

# **REQUEST FOR PROPOSALS**

**by the**

**CITY OF BISHOP**



**to provide a**

**PHYSICAL NEEDS ASSESSMENT**

**for the**

**VALLEY APARTMENTS**

**Solicitation No. 2017-001**

**City of Bishop  
377 West Line Street  
Bishop, CA 93514  
760-873-5863  
cityclerk@cityofbishop.com**

April 18, 2017

**City of Bishop**  
**REQUEST FOR PROPOSALS (RFP)**  
**Physical Needs Assessment (PNA)**  
**SOLITICITATION #: CITY OF BISHOP RFP 2017-001**

**PROPOSAL DEADLINE:**

All proposals must be received at the following address no later than 4:30 p.m. City of Bishop local time, May 18, 2017.

**PROPOSAL SUBMISSION:**

An original and three (3) copies of the proposal must be submitted in a sealed package to CITY OF BISHOP. The package must be clearly marked with the words "RFP Response Documents-Valley Apartment's PNA."

All proposals must be received at the following address by the proposal deadline stated above:

CITY OF BISHOP  
377 West Line Street  
Bishop, CA 93514  
cityclerk@cityofbishop.com

All responses submitted are subject to these instructions and the Instructions to the Offerors, Non-Construction form [HUD 5369-B](#), contained in Appendix 2.

CITY OF BISHOP reserves the right to reject any or all proposals for cause and to waive any informality in the submission process if it is in the public interest to do so.

During the period between issuance of this RFP and the proposed due date, no oral interpretation of the RFP's requirements will be given to any prospective Offeror. Requests for interpretation (and other questions) must be made in writing at least 7 days before the submission due date and time to:

CITY OF BISHOP  
377 West Line Street  
Bishop, CA 93514  
cityclerk@cityofbishop.com

During the period of advertisement for this RFP, CITY OF BISHOP may wish to amend, add to, or delete from the contents of this RFP. In such situations, CITY OF BISHOP will issue an addendum to the RFP setting forth the nature of the modification. All addenda will be posted on the CITY OF BISHOP website at <http://www.cityofbishop.com/> or distributed to the prospective vendors, if known, via U.S. Mail Service and/or email.

**Physical Needs Assessment**

**RFP**

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## **Part I. Introduction and Overview**

CITY OF BISHOP is a small town located in the rural Eastern Sierra region of California. Incorporated in 1903, the municipality was organized as a "General Law" City in accordance with the California Government Code. The City operates under an elected Council/City Administrator form of government and is guided by a five-member City Council elected at large from the City's municipal boundaries.

Bishop has adopted a General Plan to guide the current and long-term growth and land development of the community. The Housing Element of the General Plan identifies and analyzes existing and projected housing needs and establishes goals, policies and implementing actions for the preservation, improvement and development of housing in the City. The Housing Element includes the following policies for the preservation of affordable housing stock:

- The City encourages maintenance of all residential uses, even if new ~~non~~conforming, and upgrades to new, existing; and
- The City encourages maintenance of units and properties in need of repairs in order to reduce the number of units in need of complete replacement in the future.

Inyo Mono Advocates for Community Action, Inc. (IMACA), a Community Action Agency, purchased a motor court located at 156 E. Clarke Street in 1980 with funding from the State Department of Housing and Community Development (HCD). The Agency then converted the commercial buildings into the Valley Apartments, a 19-unit, multi-family rental housing project for occupancy by low-income seniors and persons with disabilities. The structures were originally constructed in 1940 and 1950 and are in need of significant improvement to maintain a safe and habitable living environment for the residents.

To preserve the affordable units at Valley, the City submitted a Community Development Block Grant (CDBG) application to HCD in 2013 and was awarded \$781,708 to reconstruct the apartments. Financing could not be obtained for the project and HCD subsequently approved a revised proposal to substantially rehabilitate the apartment complex occupied by low-income seniors and persons with disabilities. A PNA is required by HCD and the City to determine the repairs and improvements that will be completed with the CDBG funding.

This RFP requires that the selected Contractor follow the PNA protocol, prepare the data for submission to HCD, and provide the City with a written report As discussed later in this RFP under 3.4. Deliverables and Timeframe, the Contractor will be required to assist the City in successfully submitting the data to HCD.

CITY OF BISHOP is seeking a professional consultant to undertake and complete the following according to HCD and HUD requirements and protocols, and including any supplemental services the City may request herein:

- PNA

## **Part II. Scope of Services**

### **1. General Overview**

**1.1.** CITY OF BISHOP hereby requests proposals from qualified firms and individuals to perform a PNA in accordance with all current HCD regulations, the most recent Fannie Mae Multifamily Property Condition Assessment Guidelines, and other guidance as may be issued from time to time, as well as preparation of a Scope of Work to inform a future Request for Proposals (RFP) for implementing the findings the of the PNA

**1.2.** The PNA will reflect 19 units in the Valley Apartments project as identified in Appendix 1 of this RFP. The project in Appendix 1 that is the subject of the PNA is to include both dwelling and non-dwelling spaces and buildings as well as roads and parking areas contained within the project.

**1.3.** Appendix 1 contains project information with the date of construction, total number of units, and includes a listing of other community facilities to be included in the assessment.

**1.4.** The results of the PNA will provide CITY OF BISHOP and IMACA with data to make both long- and short-term strategic decisions on its physical inventory and assist in obtaining financing.

### **2. Physical Needs Assessment (PNA) Scope of Work/Technical Specifications**

The City of Bishop is seeking proposals from qualified and licensed entities to provide the following detailed services:

**2.1. General Requirements:** *In accordance with HCD requirements*, the PNA will be conducted in substantial compliance with the Fannie Mae Multifamily Property Condition Assessment Guidelines (most recently adopted version). The selected Contractor will provide a full range of services including evaluating the existing conditions of the housing stock based upon a representative sample selection of buildings, units, common areas, and other physical facilities. All identified physical improvements will meet or exceed HCD mandatory standards, and those established by local and state health, safety, and building codes. At a minimum, the goal of the PNA is to identify and provide a description of all physical improvements that will be required to bring the property back to a level comparable with "as-built," to the degree reasonably possible based on available components and building age. The effort should provide the City and IMACA with the information necessary to ensure long-term physical viability and in a manner suitable for planning and budgeting purposes. Data shall be in a format suitable for HCD reporting requirements.

**2.1.1.** Generally, identify deficient conditions, such as those that result from deferred maintenance, and building and life safety code noncompliance or obsolescence issues.

**2.1.2.** Perform interviews and review existing property documentation with knowledgeable City and IMACA staff, including building plans, building histories, prior assessments and energy audits, maintenance records, and Real Estate Assessment Center (REAC) scores of each development.

**2.1.3.** Identify all development components that will be part of the assessment.

**2.1.4.** Establish a methodology that will sample multiple like-kind buildings, and common areas such as lobbies, corridors, and community facilities.

**2.1.5.** Establish a plan to inspect the following:

- A minimum of 5 units
- 100 percent of the exterior of the apartment buildings.
- 100 percent of common areas.
- 100 percent of all site features.

**2.1.6.** Perform walkthrough assessment/inspection of the Valley Apartments to ascertain the condition of the property; **immediate** critical and non-critical needs; general code compliance; expected repair, replacement, and major refurbishment needs; and total estimated cost to complete such items. The assessor will record the data for the following: site, building exterior, building systems, unit, and common areas.

**2.1.7.** Identify work necessary to comply with federal, state, and local requirements and codes, such as elimination of asbestos/lead, new energy code, and accessibility compliance.

**2.1.8.** The assessor will provide and record an estimate of Expected Useful Life (EUL) for each individual component and will provide a source for EUL in general.

**2.1.9.** The assessor will provide and record a replacement unit cost for each individual component and for a total of those components. (e.g., per window and per window times all similar windows.)

**2.1.10.** Identify work items needed and costs for implementation to make selected units accessible and usable by the handicapped as required by Section 504 of the Rehabilitation Act of 1973. This will include costs to retrofit a specific number of dwelling units to meet Section 504 requirements for persons with disabilities. Each area that is designated as part of Section 504 or Americans with Disabilities Act (ADA) requirements will be inspected to ensure that the components are functioning according to their purpose. (*Note: A regulatory compliance review is not required for these units or areas; only a functionality and EUL assessment is needed.*)

**2.1.11.** Identify energy conservation measures and review energy audit reports to incorporate energy audit recommendations into the PNA. Evaluate options for increased energy efficiency.

**2.1.12.** The intent of the assessment is to perform a full evaluation based on visual observation of accessible areas. The assessor is not expected to perform destructive or forensic testing (opening wall cavities, cutting pipes, etc.) or to enter confined spaces. No destructive testing is to take place without prior written approval of IMACA.

**2.1.13.** Any deficiencies identified that could have an impact on health and safety will be brought to the attention of the City and IMACA immediately by written and verbal notification as a matter of ensuring the safety of residents and housing authority personnel.

**2.1.14.** The selected Contractor will develop a Comprehensive Costing Library. Professional/certified cost estimating utilizing "R.S. Means" construction costing is preferred. The comprehensive cost and EUL component library must contain descriptions and reference information.

**2.1.15.** Provide a detailed report for the IMACA development that details the assessment data. The selected Contractor will detail quantity and cost estimates to accomplish each work item, a total for each project, and a grand total to accomplish all needed physical improvements. *General work category (e.g., Kitchens, Bedrooms) costing without specific work item costing is unacceptable.* Provide

individual cost tables and digital photographs to document notable conditions at the Valley Apartments. The Contractor shall show a line-item prioritization. The work shall include a review of any prior plans, recommendations, and a detailed report on items completed in the interim. The major part of the work consists of a thorough assessment of noted property, leading to a prioritized list of recommended improvements, plus a detailed physical database. Included is the identification of work that may be recommended to improve long-term viability, such as change in physical configurations, comprehensive revitalization with total demolition, and/or disposition. All data will be sufficient to produce a 20-year cost projection of needs for each capital component.

**2.1.16.** A PNA that meets the requirements of the “Fannie Mae Physical Needs Assessment Guidance to the Property Evaluator” is an acceptable form for the City and HCD.

**2.1.17.** Prepare and provide a Scope of Work to inform preparation of an RFP soliciting qualified firms and individuals to complete the repairs and improvement identified in the PNA. The Scope of Work shall prioritize each task based on highest and most urgent need, ability to complete work within the expenditure deadline (December 31, 2017), and cost. It is the goal of the City and IMACA to address as many repairs and improvements identified in the PNA within the 2017 calendar year and the remaining CDBG budget as possible.

**2.2. Phases of Work:** Work shall consist of three phases:

**2.2.1. Pre-Assessment**—focuses primarily on preparing for the assessment, as well as collecting and recording development data and utilizing architectural plan measurements and count data.

**2.2.2. Assessment**—focuses on helping you to identify all building components, including quantities of each present component; establish remaining useful life (RUL); and determine eligibility and cost of component refurbishment or replacement.

**2.2.3. Post-Assessment**—focuses on establishing industry-standard parallels through collection, review, data input, and report production.

**2.3. Steps of Work:** The steps involved include, but are not limited to:

**2.3.1.** Develop a detailed survey scope and survey methodology, pertinent to the collection of all assessment data and the information required to develop the database.

**2.3.2.** Survey existing physical conditions at the development, including but not limited to: the roofs, envelopes, windows, landscaping, streets/parking areas, sidewalks, etc.; the building interiors, including all finishes, fixtures, materials, and equipment; all common areas, including halls, lobbies, stairwells, etc.; crawl spaces, utility tunnels, etc.; and all mechanical, electrical, plumbing, and air conditioning systems, etc.

**2.3.3.** Interview resident representatives and maintenance and management staff; collect and record all relevant data.

**2.3.4.** Based on information gathered in the steps above, analyze the condition of all systems and components at the development and identify all capital improvements or modernization necessary.

**2.3.5.** Provide cost estimates for each item of recommended improvement, including units and unit prices where applicable.

**2.3.6.** Employ quantitative units in building the database wherever possible.

**2.3.7.** Prioritize each work item. There should be at least five (5) categories of priority, ranging from emergency, through urgent, to long-range.

**2.3.8.** To allow for future updates and modifications by IMACA, the Contractor shall provide the entire plan in an electronic database format to facilitate the future updating of the facilities condition evaluations.

**2.4. PNA Report:** Upon completion of the inspections, the selected Contractor will provide a report to the City of Bishop in narrative and spreadsheet forms that meets the City and HCD requirements, in both paper and electronic format. The draft report will contain the PNA results and will be submitted to the City of Bishop for review and comments.

The report of the PNA shall include:

**2.4.1.** An introductory background section, summarizing the prior PNA and history; the past capital improvements; the assessment procedures, assumptions, and methods; the prioritizing system and approach; the cost-estimating methods and assumptions; and an explanation of and reference to the cost-estimating guide proposed.

**2.4.2.** A Physical Needs Assessment report for the assessed Valley Apartments project in a form that meets the requirements of the "Fannie Mae Physical Needs Assessment Guidance to the Property Evaluator." Attach to the report color photographs and a detailed narrative describing the property's exterior and interior physical elements and condition, including architectural and structural components and mechanical systems. Include a section for the development that gives general information and descriptions of the development.

**2.4.3.** A listing of each issue of deficiency, by priority, giving at a minimum the system (HVAC, site, unit interior, etc.), a brief description of the problem, a brief recommendation, and a cost estimate.

**2.4.4.** An attachment that includes an overall listing of the recommended work items by priority, a copy of the survey form, and a listing of all the systems, components and subcomponents, and entry codes used in the database.

**2.4.5.** An Executive Summary summarizing major findings and recommendations plus any other major issues, including any repair items that immediately impact health and safety such as code violations; regulatory compliance issues such as relocation planning, asbestos-containing materials, lead-based paint, and environmental issues; or systematic problems. Also describe any Section 504 (accessibility requirements) work items, energy conservation measures, and any environmental hazard (asbestos/lead-based paint) items.

### **3. Deliverables and Timeframe**

**3.1.** The Contractor shall deliver the following, not later than thirty (30) days from the effective date of the contract:

**3.1.1.** A briefing, at a time, date, and place determined by CITY OF BISHOP, reflecting an overview of the Contractor's findings based on the completed PNA. At a minimum, the Contractor shall address the overall condition of the project listed in Appendix 1 and review the PNA report to be submitted to HCD.

**3.1.2.** A full, bound hard copy of the results of the PNA. This includes a report prepared for the development with a discussion of all building systems, photographs of representative interiors and systems, and a table showing immediate repairs and life-cycle component replacement.

**3.1.3.** A copy of the Inspections, Master Cost Library, Replacement Needs, Refurbishment Needs, Sustainability Needs, Accessibility Needs, and Marketability Needs installed, if necessary.

**3.1.4.** A demonstration of technical assistance to CITY OF BISHOP staff regarding submission of the required reports to HCD, including the PNA and future annual updates.

Two (2) hard copies of each aforementioned item shall be submitted, as well as one (1) electronic copy submitted in either MS Excel or MS Word format on a “flash” or “thumbnail” drive or compact disc (CD). These documents/devices shall be the sole property of the CITY OF BISHOP. The Contractor shall not provide the documents produced for CITY OF BISHOP under this contract to any other party unless approved in writing by the Contracting Officer.

**3.2.** Time Completion Plan/Schedule (TCP/S): Offerors shall establish in the TCP/S the schedules/milestones shown below for the deliverables identified. In developing the schedule of milestones, the Contractor shall provide for fifteen (15) calendar days for the CITY OF BISHOP to review, coordinate, and comment on draft deliverables.

Deliverables	Timeframes/Milestones
Physical Needs Assessment (PNA) – Draft Version	Within thirty (30) days after the effective date of the Notice To Proceed (NTP)
Physical Needs Assessment (PNA) – Final Version	Within fifteen (15) days after receipt of comments on the “Draft Version” of the PNA
Scope of Work for PNA implementation	To be submitted with Final PNA

**3.3.** All reports are to be sent to:

CITY OF BISHOP  
Attn: Elaine Kabala  
377 West Line Street  
Bishop, CA 93514  
EKabala@CityofBishop.com

**Part III. Qualifications**

In order to be considered qualified to perform the services under the Scope of Work, contractors performing the PNA must have the following qualifications:

**PNA:**

1. State and local license as required.
2. At least 5 years of experience performing physical property inspections and cost estimations for public agencies; demonstrated knowledge of applicable multifamily building standards and codes; demonstrated knowledge of energy-efficiency practices; and a working knowledge of commonly used computer technology (MS Excel, Access, etc.).

**Insurance Requirements:**

The Contractor must demonstrate Worker's Compensation Insurance and at least \$1,000,000 separately for both casualty and professional liability insurance.

**Part IV. Proposal Submission**

Proposals should be submitted in the following format, with Tabs separating each section:

1. **Letter of Transmittal.** A transmittal letter signed by the Contractor authorized to submit the proposal and to make commitments on behalf of the company.
2. **Table of Contents.** A table of contents shall be provided that lists each section of the proposal as required by Part IV of this RFP.
3. **Organization History.** Give a brief description of the firm and its history.
4. **Qualifications.** A description of the firm's qualifications to perform the PNA.
5. **Experience.** Provide a list of the organizations for which the Contractor has performed relevant work, going back at least 5 years. Particular emphasis should be on contracts with public housing agencies and performance of physical needs assessments for properties of similar character to those of the subject development.
6. **Staffing.** Provide a list of staff members who will work on this contract, including principals and staff-level personnel, along with qualifications of each.
7. **Evaluation Criteria.** Provide information addressing each of the evaluation criteria.
8. **Pricing.** Provide pricing separately for the PNA and Total Costs for providing the services covered by this RFP. Show each staff member, hours proposed, and hourly rates (fully loaded). Also show material and other costs, including travel, general, administrative, overhead, and profit.
9. **References.** Provide a list of clients, including the organization name, contact person, telephone number, and address as well as brief descriptions of the scope of work. (No fewer than three references and no more than five).
10. **Other.** Evidence of coverage as required under Part III and any other information the Contractor or CITY OF BISHOP deems relevant and would like CITY OF BISHOP to consider.

**Part V. Evaluation and Selection**

**Basis for award.** The contract will be awarded to the firm whose proposal is determined by CITY OF BISHOP to be the most advantageous to the City, with price and other technical factors considered.

Technical factors include:

1. Experience. Firm’s experience in performing physical needs assessments and/or energy audits. Emphasis should be placed on experience with public housing agencies, performing physical needs assessments and energy audits.
2. Qualifications. Identify the qualifications of the principals and staff performing work. Staff members performing the PNA must meet the qualifications listed under Part III.
3. Approach/Work Plan. Firms must identify how they plan to undertake the activities under the Scope of Services provided in Part II, and the proposed timeline.
4. Section 3 and Small, Minority- and Women-Owned Businesses.
  - Firms must provide documentation regarding their status as either a Section 3 business concern or a small, minority- or woman-owned business concern.
  - Firms must submit separate plans as to how they intend to meet the individual requirements of 24 CFR 135 to provide economic opportunities for low-income persons in the jurisdiction of CITY OF BISHOP and 24 CFR 200 for small, minority- and women-owned business enterprises.

Relative weight of technical evaluation factors:

<b><u>Factors</u></b>	<b><u>Points</u></b>
1. Experience.	30
2. Qualifications.	20
3. Approach/Work Plan.	20
4. Section 3/MBE.	10
5. Pricing.	20
<b>Total Points</b>	<b>100</b>

Price will be considered in conjunction with technical factors by the CITY OF BISHOP to determine the proposal that is most advantageous and offers the best value to CITY OF BISHOP.

**Part VI. Other Relevant Information**

The contract executed pursuant to this RFP is deemed to include:

1. The specific contract document provided by CITY OF BISHOP.
2. This RFP in its entirety.
3. Required HUD forms:
  - Form HUD-5369-A, Instructions to Offerors – Non-Construction, is included in Appendix 2 and is part of this RFP. It is the Contractor's responsibility to carefully review the provisions.
  - Form HUD-5370-C, General Conditions for Non-Construction Contracts, Section I, is deemed to be a part of this RFP and the contract awarded under this RFP. The Contractor is expected to fully comply with this contract form.

The term of this contract is 90 days. There are no option periods.

The Contractor is expected to provide all labor and materials necessary to accomplish the Scope of Services contained in Part II of this RFP.

The Contractor will be paid upon completion of the contract and satisfaction of all contract and deliverable requirements contained in Part II, Section 4, of this RFP.

**Appendix 1: Description of Development Covered by the RFP**

**PROJECT LOCATION:**

The site for this PNA is located on the south side of E. Clarke Street, approximately 534 feet east of South Main Street and 100 feet west of Sneden Street. The street address is 156 E. Clarke Street and the Tax Assessor Parcel Number (APN) for the property is 01-212-05. Dimensions for the site are 150 feet of street and alley frontage by 130 feet deep for a total of .45 acres of land area.

The legal description of the property is as follows:

Lots 4, 5 and 6 of Block "HE" of the John B. Clarke Addition to the City of Bishop, in the County of Inyo, State of California, as per map filed in Book 1 Page 67 of Maps, in the office of the County Recorder of said County. Excepting therefrom the South 9 feet as conveyed to the City of Bishop, in Book 10 Page 413 of Deeds.

The site is in a Por. N ½ Sec. 7, T.7 S. R.33 E., Mount Diablo Baseline and Meridian (M.D.B. & M.), in the southern portion of the City of Bishop, County of Inyo, and State of California.

**EXISTING CONDITIONS:**

The approximately .45 acre project site is located on the south side of Clarke Street between S. Main Street and Sneden Street and is currently developed with the Valley Apartments. The Valley Apartments include 19 affordable, senior-restricted dwelling units with 18 rentals and one caretaker's unit. The units are located in four attached one-story buildings which form a central courtyard and a separated, off-street parking area with 14 spaces. Vehicle access to the parking is from a driveway off Clarke Street. A one-way (west to east) alley abuts the site to the south and provides pedestrian but not vehicular access. Adjacent to the covered walkway between the alley and courtyard are laundry and utility room located in the western most building. There is a 500-gallon propane tank along the east property line. The propane tank and parking are shared with the IMACA Head Start Program property to the east. The site is completely covered with paving and buildings except for a large cottonwood tree and raised planter bed in the courtyard area and a small vegetable garden in the parking lot.

**SURROUNDING LAND USES AND SETTING:**

Inyo Mono Advocates for Community Action, Inc. (IMACA) is the property owner for the Valley Apartments and the Head Start Program site located to the east. Adjacent to the west of the Valley Apartments is a parking lot for an automobile sales and repair business. To the south, across a 19-foot wide alley, is an auto body and paint facility and commercial businesses. A day care center and single family residence are located to the north across Clarke Street. The Valley Apartments site and all surrounding properties are zoned C-1, General Commercial and Retail and designated General Commercial in the Land Use Element of the General Plan.

**SITE DEVELOPMENT HISTORY:**

A single-family residence with 727 square feet was constructed on the property in 1940. This dwelling is now the caretaker's unit for the Valley Apartments and is located at the northwest corner of the site. In 1950, an 18-room motel with approximately 5,554 square feet was built on the property adjoining the residence. All of the units contain a small kitchen and most of the apartments have approximately 260 square feet of living area. A couple of the apartments are slightly larger with more kitchen area. Two off-street parking areas with access from Clarke Street were also constructed for the site. The courtyard parking area, in which parking is now prohibited, included 16 spaces and two, one-way driveways. The east parking area, which is shared with IMACA Head Start, has 14 parking spaces and a one-way driveway off Clarke Street.

IMACA, with low-interest loans from the California Department of Housing and Community Development (HCD), purchased the motel complex and residence in 1981. Funding from the state was also used to rehabilitate the structures and convert the motel into affordable apartments for seniors and people with disabilities. IMACA has owned and managed the apartment complex for over 35 years and the structures are showing age and deterioration. Major repairs have been made to many of the dwellings and the water and electrical delivery infrastructure is in need of improvement.

To preserve the affordable rental units at Valley Apartments, the City submitted a Community Development Block Grant (CDBG) application to HCD in 2013 and was awarded \$781,708 to reconstruct the multi-family complex. Financing could not be obtained for the project and HCD subsequently approved a revised proposal to substantially rehabilitate the apartment complex occupied by low-income seniors and persons with disabilities. A PNA is required by HCD and the City to determine the repairs and improvements that will be completed with the CDBG funding.

Attachments: Vicinity Map, Tax Assessor Page and Aerial showing location of property.  
Conversion project site and floor plans available upon request.

**Appendix 2: Form HUD 5369-B. Instructions to Offerors – Non-Construction**

Available for review at <http://portal.hud.gov/hudportal/documents/huddoc?id=5369-b.pdf>.

**Appendix 3: Form HUD 5370-C. General Conditions for Non-Construction Contracts, Section I**

# General Conditions for Non-Construction Contracts

## Section I – (With or without Maintenance Work)

### U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

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 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 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 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; performance of this contract; or,  
(iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

#### 5. Rights in Data (Ownership and Proprietary Interest)

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

#### 6. Energy Efficiency

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

#### 7. Disputes

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

#### 8. Contract Termination; Debarment

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

#### 9. Assignment of Contract

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

#### 10. Certificate and Release

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

#### 11. Organizational Conflicts of Interest

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

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## 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

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

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

## **22. Procurement of Recovered Materials**

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

# General Conditions for Non-Construction Contracts

## Section II – (With Maintenance Work)

### U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

#### 1. Minimum Wages

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

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

#### 2. Withholding of funds

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

#### 3. Records

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

#### 4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:

A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

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

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

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

**5. Disputes concerning labor standards**

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

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

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

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

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

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

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

(c) **Withholding for unpaid wages and liquidated damages.**

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

**7. Subcontracts**

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

**8. Non-Federal Prevailing Wage Rates**

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

**Appendix 4: Cost Proposal**

The contractor shall propose a firm fixed fee for all work performed under this RFP. The fee will be broken down to reflect the fee for the PNA, and total fee as reflected herein. The fee breakdown shall be inclusive of all costs, including but not limited to labor, material, supplies, and other costs. The fee shall be broken down by the component parts as follows:

**PART A**

**PNA.**

**Total Cost.**

**Grand Total.**

**Total Cost.**

**Firm/Company Name:**

**Firm's Authorized Representative:**

**Signature:**

**PART B – PNA Cost Proposal**

**A. Labor.** Provide a breakdown for each position and for all positions combined.

<u>Position</u>	<u>Hourly Rate</u>	<u>Estimated Hours</u>	<u>Total</u>
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**B. Direct Costs.** Direct costs are costs that can be identified specifically with a project and therefore are charged to that project.

<u>Cost Element</u>	<u>Total</u>
Materials.	
Travel.	
Misc. Expenses.	
Total Direct Costs.	<u>Total</u>

**C. Indirect Costs, if applicable.** Indirect costs are costs incurred for common or joint objectives and therefore cannot be readily and specifically identified with a particular direct project or activity.

<u>Cost Element</u>	<u>Total</u>	<u>Total</u>
Labor.	<u>Total</u>	
Non-labor.	<u>Total</u>	
Total Indirect Costs.		

**D. Subtotal.** Subtotal of all labor, direct and indirect costs.

**Subtotal**

**E. General, Administrative and Overhead.** State the percentage and total costs.

<u>General</u>	<u>Total</u>	
<u>Administrative</u>	<u>Total</u>	
<u>Overhead</u>	<u>Total</u>	
<u>Total</u>		<u>Total</u>

**F. Profit.** State the percentage and total cost.

<u>Percentage</u>	<u>Total</u>
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<b>G. Total PNA Cost Proposed.</b>	<b><u>Total</u></b>
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**Appendix 5: Section 3 Certification**

**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:**

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

**For business entity as applicable:**

- |                                                                                                   |                                                                   |
|---------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Copy of Articles of Incorporation                                        | <input type="checkbox"/> Certificate of Good Standing             |
| <input type="checkbox"/> Assumed Business Name Certificate                                        | <input type="checkbox"/> Partnership Agreement                    |
| <input type="checkbox"/> List of owners/stockholders and<br>% ownership of each                   | <input type="checkbox"/> Corporation Annual Report                |
| <input type="checkbox"/> Organization chart with names and titles<br>and brief function statement | <input type="checkbox"/> Latest Board minutes appointing officers |
|                                                                                                   | <input type="checkbox"/> 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:**

- |                                                                                                |                                                                                                          |
|------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> List of all current full-time employees                               | <input type="checkbox"/> List of employees claiming Section 3 status                                     |
| <input type="checkbox"/> PHA/IHA Residential lease less than 3<br>years from day of employment | <input type="checkbox"/> Other evidence of Section 3 status less than 3<br>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: \_\_\_\_\_