

# Project Based Voucher Program

Request for Proposals (RFP)

Issued 03/31/2018



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Project Based Voucher Program  
**REQUEST FOR PROPOSALS (RFP)**  
**INSTRUCTIONS**

## I. GENERAL INFORMATION

### A. Introduction

Charleston-Kanawha Housing Authority (CKHA) is a Public Housing Agency established in 1939. The agency's main office is located at 1525 Washington Street West, Charleston, WV 25387. CKHA's mission is to provide every resident with a decent, safe, affordable place to live while linking or providing programs that will assist them on their journey to self-sufficiency. The primary means to provide this assistance is through the U.S. Department of Housing and Urban Development (HUD) funded Section 8 Housing Choice Voucher (HCV) program. CKHA currently assists over 3,000 families in the counties of Kanawha, Putnam, and Clay through the HCV and similar programs.

For more information on CKHA and its rental assistance programs, please visit the Housing Authority website at [www.ckha.com](http://www.ckha.com).

### B. Objective

CKHA invites property owners/developers to submit a written proposal demonstrating their project eligibility, qualifications, and interest in securing Project-Based Vouchers (PBV). PBV assistance provides rental subsidies paid on behalf of eligible families who live in units that are contracted under the program. Qualifying properties should be located in CKHA's jurisdiction of Kanawha, Putnam, and Clay counties and may be either existing properties or newly constructed or rehabilitated properties. In all cases, the selected property and/or housing provider must meet all applicable Housing and Urban Development (HUD) requirement for project based vouchers found at 24 CFR 983. Copies of the regulations are available via the following website at [www.ecfr.gov](http://www.ecfr.gov). Projects may request up to a fifteen (15) year Housing Assistance Payments (HAP) PBV Contract with CKHA. Up to twenty-four (24) vouchers are available through this RFP process (maximum of eight (8) vouchers per project).

Projects must create permanent housing. Emergency, temporary, or transitional housing are not eligible for project based rental assistance. Vouchers funded by this RFP must serve persons and/or families who (1) established rehabilitation programs focusing on substance abuse, addiction or alcoholism, and/or (2) projects in the 2016 flood affected areas, such as Elkview, Clendenin, and Clay.

RFP's can be attached to projects that serve citizens with special needs. For purposes of this RFP, "Special Needs" will refer to individuals that require supportive services. CKHA does not provide any supportive services in connection with the PBVs. All supportive services are the sole responsibility of the project owner.

### C. Questions from Prospective Offerors

Any prospective Offeror desiring an explanation or interpretation of the RFP, statement of work, etc., must request it in writing. Oral explanations or instructions will not be binding. Any information given to a perspective Offeror concerning a RFP will be posted on the CKHA website as an addendum to the RFP.

All questions regarding this RFP should be directed in writing to Carmen Easter no later than 3:00 p.m. on April 27, 2018. Inquiries may be delivered by fax at 304.348.6455, or via email to [ceaster@ckha.com](mailto:ceaster@ckha.com). All addendums will be placed on CKHA's website at [www.ckha.com](http://www.ckha.com) by close of business day on April 27, 2018

### D. CKHA's Reservation of Rights-Right to reject, waive, or terminate the RFP

CKHA reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, in its sole and absolute discretion if deemed by CKHA to be in its best interests.

1. Right to Not Award. CKHA reserves the right not to award a contract pursuant to this RFP.
2. Right to Terminate. CKHA reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon five (5) days written notice to the successful Offeror(s).
3. Right to Determine Time and Location. CKHA reserves the right to determine the days, hours and locations that the successful Offeror(s) shall provide the services called for in this RFP.
4. Right to Determine Financial Responsibility and Viability. CKHA reserves the right to require of Offeror information regarding financial responsibility and viability or such other information as CKHA determines is necessary to ascertain whether a proposal is the responsible proposal submitted.
5. Right to Retain Written Proposals. CKHA reserves the right to retain all written proposals submitted to CKHA by all Offerors in response to this RFP, and not permit withdrawal of same for a period of 60 calendar days subsequent to the deadline for receiving said proposals. CKHA may permit the withdrawal of proposals when requested in writing by the Offeror.
6. Right to Reject Any Proposal. CKHA reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not limited to incomplete proposals and/or proposals offering alternate or non-requested services.
7. No Obligation to Compensate. CKHA shall have no obligation to compensate any Offeror for any costs incurred in responding to this RFP.
8. Right to Prohibit. CKHA shall reserve the right to at any time during the RFP or contract process to prohibit any further participation by an Offeror or reject any proposal submitted that does not conform to any of the requirements detailed herein.

In no event will CKHA permit modification to a Proposal after the submission deadline.

## II. PROJECT BASED VOUCHER PROGRAM OVERVIEW

### A. Purpose

The purpose of the PBV Program is to encourage property owners/developers to attach PBV assistance to rental properties in order to preserve and increase the number of housing units. The rental assistance is attached to the structure. CKHA will enter into a HAP contract with the owner for the units of new construction, existing, and/or rehabilitated housing (as defined by HUD). During the term of the contract, CKHA will make HAP payments to the owner for the units leased and occupied by eligible families.

For the purpose of this PBV program, CKHA defines PBV housing developments as follows:

1. **Newly constructed housing** – housing that does not exist at the time of proposal selection
2. **Existing housing** - housing units that currently exist and substantially comply with HUD’s Housing quality standards (HQS)
3. **Rehabilitated housing** -housing units that currently exist but require at least \$10,000 in rehabilitation per unit

### B. New Construction

Proposed sites for new construction will be visited to ensure that construction activities have not been initiated prior to the awarding of any PBV and the signing of the Agreement to enter into a Housing Assistance Payments contract (AHAP). New construction sites must meet the local city and county requirements for quality, architecture, or design of housing, over and above the HQS.

### C. Existing and Rehabilitated Housing

Each unit rehabilitated (whether under existing or rehabilitated category) requires a minimum expenditure of \$10,000, including the unit’s prorated share of work to be accomplished on common areas or systems. All financing of project costs and operating expenses will be the responsibility of the owner.

### D. Site Selection Standards

CKHA may select a proposal for new construction, existing and/or newly rehabilitated housing on a site and enter into a HAP contract for those units meeting the following general criteria:

1. Project based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing or economic opportunities based upon the following considerations (Specific factors are discussed at 24 CFR 983.57):
  - a. Is the proposed PBV development in a HUD designated Enterprise Zone, Economic Community or Renewal Community?
  - b. Is the proposed development located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition?

- c. Is the census tract in which the proposed PBV development is located undergoing significant revitalization?
  - d. Have federal, state or local dollars been invested in the area to achieve the deconcentration of poverty and expansion of housing or economic opportunity?
  - e. Are new market rate units being developed in the same census tract as the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area?
  - f. If the poverty rate in the area where the proposed PBV development will be located is greater than 20%, CKHA may look at the poverty trend over the previous five (5) years.
  - g. Are there meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located?
2. The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 and any other subsequent Act outlining fair housing.
  3. The site meets HQS as outlined by 24 CFR 982.401.
  4. Must meet HUD regulations for site and neighborhood standards.
  5. Be adequate in size, exposure and contour to accommodate the number and type of units proposed and adequate utilities and streets must be available to service the site.
  6. Be accessible to social, recreational, educational, commercial, and health facilities and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted standard housing of similar market rents.
  7. Except for new construction housing designed for elderly persons, be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive.

#### E. Occupancy and Vacancy

Project-based units must be leased to families eligible for Section 8 assistance for the term of the HAP contract. Vacancies will be filled with eligible families at the top of the CKHA's waiting list.

The property owner and tenant of a project-based unit must notify CKHA immediately if a tenant will be moving from a PBV unit. CKHA will release eligible applicants from the waiting list. Once CKHA has determined program eligibility then eligible families with a PBV will be referred to property owner for further processing. An eligible family who resides in a project-based unit for a least one (1) year may move with continued rental assistance with a Section 8 tenant-based voucher, if one is available. The project-based unit the family occupies must then be rented to a new eligible family.

## F. Ineligible Units

CKHA may provide up to 20% of its budget authority as allocated by HUD for use in the PBV program. THE PBV program requires compliance with all equal opportunity requirements under federal law and regulations including the authorities cited at 24 CFR 5.105(a). CKHA may not provide PBV assistance for housing types inclusive of, but not limited to the following:

- Shared housing;
- Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;
- Nursing homes or facilities providing continuous psychiatric, medical, nursing service, board and care, or intermediate care;
- Units that are owned or controlled by an educational institution or its affiliate and designed for occupancy by the students of the institution;
- Manufactured homes;
- Cooperative housing;
- Transitional housing;
- Owner-occupied housing units;
- Hi-rise family units (without prior HUD approval); or
- Units occupied by families that are in-eligible for project-based assistance based upon local PHA admittance criteria.

Additionally, CKHA may not provide PBV assistance to the following types of assisted units in accordance with 24 CFR 983.54:

- A public housing dwelling unit;
- A unit subsidized with any other form of Section 8 assistance (i.e. tenant based or project based assistance);
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 / Section 521 / Section 202 / Section 811 / Section 101 rental assistance payments;
- A unit subsidized with any form of tenant-based rental assistance (i.e. HOME funded programs);
- A unit with any other duplicative federal, state, or local housing subsidy.

## G. Cap on Number of PBV Units per Assisted Building

CKHA may only select proposals and enter into HAP contract to provide PBV assistance for up to 25% of units in each building.

PBV units will not be counted against the 25% cap for the following types of assisted units:

- Units in a single family building (1 to 4 units); or

- Excepted units in a multi-family building that are specifically made available for qualifying families.
  - Qualifying families includes elderly or disabled families OR families with one member of the household receiving the following types of supportive services:
    - Case management;
    - Life Skills;
    - Individual and/or group counseling; or
    - Substance Abuse services.
  - At the time of lease execution, the owner, family, and CKHA must sign a statement of family responsibility that must contain all family obligations including the participation in a service program. Failure of the family, without good cause, to fulfill its service obligation will result in termination from project-based assistance and the unit will only remain an excepted unit if the unit is made available to another qualifying family.
  - CKHA may monitor said family’s supportive services involvement on a monthly basis by requiring release of information documents being signed by the tenant and supportive service provider. The supportive service provider may be required to submit monthly reports to CKHA relative to the tenant’s continued involvement in outlined services component. Failure to participate in the recommended services for two (2) or more consecutive months will result in termination from the PBV program.
  - The owner must set aside the number of excepted units made available for occupancy by qualifying families.

#### H. Rent Limits

The gross rent (including utility allowance) may not exceed the Housing Authority Payment Standard for both initial rent and annual adjustments and must be rent reasonable in relation to rents charged in the private market for comparable unassisted units. The amount of initial rent to owner is determined prior to execution of the HAP contract in accordance with the Administrative Plan, Chapter 17, Part VIII: Determining Rent to Owner. There is an exception of initial contract rents for certain tax credit units as follows:

- A contract unit that receives a low income housing tax credit under the IRS Code of 1986; or
- The contract unit is not located within a qualified census tract; or
- In the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; or
- The tax credit rent exceeds the applicable fair market rent (FMR).

The initial contract rent for any other tax credit unit, not included in the aforementioned list, will be determined in accordance with the Administrative Plan, Chapter 17, Part VIII: Determining Rent to Owner.

The total rent to the owner for PBV assisted units consists of the tenant rent (the portion of the rent to owner paid by the family) and the rental assistance paid by CKHA in accordance with the contract with the owner. CKHA determines the tenant rent in accordance with HUD regulations. Except for certain tax credits units, the rent to owner including utility allowances must not exceed the lowest of:

- An amount determined by CKHA, not to exceed 110 percent of the applicable fair market rent (FMR) for the unit bedroom size including any applicable tenant-paid utility allowance;
- The reasonable rent; or
- The rent requested by an owner.

Current CKHA 2018 FMRs for determining rents are:

**Kanawha and Clay Counties**

Unit Size (Number of Bedrooms)	HUD’s 2018 Fair Market Rent
0	\$503
1	\$650
2	\$789
3	\$989
4	\$1,083

**Putnam County**

Unit Size (Number of Bedrooms)	HUD’s 2018 Fair Market Rent
0	\$595
1	\$609
2	\$802
3	\$1035
4	\$1,100

CKHA’s utility allowance schedule is available on the CKHA website, [www.ckha.com](http://www.ckha.com).

**I. Federal Requirements**

Certain Federal requirements apply to PBV assistance, including, but not limited to:

1. Fair Housing. Nondiscrimination and equal opportunity. See 24 CFR Sections 5.105(a) and Section 504 of the Rehabilitation Act.
2. Environmental Review. See 24 CFR Parts 50 and 58 and 24 CFR Part 983.58
3. Debarment. Prohibition on use of debarred, suspended, or ineligible contractors. See 24 CFR Sections 5.105(c) and 24 CFR Part 24.
4. Labor Standards. Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), 29 CFR Part 5, and other federal laws and

regulations pertaining to labor standards applicable to an agreement covering nine or more assisted units.

5. Uniform Relocation Act. A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR Part 24.
6. Section 3. PBV assistance 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”). Section 3 is a HUD mandate that employment and other economic opportunities generated by federal assistance to public housing authorities shall, to the greatest extent feasible, be directed to public housing residents and other low and very low income persons or business concerns residing in the community where the project is located. By submitting a Proposal, Proposer agrees to comply with the HUD regulations in 24 CFR part 135 that implement Section 3.

#### J. Environmental Review

PBV selected sites are subject to HUD environmental regulations with 24 CFR parts 50 and 58. CKHA may not enter into a PBV HAP contract with an owner until one of the following occurs:

- The responsible entity has completed the environmental review procedures required by 24 CFR part 58 and HUD has approved the environmental certification and request for release of funds;
- The responsible entity has determined that the project to be assisted is exempt under 24 CFR 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or
- HUD has performed an environmental review under 24 CFR part 50 and has notified the PHA in writing of environmental approval of the site.

Upon any environmental findings, as applicable, the owner is required to carry out mitigating measures required by the responsible entity in order to enter into a HAP contract with CKHA.

#### K. Housing Quality Standards

Assisted units under the PBV program are subject to HQS as outlined in 24 CFR 982.401.

CKHA will conduct HQS inspections (or HUD approved inspection process) of individual units prior to selection of the site and again prior to execution of the HAP contract for each assisted unit. Additionally, for each assisted family in the units, annual inspections will be conducted as well as turnover inspections (move in and move out inspections when the unit becomes vacant and then again leased up). CKHA reserves the right to inspect the unit at any time outside of the aforementioned times (i.e. quality control inspections, tenant complaint or landlord complaint inspections).

The owner must maintain and operate the contract units and premises in accordance with the HQS including performance of ordinary and extraordinary maintenance. In addition, the owner is responsible for providing all services, maintenance, equipment and utilities as specified in the executed HAP contract.

At any time in which the owner does not maintain the units and premises in accordance with HQS (or HUD approved inspection process) as outlined in the Administrative Plan, Chapter 17, Part V: Housing Assistance Payment Contract (HAP) and Chapter 8, Part II: Section 8-II.G. Enforcing Owner Compliance, CKHA will abate the HAP.

#### L. Lead Based Paint

The lead based paint requirements under 982.401 do not apply to PBV programs, however, the Lead-Based Paint Poisoning Prevention Act and the Residential Lead Based Paint Hazard Reduction Act of 1992 and implementing regulations at 24 CFR part 35, subparts A, B, H and R apply to the PBV program.

#### M. Housing Accessibility

The proposed and selected housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8. CKHA shall ensure that the percentage of accessible dwelling units complies with said requirements. In addition, housing first occupied after March 13, 1991 must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205 as applicable.

#### N. Execution of HAP Contracts

CKHA may enter into a HAP contract with the selected owner for an initial term of not less than one (1) year and not to exceed fifteen (15) years for each contract unit.

Within one (1) year of expiration, CKHA may agree to extend the term of the HAP contract up to an additional five (5) years if CKHA determines that an extension is appropriate to continue providing affordable housing for low-income families.

The HAP contract will state that CKHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or CKHA in accordance with HUD instructions. The owner may terminate the HAP contract, upon notice to CKHA, if the amount of the rent to owner for any contract unit is reduced below the amount of the initial rent to owner at the beginning of the HAP contract term. In such cases, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

At the discretion of CKHA, and subject to all PBV requirements, the HAP contract may be amended within the first three (3) years of the contract term for the following requests:

- To substitute a different unit (pending completion of HQS inspection) with the same number of bedrooms in the same building for a previously covered contract unit.
- To add contract units provided that the total number of units in a building that will receive PBV assistance does not exceed 25% of the number of dwelling units in the building or 20% of CKHA's authorized budget authority.

- To reduce the number of contract units by the number of units that has vacant for a period of 120 or more days.

## 0. Tenant Selection

CKHA will select families from CKHA's Section 8 waiting list for the selected PBV program site. CKHA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. The owner is responsible for screening and selection of the family referred by CKHA from CKHA's waiting list to occupy the owner's unit based on their tenancy histories. CKHA screens families for their eligibility to receive the voucher assistance, and the owner screen the family for suitability to enter into a lease agreement. Not less than 75% of the families admitted to the tenant based and project based voucher programs will be extremely low income families.

CKHA may only provide rental assistance to families determined eligible at the commencement of PBV assistance in accordance with the Administrative Plan, Chapter 3 - Eligibility. Should the tenant be "in-place" in the assisted unit, the tenant will be placed on CKHA's waiting list for the PBV program development in order to minimize displacement of existing residents. Once a family has been determined eligible, the head of household will be invited to attend a briefing session as outlined in the Administrative Plan, Chapter 10, Part I, Section 10-1.C. Voucher Issuance and Briefing. In selecting families to occupy PBV units with special accessibility features for persons with disabilities, CKHA must first refer families who require such accessibility features to the owner.

During the course of the tenant's lease, the owner may not terminate the lease without good cause. "Good cause" does not include a business or economic reason or desire to use the unit for an individual, family or non-residential rental purpose. Upon expiration of the lease the owner may: renew the lease; refuse to renew the lease for good cause; or refuse to renew the lease without good cause. Should the tenant be terminated by the owner for good cause, the tenant will not be eligible for a tenant-based voucher upon lease termination. Should the owner choose not to renew the lease without good cause, the tenant will be offered a tenant based voucher.

The assisted family has the right to terminate the lease any time after the initial one (1) year lease term with advance written notice of intent to vacate. In such instances that the family is in good standing with the owner, the family will be offered continued assistance either through either another PBV or a tenant based voucher. If continued assistance is not immediately available, the family will receive priority in receiving the next available opportunity for continued tenant based rental assistance. Should the family terminate the assisted lease prior to the initial one (1) year term, the family relinquishes the opportunity for continued tenant based assistance.

## P. Tenant Rent/Payment to Owner

CKHA will administer payments to owners as outlined in the Administrative Plan, Chapter 17, Part V: Housing Assistance Payments Contract (HAP) and Part IX: Payments to Owner.

## III. OFFER OF PROJECT BASED VOUCHERS

### A. Number of PBV Units Available

CKHA is soliciting in this RFP up to twenty-four (24) Project Based Vouchers (maximum of eight (8) vouchers per project). CKHA at its sole discretion may award more than one project. CKHA at its sole discretion can opt not to award all twenty-four (24) vouchers if applications submitted do not score relatively high.

### B. Project Eligibility

In order to be considered under this RFP, all projects submitted must meet the conditions stated below:

1. Proposed project must be located in the counties of Kanawha, Putnam, and Clay.
2. Projects must be intended for the specific populations and geographic areas on page 1 of the RFP.
3. Owner/agent must be a legal business entity that has provided management services for a minimum of ten (10) years in low-income housing.
4. Proposed project must be a planned new construction project, an existing project or a project in need of rehabilitation. Rehabilitation projects must demonstrate a minimum average per unit cost of \$10,000 to be considered for award.
5. Construction or rehabilitation for the proposed project must not have started at the time of selection for PBV (and cannot start until all post-award conditions are met and an agreement is signed).
6. Projects must be able to meet all HUD and CKHA PBV program requirements.
7. Proposals will be rejected for projects receiving other government funding for operating costs/rent subsidy for units that are requesting PBVs.
8. Proposals will be evaluated on the following factors:
  - a. Extent to which the project furthers CKHA goal of deconcentrating poverty and expanding housing and economic opportunities; and
  - b. Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community (See 24 CFR Section 983.57 Site Selection Standards).
9. Applicant must have site control. Required documents are: recorded deed or an Executed Option Agreement.

10. Applicant must provide evidence that the proposed new construction or rehabilitation is permitted by current zoning ordinances or regulations, or evidence to indicate that the needed rezoning is likely to be obtained and will not delay the project.
11. All projects will be required to complete a subsidy layering review process.
12. Owners/Developers/Project Sponsors must be in good standing with CKHA. Proposals will not be considered from entities that have unresolved contract issues with CKHA. Proposals that were previously awarded CKHA PBVs that failed to execute a HAP contract with CKHA may be rejected.
13. Applicant must provide a management plan, which includes employee portfolios.

### C. Requirements for Organizations Receiving PBV from CKHA and HUD

The organization must be incorporated. If the organization is a non-profit, the organization must have received a 501(c)(3) tax-exempt organization determination.

1. The organization must have policies and procedures including admission policies, rules for resident behavior, procedures for involuntary discharge and a grievance procedure.
2. The organization must be annually audited by a certified public accounting firm and the results must be provided to the CKHA. The latest audit must be part of and submission to this RFP.
3. The organization must have in place the following insurance which shall be written by companies authorized to do business in the State of West Virginia and acceptable to CKHA. Binders will be required before completion of contract:
  - a. Comprehensive general liability insurance at limits not less than one million dollars (\$1,000,000.00) combined single limits
  - b. Commercial general liability insurance including contractual liability coverage's in the amount not less than one million dollars (\$1,000,000.00) combined single limits
  - c. Employees dishonesty bond at limits not less than one million dollars (\$1,000,000.00)
  - d. Workers Compensation Insurance
4. The organization must comply with all the laws and regulations of the State of West Virginia, including but not limited to laws involving the use, maintenance and operation of structures, including building permits, zoning, code enforcement and rental certificates of compliance.
5. The organization must designate a point of contact for CKHA.
6. The organization must provide to CKHA, HUD or its agents reports, financial and other information as requested that may be needed to ensure compliance with local, state and federal laws and regulations.
7. Organizations must be able to enter into an AHAP contract and start the project for which PBV's have been requested within a twenty-four (24) month period after the announcement of award of PBV's or CKHA reserves the right to withdraw the award.

#### D. CKHA Owned Units

CKHA owned units may be assisted under the PBV program [24 CFR 983.51(e)]. If CKHA were to submit a proposal in response to this RFP, the HUD Baltimore field office or HUD-approved independent entity must review the selection process and determines that the CKHA-owned units were appropriately awarded based on the selection procedures specified in the CKHA Administrative Plan.

### IV. APPLICATION PROCESSING

#### A. Limit on Number of Projects

Applicants are not limited on the number of projects they may submit for consideration under this RFP. However, each application must be for a single project. For each project submitted, a separate application must be submitted.

#### B. Organization of Submitted Materials

All proposals submitted in response to this solicitation must conform to all of the requirements and specifications outline within the RFP document and any designated attachments in their entirety. All questions within the application must be answered. Questions must be answered on a separate sheet of paper tabbed separately. If any questions are left blank the application will be considered deficient and ineligible to compete in the RFP process.

Applicants must submit one (1) original and three (3) additional copies of the entire packet, including all attachments. At least a twelve (12) point font must be used. All applications and accompanying documents must be paper copies. The information should be 8.5" x 11" format bound by a single staple in the top left-hand corner or a three-ring / spiral binder. A numbered or lettered tab shall separate each section. All proposals must be addressed to Charleston-Kanawha Housing Authority in an envelope(s) clearly marked "RFP for Project Based Voucher Program." Where possible, copies should be submitted as two-sided copies in order to conserve paper. **No electronic versions of the application will be accepted.**

All documents submitted as part of the proposal will become property of CKHA. Any material submitted that is confidential must be clearly marked as such, and may be subject to disclosure pursuant to applicable law.

### C. Submittal Deadline

All proposals MUST be received no later than 4:30 p.m. on April 27, 2018. Proposals may be submitted by mail or hand delivered to:

Attn: Carmen Easter, Director of Leased Housing  
Charleston-Kanawha Housing Authority  
1525 Washington Street West  
Charleston, WV 25387

CKHA will date and time stamp all applications upon receipt. Under the competitive proposal selection process, submissions are not opened publicly.

Proposals submitted after the deadline indicated above will not be accepted. Delays in mail service or other methods of delivery will not excuse a late proposal delivery.

### D. Proposal Review

The PBV Selection Panel appointed by CKHA's Director of Leased Housing will review, evaluate, rank, and select the applications according to the scoring criteria outlined in the RFP, CKHA policy, and program regulations.

### E. PBV Award

Proposals that meet the program requirements outlined in the RFP packet will be evaluated and ranked according to the selection criteria factors described in Section VI. A. of this RFP. A Ranking List will be prepared according to points awarded to each proposal. The application(s) scoring the highest points will be conditionally awarded PBVs up to the amount requested and in accordance with the specified limits. The evaluation will be completed within ten (10) business days of the proposal deadline. Owners/developers will be notified by letter of the acceptance or rejection of their proposal.

CKHA may, at its discretion, select none of the proposals submitted. CKHA reserves the right to postpone or cancel the final award of the proposals at its convenience.

### F. Post Award Conditions

For the selected project(s), the following items must be completed before CKHA and the owner can execute an Agreement to enter into HAP or HAP contracts.

- a. Site and Neighborhood Review. Before entering into a HAP contract, CKHA will conduct an inspection of the proposed PBV site and units. Site selection standards include 1) an assessment of the physical attributes and appropriateness of the site for the proposed units; and 2) an assessment of whether the project is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities as stated in CKHA's Administrative Plan.

Owners/developers may be asked to submit additional information to help facilitate this site review.

- b. Environmental Review. PBV activities are subject to HUD environmental regulations in 24 CFR Parts 50 and 58. CKHA must obtain documentation of environmental clearance from the Responsible Entity who conducted or approved the environmental review (see 24 CFR Section 983.58).
- c. Determination of initial contract rent. CKHA will determine the amount of initial rent to owner according to 24 CFR Section 983.303(c). If the project is a CKHA-affiliated property, the rent will be determined by an independent agency.
- d. Subsidy layering review. New construction, existing or units in need of rehabilitation PBV projects that utilize tax credits or other governmental housing assistance from federal, state, or local agencies are subject to a subsidy layering review (see 24 CFR Section 983.55) to prevent excessive public assistance for the project. Owners/developers will be required to submit a list of documents to CKHA which will then be submitted to HUD for the review. It is the sole responsibility of the applicant to ensure that they are in compliance with any subsidy layering requirements imposed upon the project from previous funding sources.
- e. Rent Reasonableness. A rent reasonableness determination must be completed.
- f. Certification. Certification that the owner and other project principles are not on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs.

#### G. Incomplete and Non-Responsive/Non-Compliant Applications

By signing the application the applicant is adhering that they agree to provide any documentation requested by the CKHA upon notification of awards of PBVs to ensure compliance with HUD requirements. Applicants may be asked to submit additional information to help facilitate the proposal review.

If CKHA finds that an application is found to be non-responsive or non-compliant with the RFP, written selection criteria and procedures, or HUD program regulations, it will be rejected and returned to the applicant with notification stating the reason for rejection. CKHA reserves the right to reject applicants at any time for misinformation, errors, or omissions of any kind, no matter how far they have been processed.

#### H. Withdrawal of Proposal

Applicants may withdraw their proposals before or after the RFP submittal deadline by submitting a written request to Carmen Easter at the mailing address or email listed in Section IV.C above. Proposals can be re-submitted before the RFP submittal deadline but cannot be re-submitted after the deadline.

#### I. Proposal Cost

All costs incurred in the preparation and presentation of the proposal shall be completely absorbed by the applicant.

## J. Affirmative Action

CKHA promotes competitive solicitations and does not discriminate on the basis of race, color, religion, creed, national origin, sex, disability, age or sexual orientation.

## K. Proposals Open to Public

Subsequent to the award of the contract, all information submitted as part of, or in support of the proposal will be available for public inspection in compliance with state and federal laws. Only financial information, if requested as part of the RFP to confirm an Offeror's financial soundness, will be kept confidential.

## V. CONTRACT AWARD

### A. Contract Conditions

The following provisions are considered mandatory conditions of any contract award made by the CKHA pursuant to this RFP:

1. Contract Form: The CKHA will not execute a contract on the successful Offeror's form--contracts will only be executed on the CKHA form, or any other form substantially approved as to form and substance by CKHA and by submitting a proposal in response to this RFP, the successful Offeror agrees to do so (please note that the CKHA reserves the right to amend this form as the CKHA deems necessary).
2. Assignment of Personnel: The CKHA shall retain the right, in its sole and absolute discretion, to demand and receive a change in personnel assigned to the work to be performed pursuant to the contract if the CKHA believes that such change is in the best interest of the CKHA and the completion of the contracted work.
3. Unauthorized Sub-Contracting Prohibited: The successful Offeror shall not have the right to , assign any right, nor delegate any duty for the work proposed pursuant to this RFP (including, but not limited to, selling or transferring the contract) without the prior written consent of the CKHA CEO or designee, in his/her sole and absolute discretion. Any purported assignment of interest or delegation of duty, without the prior written consent of the CKHA CEO or designee shall be void and may result in the cancellation of the contract with the CKHA, or may result in the full or partial forfeiture of funds paid to the successful Offeror as a result of the proposed contract; either as determined by the CKHA CEO or designee.

### B. Contract Period

The CKHA anticipates that it will initially award a contract for a period of fifteen (15) years, at CKHA's sole and absolute discretion.

## VI. SUBMISSION REQUIREMENTS AND SCORING CRITERIA

Following the proposal receipt deadline, an evaluation will be made of all proposals. The scoring criteria will be used by CKHA to rank and select applications for the PBV Program. Each criterion is comprised of several components with an associated point value. The total points awarded to an application will be the aggregate of the component subtotals for each factor. Projects will be ranked based on their overall percentage of points received.

At any time the CKHA may issue changes to this RFP in the form of an addendum. All addendums will be placed on the CKHA's website at [www.ckha.com](http://www.ckha.com) by close of business day on April 27, 2018. It is the applicant's sole responsibility to check the website for any addendums.

### A. SCORING CRITERIA

1. **Cover Page - Application for Project Based Vouchers (no points)**

Include a completed CKHA PBV Application Coversheet (see Attachment section).

2. **Table of Contents (no points)**

3. **Detailed Project Description (15 points)** - Do not include supportive services in this section

- 1) Provide a description of the housing to be provided (new construction, existing, or rehabilitation project);
- 2) Number of PBV units planned for the project;
- 3) Total number of buildings in the project; units by bedroom size and square footage;
- 4) Provide site plans, building plans, elevations, specifications and any other available documentation of the proposed site, building design, or remodeling plans;
- 5) For rehabilitation projects, describe the rehabilitation plan;
- 6) Must have site control, either in the form of recorded deed or an Executed Option Agreement;
- 7) Provide evidence that the proposed new construction, existing, or rehabilitation project is permitted by zoning ordinance or evidence to indicate that rezoning or relief required would likely to occur and not delay the project;
- 8) Provide a rent plan indicating rents for each unit type;
- 9) Population group or groups and areas to be served (e.g. homeless, rehabilitation programs, 2016 flood affected areas);
- 10) Project financing;
- 11) Completion of all necessary environmental clearances (CEQA and NEPA) and of a Phase 1 Environmental Site Assessment;
- 12) Term of Contract Requested; and
- 13) Other characteristics of the site.

#### **SCORING CRITERIA**

- a. If requesting a fifteen year contract - **15 points**

#### **4. Site Location (15 points)**

All proposals must describe the following:

- 1) The location of the property by address and census tract(s);
- 2) The proximity of community facilities and resources for the population to be housed at the project (such as markets, libraries, human and medical services, educational opportunities, etc.); and
- 3) Access to public transit.

Include a map that shows public transportation routes and the location of services listed above.

#### **SCORING CRITERIA**

- a. Site is within ½ mile of community facilities or is within ½ mile of public transportation to these services - **15 points**
- b. Site is within 1 mile of community facilities or is within 1 mile of public transportation to these services - **10 points**
- c. Site is within 2 miles of community facilities or is within 2 miles of public transportation to these services - **5 points**

#### **5. Owner/Developer Experience (15 Points)**

Provide a general description of your organization and its mission. Describe your experience in the development of housing for the population you wish to serve including experience with the tenant based and PBV program.

#### **SCORING CRITERIA**

- a. Owner/Developer has developed 300 or more low-income housing units – **15 points**
- b. Owner/Developer has developed 150 - 299 low-income housing units – **10 points**
- c. Owner/Developer has developed 50 - 149 low-income housing units – **5 points**

#### **6. Management/Affiliate Experience (20 Points)**

Describe your experience in the management of housing for the population you wish to serve including experience with the tenant based and PBV program. Provide details of how this project is to be managed once completed. The narrative should describe the ownership entity, the nature of any partnerships, the operational plan for this project and any additional funds that would be

leveraged through award of this project-based assistance and the sources of those funds. A copy of the Property Management Company's portfolio or resume must be submitted.

#### **SCORING CRITERIA**

- a. Management/Affiliate has more than 20 years' experience in the management and operations of low-income housing – **20 points**
- b. Management/Affiliate has more than 10 and less than 19 years' experience in the management and operations of low-income housing – **15 points**

#### **7. Ownership Entity/Management Agent's Principal's Proximity to Property Site Location (15 Points)**

Provide physical address.

#### **SCORING CRITERIA**

- a. Ownership Entity/Management Agent's Principal's (general partner) principal place of business is located within 30 miles – **15 points**
- b. Ownership Entity/Management Agent's Principal's (general partner) principal place of business is located within 90 miles – **10 points**
- c. Ownership Entity/Management Agent's Principal's (general partner) principal place of business is located within 150 miles – **5 points**

#### **8. Supportive Services Plan (5 Points) – if applicable**

Please provide a detailed description of supportive services offered.

#### **9. Project Readiness (15 Points)**

Submit a project development schedule that describes all phases from planning to construction completion. Describe the work already done that would lead to completion of the project once the project-based assistance is awarded.

#### **SCORING CRITERIA**

- a. Project will be completed in eighteen months – **15 points**
- b. Project will be completed in twenty-four months – **10 points**
- c. Project will be completed in thirty months – **5 points**

10. **Deconcentration of Poverty (5 Points)**

See Section II.D.1.a.-g. Site Selection Standards

**SCORING CRITERIA**

- a. Project meets 2 criteria – **5 points**

11. **Appendix A – no points**

The following attachments must be reviewed. The attachments requiring signatures must be enclosed with your proposal, or the proposal will be returned as ineligible:

- 1) Non-Collusion Affidavit – **signature required.**
- 2) Form HUD-5369-B, Instructions to Offerors – Non-Construction.
- 3) Form HUD-5369-C, Certifications and Representations of Offerors – Non-Construction Contract – **signature required.**
- 4) Form HUD-5370-C, General Conditions for Non-Construction Contracts.
- 5) Section 3 Clause
- 6) Section 3 Certification Form

**B. SCORING SUMMARY**

<b>SCORING CRITERIA</b>	<b>POINT POSSIBLE</b>
Term of Contract Requested	15
Site Location	15
Owner/Developer Experience	15
Management/Affiliate Experience	20
Ownership Entity/Management Agents Principal’s Proximity to Property Site Location	15
Supportive Services – if applicable	5
Project Readiness	15
Deconcentration of Poverty	5
<b>TOTAL POINTS</b>	<b>105</b>

# Appendix A

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PROJECT BASED VOUCHER APPLICATION COVERSHEET

Date of Application: \_\_\_\_\_ Total Project Based Vouchers Requested: \_\_\_\_\_

Legal Name of Organization \_\_\_\_\_

Address \_\_\_\_\_ City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ Web site \_\_\_\_\_

Name of contact person regarding the application \_\_\_\_\_ Title \_\_\_\_\_

Tax ID Number \_\_\_\_\_ Email \_\_\_\_\_

Are you requesting an exception to the 25% PBV rule?  YES  NO

Certifications

By signing this application the following certifications are made:

- 1. The owner and agents will adhere to the 24 CFR 983 regulations governing the project based vouchers.
2. The owner and its agents will comply with all applicable fair housing and civil rights requirements found in 24 CFR 5.105(1), including, but not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Titles II and III of the Americans with Disabilities Act, as applicable.
3. The owner and its agents will comply with effective communication requirements pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR 8.6.

Authorization

Authorized Signature: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_



## SECTION 3 CLAUSE

All Section 3 covered contracts shall include the following clause (referred to as the “Section 3 Clause”):

- 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 by before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

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

**Instructions to Bidders for Contracts  
Public and Indian Housing Programs**

# Instructions to Bidders for Contracts

## Public and Indian Housing Programs

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### 1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

### 2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

### 3. Amendments to Invitations for Bids

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

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

### 4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

- (1) Integrity;
- (2) Compliance with public policy;
- (3) Record of past performance; and
- (4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

## 5. Late Submissions, Modifications, and Withdrawal of Bids

(a) Any bid 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 PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(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 observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, 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 bid, 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, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, 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, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

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

(g) Bids 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 the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

## 6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

## 7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

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

## 8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

**9. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)**

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

**10. Assurance of Completion**

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[ ] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[ ] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[ ] (3) a 20 percent cash escrow;

[ ] (4) a 25 percent irrevocable letter of credit; or,

[ ] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

**11. Preconstruction Conference (applicable to construction contracts)**

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

**12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)**

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean 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; and Indian "tribe" to mean 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.

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to be used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [ ] does [ ] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

**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)

# General Conditions for Non-Construction Contracts

## Section II – (With Maintenance Work)

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

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

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

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

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

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

### 1. Minimum Wages

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

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

### 2. Withholding of funds

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

### 3. Records

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

### 4. Apprentices and Trainees

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

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

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

## 5. Disputes concerning labor standards

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

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

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.

- (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

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

## 6. Contract Work Hours and Safety Standards Act

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

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

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

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

## 7. Subcontracts

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

## 8. Non-Federal Prevailing Wage Rates

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

**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: \_\_\_\_\_