to support that firm's representation that it is a Minority Business Enterprise.

I do solemnly declare and affirm, under the penalties of perjury, that the foregoing is true and correct, and that I am authorized, on behalf of the above named firm, to make this affidavit.

(Signature of Affiant) (Printed name and title of Affiant)

STATE OF KENTUCKY, COUNTY OF JEFFERSON, CITY OF LOUISVILLE

On this _____ day of _____, 20____,

_____, the undersigned officer, personally appeared before me,
(Printed name of Affiant)

known to me to be the person described in the foregoing Affidavit, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal:

(Notary's Signature) (Notary's printed name)

My commission expires _____.

**AFFIX
NOTARY'S
SEAL**

THIS FORM MUST BE COMPLETED, and included in this *Supplemental Bid Information* package, by each and every minority contractor or subcontractor proposed to participate in this project.

The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

**MBE, SECTION 3 AND EEO
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LEGITIMACY OF JOINT VENTURE

(Separate form required for each joint venture)

Majority Party's Name, Address, Phone, and Principal's Name:

Minority Party's Name, Address, Phone, and Principal's Name:

Portion of work to be performed by Majority Party: _____% \$ _____
Portion of work to be performed by Minority Party: _____% \$ _____

(Provide additional details on following page if applicable.)

"The undersigned do hereby declare and affirm, under the penalties of perjury, that the foregoing statements are true and correct and that **all material information necessary to identify and explain the terms and operation of the joint venture, and the intended participation by each joint venture, in this undertaking, is attached hereto.** Further, the undersigned agree to provide LMHA current, complete, and accurate information regarding the actual joint venture work, payments and any proposed changes in the above-stated arrangements, and to permit audits and/or examinations of books, records, and files of the joint ventures by authorized representatives of LMHA. The undersigned recognize and acknowledge that the statements herein are given under oath and any material misrepresentation will be grounds for terminating any contract that may be awarded the undersigned for this project."

BY: _____
(Signature of Majority Party's Principal)

Date: _____

BY: _____
(Signature of Minority Party's Principal)

Date: _____

Which, if any, of the parties to this venture are MBE firms?

THIS FORM MUST BE COMPLETED, and included in this *Supplemental Bid Information* package, by every joint venture proposed to participate in this project (Attach Joint Venture Agreement and Letters of Incorporation).

The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

DETAILS OF JOINT VENTURE AGREEMENT

(Separate form required for each joint venture)

The **Majority** Party normally employs _____ tradespersons and performs work in the following trades:

The **Minority** Party normally employs _____ tradepersons and performs work in the following trades:

Indicate all work to be performed under this contract by the parties to this joint venture and the dollar value of each item (on a per-party basis):

Description of Work Item

Party Performed By

\$ Value

<u>Description of Work Item</u>	<u>Party Performed By</u>	<u>\$ Value</u>

Total Dollar Value: \$_____

(Attach additional pages if needed.)

**IF THE BID INVOLVES A JOINT VENTURE OR JOINT VENTURES, THIS FORM
MUST BE COMPLETED AND SUBMITTED WITH THE OFFICIAL BID PACKAGE.**

II. SECTION 3 REQUIREMENTS

A. Paragraph 40.(f) of Section I, *General Conditions* is replaced with the following:

The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u - Section 3) is to ensure that employment and other economic opportunities shall be to the greatest extent feasible and directed to low and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low income persons.

1. Definitions of specific terms are as follows:

a) *New Hires*: Full time employees for permanent, temporary or seasonal employment opportunities.

b) *Section 3 Business Concern*: A business concern:

- That is 51% or more owned Section 3 residents; or,
- Whose permanent, full time employees include persons, at least 30% of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or,
- That provides evidence of a commitment to subcontracts in excess of 25% of the dollar award of all subcontract to be awarded to business concerns that meet the qualifications set forth in paragraph (1) or (2) above.

c) *Section 3 Resident*:

- A public housing resident; or,
- An individual who resides in the metropolitan statistical area and who is a low-income person (families, including single persons, whose incomes do not exceed 80% of the median family income) or very low-income person (families, including single persons, whose incomes do not exceed 50% of the median family income).

d) *Subcontractor*: Any entity (other than a person who is an employee of the Contractor) that has a contract with the Contractor to undertake a portion of the Contractor's obligation for the performance of work.

2. Contractor's may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth for

providing training, employment, and contracting opportunities to Section 3 residents and business concerns as follows:

- a) Awarding **at least 10%** of the total dollar amount of the Contract to Section 3 business concerns; and
 - b) Hiring Section 3 residents in a number equal to **at least 30%** of the aggregate number of new hires.
3. Contractor's shall provide training and employment opportunities to Section 3 residents in the following order of priority:
- a) Residents of the housing development or developments for which the Section 3 covered assistance is expended;
 - b) Residents of other housing developments managed by the Louisville Metro Housing Authority;
 - c) Participants in HUD YouthBuild programs in the metropolitan statistical area; and
 - d) Other Section 3 residents of the metropolitan statistical area.
4. Contractor's shall award to Section 3 business concerns in the following order of priority:
- a) Business concerns that are 51% or more owned by residents of the housing development or development for which the Section 3 covered assistance expended, or whose full, permanent work force includes 30% of these persons as employees;
 - b) Business concerns that are 51% or more owned by residents of other Louisville Metro Housing Authority developments, or whose full time permanent workforce includes 30% of those persons as employees;
 - c) HUD YouthBuild programs being carried out within the metropolitan statistical area; and
 - d) Business concerns that are 51% or more owned by Section 3 residents, or whose permanent, full time workforce includes no less than 30% Section 3 residents, or that subcontract in excess of 25% of the total amount of subcontracts to business concerns in (1) and (2) above.
5. A contractor that has not met the numerical goals set forth has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section.

- B. Paragraph 40.(g) of Section I, *General Conditions* is replaced with the following:

Employment Demographics Reporting Requirements -- The Contractor and each subcontractor shall complete and submit "Employment Demographics" forms once every month, or more frequently if LMHA so chooses, during the course of the contract.

In completing the forms the Contractor and each subcontractor shall clearly identify persons newly employed since the last form was submitted (hereafter "New Hires"). The Contractor or subcontractor shall provide the address and telephone number of each New Hire, and shall state whether each New Hire is a Section 3 Resident. The Contractor shall collect the forms and deliver them to LMHA by the seventh calendar day of each such month. LMHA will provide the Contractor with proper, blank forms at the pre-construction conference, from which the Contractor shall make and distribute copies for its own use and its subcontractors' use. The Contractor's failure to submit a monthly Employment Demographics form, or that of any subcontractor, is ground for termination, for default, of the Contractor's right to proceed with the work.

- C. Paragraph 40.(h) of Section I, *General Conditions* is replaced with the following:

Notice of Job Openings -- The Contractor shall notify LMHA of any and all job openings that arise in the Contractor's company during the course of the Contract. Such notice shall be in writing and mailed, first class, to LMHA via the U.S. Postal Service within two business days after such opening arises. The notice shall describe the minimum qualifications and requirements of the job, the nature of the work, the expected pay rate or range, the place and manner of submitting applications, the name, address and telephone number of the person to contact to obtain an application or additional information, and the date by which applications must be submitted. LMHA will notify its residents of such job openings and encourage qualified residents to submit applications for employment. The Contractor shall, if it receives an application from a qualified LMHA resident, give that application and applicant the same opportunity and consideration for the job as would be given any other, similarly qualified applicant and, if such applicant is the most qualified applicant and there is no bar to employing the applicant, the Contractor shall hire the applicant for the job if it hires anyone for the job. The Contractor's right to proceed with the work may be terminated, for default, upon failure to perform this obligation.

SECTION 3 REQUIRED NUMERICAL GOALS:

- **AWARD AT LEAST 10% OF THE TOTAL DOLLAR AMOUNT OF THE CONTRACT TO SECTION 3 BUSINESS CONCERNS**
- **HIRING SECTION 3 RESIDENTS IN A NUMBER EQUAL TO AT LEAST 30% OF THE AGGREGATE NUMBER OF NEW HIRES**

SECTION 3 CLAUSE

This Contract is subject to the following conditions under Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).

- 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.

The below referenced documents are included as part of this section of the contract documents:

- Contractor Section 3 Plan Format (2 pages)
- Table A of Contractor Section 3 Plan Format (1 page)
- Table B of Contractor Section 3 Plan Format (1 page)
- Certification Form for Contractor Section 3 Plan Format (1 page)
- Form of *Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability* (1 page)
- Section 3 Business Concern Affidavit Worksheet (2 pages)
- Form 6 – Section 3 Business Concern Affidavit (2 pages)

III. CONTRACTOR SECTION 3 PLAN FORMAT

_____ agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the city of Louisville, Kentucky.

- A. To ascertain, from the locality's program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit, from within the city, the necessary number of lower income residents through: Local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within, or serving, the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this Section 3 plan in all bid documents, and to require all bidders on subcontracts to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E. To ensure that subcontracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To ensure that all appropriate project area business concerns are notified of pending subcontractural opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan.
- J. To list on Table A, information related to subcontracts to be awarded.
- K. To list on Table B, all projected workforce needs for all phases of this project by occupation, trade, skill level and number of positions.

As officers and representatives of _____
(Name of Contractor)

We, the undersigned have read and fully agree to this Affirmative Action and become a party to the full implementation of this program.

Signature

Title

Date

Signature

Title

Date

CONTRACTOR SECTION 3 PLAN FORMAT continued

ESTIMATED PROJECT WORKFORCE BREAKDOWN – TABLE B

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
JOB CATEGORY	TOTAL ESTIMATE POSITIONS	NO. OF POSITIONS CURRENTLY OCCUPIED BY PERMANENT EMPLOYEES	NO. POSITIONS NOT CURRENTLY OCCUPIED	NO. POSITIONS TO BE FILLED WITH L.I.P.A.R.
OFFICERS/ SUPERVISORS				
PROFESSIONALS				
TECHNICIANS				
HOUSING SALES/ RENTAL/MGMNT				
OFFICE/CLERICAL				
SERVICE WORKERS				
OTHERS				

TRADE:

JOURNEYMEN				
HELPERS				
APPRENTICES				
MAXIMUM NO. TRAINEES				
OTHERS				

TRADE:

JOURNEYMEN				
HELPERS				
APPRENTICES				
MAXIMUM NO. TRAINEES				
OTHERS				

TRADE:

JOURNEYMEN				
HELPERS				
APPRENTICES				
MAXIMUM NO. TRAINEES				
OTHERS				
TOTAL				

- Low income or very low income persons.
- Refer to Supplemental General Conditions for specific requirements. _____
Company

As officers and representatives of _____, we the undersigned,
(Name of Contractor)
certify to the following in compliance with 24 CFR part 135, section 3, for work under Contact
No. _____:

(1) Any vacant employment positions, including training positions, that were filled after
_____ was selected to perform the work
(Name of Contractor)
under this contact, but before the contract was executed were not filled to circumvent
_____ obligations under 24 CFR part 135; and,
(Name of Contractor)

(2) Any vacant employment positions, including training positions, that were filled 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 _____
(Name of Contractor)
obligations under 24 CFR part 135.

CERTIFIED BY:

Signature

Title

Date

Signature

Title

Date

**CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3 PREFERENCE IN
CONTRACTING AND DEMONSTATION OF CAPABILITY**

Name of Business: _____
Address of Business: _____

Type of Business: = Corporation = Partnership
 = Sole Proprietorship = Joint Venture

Name and Address of Resident in 51% ownership position:

Attached is the following documentation as evidence of status:

For person claiming status as resident:

- = Copy of resident lease
- = Copy of receipt of public assistance
- = Copy of evidence of participation in a public assistance program
- = Other evidence

For the business entity as applicable:

- = Copy of Articles of Incorporation
- = Certificate of Good Standing
- = Assumed Business Name certificate
- = Partnership Agreement
- = List of owners/stockholders and % of each
- = Corporation Annual Report
- = Organization chart with names and titles and brief functional statement
- = Latest Board Minutes appointing officers
- = Additional documentation

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- = Current financial statement
- = List of owned equipment
- = Statement of ability to comply
- = List of all contracts for the past

Corporate Seal

Authorizing Name & Signature

Attested by: _____
Name _____
Date _____

**SECTION 3 BUSINESS CONCERN AFFIDAVIT
WORKSHEET**

Will there be any contracts or subcontract let as a result of this project?
(Please circle your answer)

YES

NO

Will any of the contracts described on the Contracting Plan (FORM-3) be with Section 3 business concerns?
(Please circle your answer)

YES

NO

If the responses to both questions were yes, please have each of the businesses identified on the Contracting Plan (FORM-3) as Section 3 business concerns, complete FORM-6. A separate FORM-6 should be given to and completed by each Section 3 business concern.

INSTRUCTIONS FOR COMPLETION OF FORM-6

- I.
 1. Provide the full legal name of the business.
 2. Provide the current address of the business.
 3. Indicate whether the business is a corporation, a partnership, a sole proprietorship or a joint venture.
 4. Describe briefly the contract or subcontract that the business anticipates undertaking for the project. This should be the same information as in the first column on the Contracting Plan (FORM-3).
- II.
 1. Please indicate whether the business is a Section 3 business concern. A “Section 3 business concern” is a business concern that either:
 - (a) is at least 51% owned by Section 3 residents,
 - (b) Has full-time, permanent employees, at least 30% of whom wither (i) are currently Section 3 residents, or (ii) have been employed by the business for three years or less and were Section 3 residents at the time when the business first hired them,
 - (c) has committed to subcontract in excess of 225% of the dollar award of all subcontracts to be let in connection with the project to businesses that qualify uner (a) or (b) above.
 2. A “business concern” is a business entity formed in accordance with state law and which is licensed under state, county or municipal law to engage in the type of business activity for which it was formed.
 3. A “Section 3 business concern” – with category preference is defined as a Section 3

business concern that either:

- (a) is at least 51% owned by Section 3 residents, all of whom live in the project's service area, or
 - (b) has full-time, permanent employees, at least 30% of whom live in the project's service area and either (i) are currently Section 3 residents, or (ii) have been employed by the business for three years or less and were Section 3 residents at the time when the business first hired them (category 1 business); or
 - (c) is at least 51% owned by Section 3 residents who live in other CHA housing developments not in the project's service area, or whose full-time permanent employees, includes 30% of these Section 3 residents (category 2 business); or
 - (d) HUD YouthBuild programs being carried in the metropolitan area in which Section 3 covered assistance is expended (category 3 business); or
 - (e) Has committed to subcontract in excess of 25% of the dollar award of all subcontracts to be let in connection with the project to business that qualify under (a) or (b) above. (category 4 business).
4. Identify whether the business has been selected to carry out any HUD YouthBuild programs.
- III. The title of the person signing the affidavit should be inserted. The affidavit must be signed, dated, and notarized. The name of the person signing the affidavit must type or legibly print below his/her signature.

SECTION 3 BUSINESS CONCERN AFFIDAVIT

The undersigned being duly sworn, on oath, represents, warrants, certifies, deposes and says, under penalty of law, as follows:

I. BASIC INFORMATION

The following information is true and correct:

1. Name of Company: _____

2. Company Address: _____

3. Type of Business (corporation, partnership, partnership, sole proprietorship, joint venture):

4. Project Name and Address(es): _____

5. Name/Type of Contract: _____

II. TYPE OF SECTION 3 BUSINESS CONCERN

For purposes of this section, please refer to the attached instructions for the meanings of the terms “Section 3 Business Concern” and Section 3 Business Concern with Category-Preference” and “HUD YouthBuild Program”. (Please circle your answer.)

1. Is the Company a Section 3 Business Concern?
YES NO

If “YES”, please go on to question #2. If “NO”, please go directly to Part III.

2. Is the company a Section 3 Business Concern-With Category preference?
YES NO

If “YES”, please go directly to Part III. If “NO”, please go on to question #3.

3. Has the Company been selected to carry out any HUD Youthbuild Program?
YES NO

III. VERIFICATION

The company hereby agrees to provide, upon request, documents verifying the information provided on this form.

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

Name (Signature) _____

Name (Printed) _____

State of Kentucky

County of _____

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

Notary Public

My Commission Expires: _____

**MBE, SECTION 3 AND EEO
CONTRACT REQUIREMENTS
FORMS AND DOCUMENTS**

**CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3
PREFERENCE IN CONTRACTING AND DEMONSTRATION OF CAPABILITY**

Name of Business _____

Address of Business _____

Type of Business: Corporation Partnership
 Sole Proprietorship Joint Venture

Attached is the following documentation as evidence of status:

For Business claiming status as a Section 3 resident-owned enterprise:

- Copy of resident lease
- Copy of receipt of public assistance
- Copy of evidence of participation in a public assistance program
- Other evidence

For business entity as applicable:

- Copy of Articles of Incorporation
- Certificate of Good Standing
- Assumed Business Name Certificate
- Partnership Agreement
- List of owners/stockholders and % ownership of each
- Corporation Annual Report
- Latest Board minutes appointing officers
- Organization chart with names and titles and brief function statement
- Additional documentation

For business claiming Section 3 status by subcontracting 25 percent of the dollar awarded to qualified Section 3 business:

- List of subcontracted Section 3 business(es) and subcontract amount

For business claiming Section 3 status, claiming at least 30 percent of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:

- List of all current full-time employees
- List of employees claiming Section 3 status
- PHA/IHA Residential lease less than 3 years from day of employment
- Other evidence of Section 3 status less than 3 years from date of employment

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- Current financial statement
- Statement of ability to comply with public policy
- List of owned equipment
- List of all contracts for the past two years

Authorizing Name and Signature

(Corporate Seal)

Attested by: _____

Preference for Section 3 Business Concerns

Preference in the award of Section 3 covered contracts that are awarded under a sealed bid (IFB) process shall be provided as follows:

Bids shall be solicited from all businesses (Section 3 business concerns, and Non-Section 3 business concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

"X" = lesser of:

When the lowest responsive bid is less Than \$100,000	10% of that bid or \$9,000
When the lowest responsive bid is: At least \$100,000 but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of that bid, or \$25,000
At least \$500,000, but less than \$1 million	5% of that bid, or \$40,000
At least \$1 million, but less than \$2 million	4% of that bid, or \$60,000
At least 2 million, but less than \$4 million	3% of that bid, or \$80,000
At least \$4 million, but less than \$7 million	2% of that bid, or \$105,000
At least \$7 million or more.....	1 ½ % of the lowest responsive bid with no dollar limit

If no responsive bid by a Section 3 business concern meets the requirements of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

RESIDENT EMPLOYMENT OPPORTUNITY DATA

LOUISVILLE METRO HOUSING AUTHORITY

ELIGIBILITY FOR PREFERENCE

Eligibility for Preference

A Section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section 3 resident, as defined in Section 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

**Certification for Resident Seeking Section 3 Preference in
Training and Employment**

I, _____, am a legal resident of the _____
_____ and meet the income eligibility
guidelines for a low- or very-low income person as published on
the reverse.

My Permanent address is: _____

I have attached the following documentation as evidence of my
status:

- | | |
|---|--|
| <input type="checkbox"/> Copy of lease | <input type="checkbox"/> Copy of receipt of public
Assistance |
| <input type="checkbox"/> Copy of evidence of
participation in a public
assistance program | <input type="checkbox"/> Other evidence
_____ |

Signature

Print Name

Date

SECTION 3 INCOME LIMITS

All residents of public housing developments of the _____ Housing Authority qualify as Section 3 residents. Additionally, individuals residing in the _____ City of _____ who meet the income limits set forth below, can also qualify for Section 3 status.

A picture identification card and proof of current residency is required.

Eligibility Guideline

Number in Household	Very Low Income	Low Income
1 individual	22,450	35,950
2 individuals	25,650	41,050
3 individuals	28,850	46,200
4 individuals	32,050	51,300
5 individuals	34,650	55,450
6 individuals	37,200	59,550
7 individuals	39,750	63,650
8 individuals	42,350	67,750

IV. EQUAL EMPLOYMENT OPPORTUNITY

- A. Paragraph 39.(j) of Section I, *General Conditions* is hereby deleted and replaced with the following:

The requirements of Executive Order 11246 are set forth as follows:

**Standard Federal Equal Employment Opportunity Construction
Contract Specifications (Executive Order 11246)**

1. As used in this paragraph:
"Covered Area" means the geographical area described in the specification from which this contract resulted.

"Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

"Employer Identification Number" means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

"Minority" a person who conforms to the definitions provided.

"These specifications" means Paragraph 39.(j) of Section I, *General Conditions*.
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract, in excess of \$10,000, the provisions of this Section and the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan, approved by the U.S. Department of Labor in the covered area, either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with the Plan for those trades which have union participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor, or subcontractor, participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make good faith efforts to achieve each goal under the Plan in each trade in which it has employees.
4. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractors, or subcontractor' failure to make good faith efforts to achieve the Plan goals and timetables.

5. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7.a through 7.p, below. The goals set forth in the solicitation are the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area.
6. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
7. Neither the provisions of any collective bargaining agreement, nor the failure by a union, with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor from its obligations under the specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
8. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability pursuant to training programs approved by the U.S. Department of Labor.
9. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
 - a) Ensure and maintain a working environment free of harassment , intimidation, and coercion at all sites, and in all facilities, at which the Contractor's employees are assigned to work; and,
 - b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organizations' responses; and,
 - c) Maintain a current file of the names, addresses, and telephone numbers of all minority and female "off-the-street" applicants and minority or female referrals from unions, recruitment sources, or community organizations, and of what action was taken with respect to each such individual.

If such an individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, the file with the reason therefore, along with whatever additional actions the Contractor may have taken; and,

- d) Provide immediate typewritten notification to the Director when the union(s), with which the Contractor has a collective bargaining agreement, has not referred to the Contractor a minority or female person sent by the Contractor, or when the Contractor has other information that the union(s) referral process has impeded the Contractor's effort to meet its obligations; and,
- e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly includes minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under the requirements of 7.b, above; and,
- f) Disseminate the Contractor's EEO policy by providing notice of policy to unions and training programs, and requisitioning their cooperation in assisting the Contractor in meeting its EEO obligations; including it in any policy manual and collective bargaining agreement; publicizing it in the company news paper, annual report, etc.; specific review of the policy with all management personnel and with all minority and female employees at least once a year; and, by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed; and,
- g) Review, at least annually, the company's EEO policy and affirmative action obligation under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items with on-site supervisory personnel, such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site.

A written record shall be maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter; and,

- h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female media, and by providing written notification to, and discussing the Contractor's EEO policy with, other contractors and subcontractors with whom the Contractor does, or anticipates doing, business with; and,
- i) Direct its recruitment efforts, both oral and verbal, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations servicing the Contractor's recruitment area and

- employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process; and,
- j) Encourage present minority and female employees to recruit other minority and female persons, and, where reasonable, provide after school, summer, and vacation employment opportunities to minority and female youth, both on the site and in other areas of the Contractor's work force; and,
 - k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR §60-3; and,
 - l) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities, and encourage those employees to seek, or to prepare for through appropriate training, etc., such opportunities; and,
 - m) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect, by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out; and,
 - n) Ensure that all facilities and company activities are non-segregated, except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes; and,
 - o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations; and,
 - p) Conduct a review, at least annually, of all supervisors' adherence to, and performance under, the Contractor's EEO policy and affirmative action obligations.
10. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7.a through 7.p). The efforts of a contractor association, joint contractor union, contractor community, or other similar group, of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7.a through 7.p of these specifications, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes good faith efforts to meet its individual goals and timetables, and can

provide documentation which demonstrates the effectiveness of actions taken on the behalf of the Contractor. The obligation to comply, however is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

11. A single goal for minorities and a separate single goal for women have been established. The Contractor is, however, required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner.

For example, even though the Contractor has achieved its goal for women in general, the Contractor may be in violation of the Executive Order if a specific minority group of women is under utilized.

12. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, national origin, or handicap.
13. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
14. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Employment Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs.

Any Contractor who fails to carry out such sanctions and penalties shall itself be in violation of these specifications and Executive Order 11246, as amended.

15. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those set forth in 7.a through 7.p above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR §60-4.8.
16. The Contractor shall designate a responsible official to monitor all employment related activities to ensure that the company's EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include, for each employee, the name, address, telephone number, construction trade, union affiliation, if any, employee identification number, if any, Social Security Number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week

in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

17. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

V. AFFIRMATIVE ACTION REQUIREMENTS

- A. Paragraph 41, *Indian Preference*, of Section I, *General Conditions* is hereby deleted and replaced with the following:

**Notice Of Requirement For Affirmative Action To Ensure
Equal Employment Opportunity (Executive Order 11246)**

1. The Offeror's, Bidder's, or Contractor's (henceforth called Contractor) attention is called to the "Equal Opportunity Clause" and the "Standard Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade, on all construction work in the covered area, are as follows:

Goals for minority participation for each trade:	11.2%
Goals for female participation for each trade:	6.9%

These goals apply to all the Contractor's construction work performed in the covered area, whether or not it is Federally assisted.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60.3(a), and its efforts to meet the goals established for the geographical area where this Contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Program within 10 working days of award of any construction subcontract in excess of \$10,000, at any tier, for

construction work under this Contract. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.