

# HOUSING AUTHORITY OF CLACKAMAS COUNTY OREGON CITY, OREGON

## REQUEST FOR PROPOSALS TRANSFER OF FARMWORKER PROPERTY

**ISSUE DATE: MAY 1, 2019**  
**DUE DATE: TUESDAY MAY 28, 2019**

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### **REQUEST FOR PROPOSALS**

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department (H3S) issues this Request for Proposals (RFP) to seek proposals from entities with a strong track record in the ownership, management, delivery of resident services and redevelopment or rehabilitation of Farmworker Housing.

**Issue Date:** Thursday May 1, 2019  
**Due Date:** Tuesday May 28, 2019 at 4:00 PM

*Submittals are to be delivered to the RFP Contact per the submission requirements outlined in the RFP. Late submittals will not be considered.*

### **Proposal Meeting for Applicants (Optional)**

Date: Wednesday, May 15, 2019  
Time: 1:00 to 2:00 p.m.  
Location: Arbor Terrace Community  
127 N. Cole Street  
Molalla, OR 97038

The proposal meeting provides an opportunity for respondents to this RFP to see the property and ask questions about the transfer process. There may or may not be an opportunity to view in the interior of an apartment.

**Please RSVP by 4:00PM on May 14th to attend the Proposal Meeting and receive location information: [rmalloy@clackamas.us](mailto:rmalloy@clackamas.us)**

**Proposal Submission - RFP Contact:**

**Submit Four (4) Hardcopies of the Proposal to:** Housing Authority of Clackamas County  
Attention: Rich Malloy  
P.O. Box 1510  
13930 S. Gain Street  
Oregon City, OR 97045

PAGE Limits: There is no page limit to the narrative you submit, however it is recommended to focus on the questions asked in the submission requirements. You may also attach brochures, annual reports, program information, real estate holding schedules or other information as applicable to the submission requirements. Electronic submittals will not be accepted.

**I. RFP Background and Purpose**

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department (H3S), owns over 900 units of affordable housing. Within this portfolio HACC owns Arbor Terrace (the "Project") a 25 unit farmworker housing community located at 127 N. Cole Street, Molalla, OR 97038. The Project was funded under the United States Department of Agriculture (USDA) Rural Development 515 Program and was constructed in 1992.

HACC is seeking to transfer the Project to a qualified farm worker housing entity with a solid track record in the ownership, management, development or rehabilitation and provision of resident services under the oversight and regulatory framework of the USDA Rural 515 farmworker housing program.

Because Arbor Terrace has capital needs, the successful proposer should have the capacity to procure capital funding and facilitate a substantial rehabilitation process. Also, HACC strongly prefers that the entity that is successful in obtaining authorization to acquire Arbor Terrace have a successful track record with resident services programs that meet the needs of the resident population. Finally, the successful respondent must have the experience with property management and compliance under the USDA regulations.

## II. Minimum Qualifications Necessary for Consideration:

To be qualified to respond, respondents must not be debarred, suspended, or otherwise ineligible to contract with HACC, and must not be included on the General Services Administration's "List of Parties Excluded From Federal Procurement and Non-Procurement Programs" or the Department of Housing and Urban Development's "Limited Denial of Participation" list.

### Qualification criteria:

- *Qualifications may be met by organizational track record or a combination of organization track record and experience of staff currently employed by applicant organization.*
- *Qualifications and experience must be based on direct involvement with farm worker housing under the USDA Rural 515 Program. Other housing involvement will not substitute or count for the USDA Rural 515 Program.*

### 1) Farmworker Housing Ownership:

- Currently own at least 100 units of farmworker housing and have been owner of farmworker units for at least five years.

### 2) Property Management:

- At least three years of experience in farmworker property management. Use of a third party management company will qualify provided the third party management company submits the required documents under Section III.2 & III.5, Submission Requirements below.

### 3) Rehabilitation or New Construction:

- Experience with the successful rehabilitation or new construction of least 100 units.

### 4) Resident Services:

- At least three years of experience delivering resident services to farmworker housing residents.

### 5) Fiscal Management:

- Capacity to be a fiscal agent for the administration of a federally funded housing program.
- Accounting systems and standards acceptable to USDA Rural Development per Chapter 4, of Handbook HB-2-3560. No significant audit findings in the last five years.

## III. SUBMISSION REQUIREMENTS:

To be considered responsive and responsible, each respondent shall respond to the following requirements. Responses must be specific and complete unto themselves. Any submittal that, in

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the opinion of HACC, does not fully and completely address these requirements may be disqualified.

**Submission Requirements:** Submit either written narratives or specific documents as listed:

- 1) Description of your organization including:
  - a) Cover letter describing your organizational philosophy and goals for Arbor Terrace.
  - b) Description and documentation of Legal or governing structure;
  - c) Staff structure including an organizational chart (include resumes of key leadership staff)
  - d) Location of central office and housing properties and geographic area served
  - e) All housing types owned and managed. Include names of projects, number and types of units, affordability levels, program name (e.g. Farm Worker, LIHTC, etc.)
  
- 2) Property Management Experience and Capacity:
  - a) Description of your property management company including how organized including staffing structure (may be an internal or affiliated company or a third party management company).
  - b) Number of years of experience and number and type (i.e. residential affordable or market rate) of units managed (may be similar response to Section II above).
  - c) Track record with USDA reviews (provide sample review letters). If there were findings or concerns, describe how these findings or concerns were resolved.
  - d) Describe how your organization markets properties and how you manage waiting lists.
  - e) Describe your maintenance team and how they ensure that routine maintenance is managed and your response times to resident requests in a timely manner.
  - f) Describe how you manage lease violations, warnings, terminations and restitution if necessary. Also, include any information regarding your resident service department's involvement with property management in working with residents to successfully retain their housing rather than taking immediate action leading to lease termination.
  - g) Describe your working relationship with the USDA Field Office and Oregon Housing and Community Services or any other public entity or private foundation that provides funding for your capital needs, operations or residents services programs. Include how long you have worked with or partnered with any of these agencies, what metrics you have tracked related to positive housing outcomes for low income or vulnerable families and your organization's plans to continue working with these partner agencies or funders.
  
- 3) List of projects your organization has developed and rehabilitated:
  - a) Include all new construction projects including number and type of units, general building design, site design and amenities. Include financing structures, sources and uses. Provide development pro formas if available. Include experience and use of farm workers tax credits, USDA grants and loans, other resources utilized.
  - b) Describe all rehabilitation projects you have completed including number and type of units. Include financing structures, sources and uses. Provide development pro formas

if available. Include experience and use of farm workers tax credits, USDA grants and loans, other resources utilized.

- c) Describe your development and rehabilitation team including individual roles, qualifications and experience. Consultants should be included also.

4) Resident Services Programs, Team and Experience:

- a) Describe the resident services programs your organization provides directly or contracts with a third party entity to provide these services. Which segments of your resident population do you serve? How do you measure the impact of your services? How are resident services funded?
- b) Provide resumes and proposed role of key staff that will be administering resident services.
- c) What stands out about your resident services programs?
- d) How do you ensure your resident services programs are culturally sensitive?
- e) Please describe any success stories of any of your residents because of their participation in your resident services programs.
- f) How do you fund your resident services program?

5) Fiscal Management Team and Capacity:

- a) Describe your financial management team, individual roles and responsibilities.
- b) Provide your most recent operations budget;
- c) Provide copies of your audits from the last three fiscal years. Have you had any significant audit findings in the last three years? If so, please describe how you resolved such findings.
- d) Submit your certificate of Insurance coverage for Commercial & General Liability, Professional Liability (e.g. Errors & Omissions) and Workmen's Compensation.

6) References:

Provide three references that affirm your ability and capacity to:

- a) Successfully manage property and ensure all minimum standards of program compliance have been consistently met.
- b) Plan and implement real estate development or rehabilitation activities.
- c) Deliver resident services with measurable positive outcomes.

**IV. Review of RFPs and Selection Process**

**Intent and Purpose:**

The intent and purpose of this RFP is to select the best qualified housing entity with substantial experience with farmworker housing under the USDA farm worker housing program that can complete the USDA Transfer Process to acquire Arbor Terrace Apartments.

- 1) All successful Proposers must meet the minimum qualifications in Section II above. Although HACC will review and score proposals to determine the best qualified entity to

take possession of Arbor Terrace. The final decision will be made by the local USDA Rural Development Office after the successful entity completes the transfer process

- 2) Review Process:
- a) All RFPs must meet the minimum threshold requirements in Section II above. All RFPs will be scored according to the criteria listed under Section III above, Submission Requirements listed above. Scoring thresholds are listed in the table below:

| <b>Submission Requirement</b>   | <b>Points</b> |
|---|---------------|
| 1) Description of your organization                                   | 10            |
| 2) Property Management Experience and Capacity                        | 25            |
| 3) List of projects your organization has developed and rehabilitated | 15            |
| 4) Resident Services Programs, Team and Experience                    | 20            |
| 5) Fiscal Management Team and Capacity                                | 20            |
| 6) References   | 10            |
| <b>TOTAL</b>  | <b>100</b>    |

- b) Proposals that best meet the submission requirements will be contacted for an interview and presentation to HACC senior management.

- 3) Final Selection:
- Once HACC makes its decision on the best qualified entity to acquire Arbor Terrace, it will then contact the USDA Field Office to seek approval for its recommendation. Upon completion of this recommendation and final direction from the USDA Field Office, the recommended entity may receive authorization to move forward with the USDA process to transfer the project from HACC to their respective ownership. A selection by HACC does not guarantee a proposer will be awarded the opportunity to take possession of the Project. Final decision to acquire the Project under the USDA transfer guidelines is subject to approval by the USDA Field Office and the HACC Board of Commissioners.

4) **Questions and Comments**

Any respondent requiring clarification of the information must submit specific questions or comments to the RFP contact via email. **The deadline for submitting such questions is 5:00 May 20, 2019.** If in HACC's opinion, additional information or interpretation is necessary; such information will be supplied in the form of an Addendum that will be posted to the HACC website:

<http://www.clackamas.us/housingauthority/bids.html>

Such addenda shall have the same binding effect as though contained in the main body of the Request for Qualifications. Oral instructions given to prospective respondents by HACC employees or its agents shall not bind HACC. All Addenda shall be issued by HACC not less than three (3) calendar days prior to the qualifications deadline.

**All questions should be submitted in writing, by email or telephone to:**

Rich Malloy, Asset Manager  
Housing Authority of Clackamas County  
Telephone: 503-650-3128  
Email: rmalloy@clackamas.us

**V. Selection of Qualified Entity**

HACC will evaluate proposals and will rate proposals using the scoring methodology described in Section IV of this document.

HACC reserves the right to seek clarification of the written Proposals from respondents.

HACC reserves the right to reject any and all proposals and to waive any informality in proposals received whenever such rejection or waiver is in the interest of the Housing Authority.

HACC reserves the right to reject the proposal of any proposer including those who have previously failed to perform properly, or to complete on time, contracts of a similar nature; who is not in a position to perform the contract, or who has neglected the payment of bills or otherwise disregarded their obligations to subcontractors, material suppliers, or employees. HACC also reserves the right to reject the proposal of any proposer listed in the current issue of "List of Parties Excluded from Federal Procurement and Non-procurement Programs" U.S. General Services Administration, Office of Acquisition Policy or listed in the HUD Limited Denial of Participation, current edition.

Professional services contracts will not have terms exceeding five years without HUD Approval.

The successful firm shall sign and file with HACC all documents necessary to the successful execution of the contract within ten calendar days after the notice of award.

**A. Right to Protest**

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Any actual proposer who is adversely affected or aggrieved by HACC's award of the contract to another proposer on the same solicitation shall have fourteen (14) calendar days after notice of intent to award has been issued to submit to the Executive Director a written protest of the award. The written protest shall specify the grounds upon which the protest is based. A protest must meet the requirements of ORS 279B.410. HACC will not entertain protests submitted after the time period established in this rule.

## **B. Insurance Requirements**

Prior to executing a contract, the consultant team shall provide the following documents:

1. Proof of \$1,000,000 per occurrence (\$2,000,000 general aggregate) general liability insurance,
2. Proof of \$1,000,000 automobile liability insurance,
3. Proof of \$1,000,000 combined single limit per occurrence (\$2,000,000 general annual aggregate) professional errors and omissions liability insurance,
4. Proof of \$1,000,000 employers liability insurance,
5. Proof of Worker's Compensation insurance, and

All required insurance other than Professional Liability, Worker's Compensation, and Personal Automobile Liability shall include the "Housing Authority of Clackamas County, its agents, officers, and employees" as an additional insured.

## **C. Cancellation**

HACC reserves the right to cancel or reject any or all Proposals, and to cancel award of this contract at any time before execution of the contract by both parties if cancellation is deemed to be in HACC's best interest. In no event shall HACC have any liability for cancellation of award.

## **D. Cost of Preparation**

Costs incurred by respondents in preparation of a response to this RFQ shall be borne by the respondents.

## **E. References**

HACC reserves the right to investigate references including other than those listed in the response to this RFQ. Investigation may include past performance of any consultant team member with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, completion or delivery of a project on schedule or on budget, and its lawful payment of



subcontractors, employees, and workers. If demanded by HACC, supportive references must be furnished.

**F. Confidentiality**

Proposals are public records. All information submitted by respondents shall be public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposal for which respondent requests exception from disclosure consistent with Oregon Law. All requests shall be in writing, noting specifically which portion of the proposal the respondent requests exception from disclosure. Respondents shall not copyright, or cause to be copyrighted, any portion of any said document submitted to the HACC as a result of this RFQ.

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**EXHIBITS:**

- A. Lobbying Certificate
- B. Certification Regarding Debarment and Suspension
- C. Instructions to Offerors Non-Construction
- D. Certifications and Representations of Offerors Non-Construction Contract
- E. General Conditions for Non-Construction Contracts
- F. Map of property location
- G. USDA Transfer Application Documents

**Lobbying Certificate**

The Undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

NOTE: CONTRACTORS ARE REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

## Certification Regarding Debarment and Suspension

U.S. Department of Housing  
and Urban Development

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

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

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

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

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

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

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

#### Instructions for Certification (A)

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

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

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

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

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

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

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

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

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

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

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

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

**Instructions for Certification (B)**

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

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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

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

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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

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

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

|   |  |       |
|---|--|-------|
| Applicant                                   |  | Date  |
| Signature of Authorized Certifying Official |  | Title |

# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 7. Contract Award

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

(b) The HA may

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

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

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

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

#### 8. Service of Protest

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

#### 9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

# Certifications and Representations of Offerors

## Non-Construction Contract

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

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

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

### 1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

### 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

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

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);
- (ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

- (iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

**4. Organizational Conflicts of Interest Certification**

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:
  - (i) Award of the contract may result in an unfair competitive advantage;
  - (ii) The Contractor's objectivity in performing the contract work may be impaired; or
  - (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.
- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.
- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

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

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

**6. Conflict of Interest**

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

**7. Offeror's Signature**

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

\_\_\_\_\_  
Signature & Date:

\_\_\_\_\_  
Typed or Printed Name:

\_\_\_\_\_  
Title:



# General Conditions for Non-Construction Contracts

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

U.S. Department of Housing and Urban  
Development

Office of Public and Indian Housing

Office of Labor Relations

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

**Exhibit E**

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

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

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

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

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

- proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
  - (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

#### 3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

#### 4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- 
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
- (i) appeals under the clause titled Disputes;
  - (ii) litigation or settlement of claims arising from the performance of this contract; or,
  - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

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

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

#### 6. Energy Efficiency

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

#### 7. Disputes

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

#### 8. Contract Termination; Debarment

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

#### 9. Assignment of Contract

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

#### 10. Certificate and Release

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

#### 11. Organizational Conflicts of Interest

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

#### 12. Inspection and Acceptance

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

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

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

### 13. Interest of Members of Congress

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

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

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

### 15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

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## 16. Equal Employment Opportunity

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

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

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

## 17. Dissemination or Disclosure of Information

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

## 18. Contractor's Status

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

## 19. Other Contractors

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

## 20. Liens

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

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

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

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

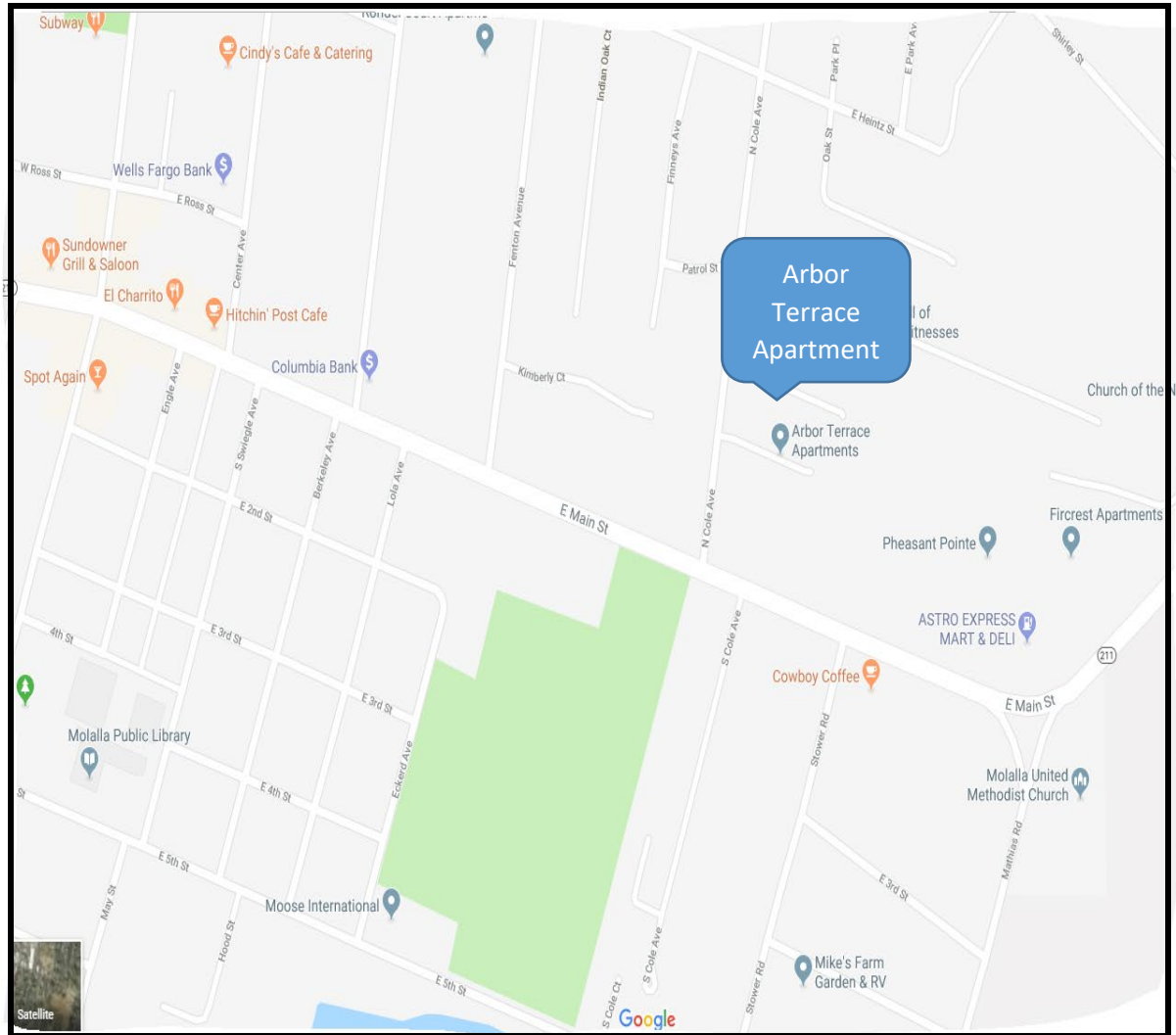
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor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

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

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

# Exhibit F

## Arbor Terrace Apartments 127 N. Cole Ave Molalla, OR 97038



## ATTACHMENT 7-B-1 TRANSFER APPLICATION DOCUMENTS

The following is a list of the documents constituting a complete application for Rural Development approval of a proposed transfer. Rural Development processing will begin only when a complete transfer request package has been submitted.

Transfer requests must be submitted at least 45 days prior to the proposed transfer approval date. [7 CFR 3560.406 (c)]. Unless otherwise noted, all documents are to be submitted at the time of application. Form numbers and references to applicable guidance are shown in italics.

### The Proposed Transaction

1. **Executive Summary.** An executive summary of significant aspects of the proposed transaction. Because each of the following will be supported by more detailed information that will also be provided, discussion should be brief in the executive summary. The following should be discussed:

A. **Acceptable Reason for Transfer.** Why the transfer satisfies at least one of the following (see paragraph 7.5).

- Facilitates the physical and financial revitalization of the property.
- Needed to remove a hardship to the current borrower that was caused by circumstances beyond the borrower's control (circumstances constituting 'hardship' are discussed in Paragraph 7.5).
- The transfer is a result of a court order requiring the division of security property.
- The transfer is being requested as an alternative to prepayment. Chapter 15 of HB-3-3560.
- The transfer will do no harm to Rural Development or tenants.
- Other circumstances exist which make the transfer in the best interest of the Government and the tenants of the project.

8. How the proposed transaction will improve or maintain:

- The viability of the property. Discuss the nature and extent of repairs. If the project is in an area experiencing economic stress, or if the project is experiencing occupancy challenges, discuss plans for ensuring that the project remains viable.
- The likelihood of loan repayment to Rural Development.
- The quality of housing for the tenants.



- C. Any concerns previously identified by Rural Development (e.g., maintenance issues, compliance findings) and how these concerns will be addressed.
- D. Proposed purchaser.
- E. Proposed management.
- F. Establish that the purchaser has site control. For example, site control can be established through an option to purchase, or through a purchase and sale agreement.
- G. If the new proposed Return to Owner (RTO) differs from the RTO currently applicable to the seller, explain the reason for the proposed change and show that the proposed change is in accordance with applicable Rural Development requirements. See paragraph 7.0 and Exhibit 7.3
- H. Any financial commitments, financial concessions, or other economic benefits proposed to be provided by Rural Development. For example:
  - A change in rents
  - A change in interest rate or loan term or amortization.
  - Rental Assistance.
  - A subsequent Section 515 loan.
  - Subordination in lien position.
- I. Third-party funding. For each third-party funding source, discuss briefly (providing highlights of the more detail information called for under items 19 through 23 below):
  - Funding provider (names of debt/equity providers).
  - Commitment status (e.g. application submitted, conditional commitment received). Unless non-USDA funds are fully committed, including a discussion explaining how the proposed transaction will change if some or all of the conditionally committed funds are not realized.
  - Timing issues, including:
    - ◊ Any deadlines for Rural Development approval of the transfer, or for closing the transfer.
    - ◊ When the proposed third-party funding is expected to be available to the project.
    - ◊ For loans, when it is anticipated that debt service payments will start, and how debt service payments will be funded prior to the time that Rural Development will allow project operating funds to be used to pay debt service.
  - Any restrictions that will be applicable to the project and/or the purchase, for example rent limitations, tenant eligibility requirements, and regulatory agreements. Discuss the nature and duration of any such requirements.

- Whether any accommodation by Rural Development (such as subordination in lien position) is proposed.
  - J. Any proposed compensation to parties having an identity of interest with either the seller or purchaser.
  - K. Any proposed interim financing (for example, a construction or bridge loan) that may be needed to pay for uses prior to the time that third-party funding sources become available.
2. Required written statements. If there are exceptions, the statement should be worded accordingly and should include an explanation of any exceptions. For example, "there is no identity-of-interest ... except that [include explanation]." If information is being provided by key principles to mitigate shortcomings in the transferee they will be added to this section and signed by the parties involved.
- A. **Joint Statement Concerning Project Equipment and Accounts.** Acknowledgement by the seller and purchaser that, "Rural Development will require the borrower to transfer all equipment, related facilities, and housing project financial accounts to the transferee including the operation and maintenance account, reserve account, tenant security deposit account, tax and insurance escrow account". See [7 CFR 3560.406(k)].
  - B. **Joint Statement Concerning Identity of Interest.** "A statement disclosing any identity-of-interest between the borrower and the party to which the housing project ownership is being transferred or sold." See [7 CFR 3560.406(c)(J)].
  - C. **Joint Statement Concerning Environmental Review.** Statement by the seller and purchaser that, "The proposed transfer will not alter the purpose, operation, location, or design of the project as originally approved."
  - D. **Joint Statement Authorizing Release of Information to Rural Development (if third party funding is proposed).** Authorization from both the seller and purchaser to each third-party funder authorizing the third-party funder to release information to Rural Development.
  - E. **Seller Statement Concerning Project Financial Condition.** The seller's statement "Certifying that the housing project's financial accounts are funded at required levels, less authorized withdrawals, and that payments due for operation and maintenance expenses, tax assessments, insurance premiums, any required tenant security deposit accounts, and other obligations incurred as a part of the housing project operations are paid in full with no overdue balances or a statement explaining the housing project's financial situation and the reasons for overdue payments or under-funded accounts." See [7 CFR 3560.406(c)(2)].
  - F. **Purchaser Statement Concerning Transfer.** The purchaser's written statement, signed by the proposed transferee or buyer, "Certify that the transferee or buyer will assume the borrower responsibilities and obligations specified in Rural Development program

- requirements including requirements in a promissory note, loan agreement or other documents related to Rural Development loans held by the borrower entity." See {7 CFR 3560.406(c)(4)}.
- G. **Joint Statement Concerning No Reversionary Interest.** "A certification from the borrower and the proposed transferee or buyer that the borrower does not and will not have a reversionary interest in the housing project." See {C CFR 3560.406(c)(5)}.
  - H. **Purchaser Statement Concerning Tenant Certifications.** The purchaser's plan for complying with the requirement that transferee must, "Ensure that tenant certifications in compliance with subpart D of this part for all occupied rental units are on file with Rural Development." [7 CFR 3560.406(d)(J0)].
  - I. **Purchaser Statement Concerning Financial Reports.** "The purchaser's agrees to submit financial reports to Rural Development as required under 7 CFR part 3560, subpart G." {7 CFR 3560.406(d)(J2)}.
  - J. **Purchaser Statement Concerning Credit (if applying for a subsequent loan).** The purchaser's statement (accompanied by documentation acceptable to Rural Development) that, "The purchaser is unable to obtain sufficient credit elsewhere at rates that would allow for project rents within the payment ability of eligible residents." Documentation may include letters from lenders or a certification from the applicant which identifies the lenders contacted along with rates and terms quote from lenders.
  - K. **Seller Statement Concerning Five-Year Requirement (if applicable).** If the seller has owned the project less than five years, "The sellers acknowledges that the sellers will be ineligible for further Rural Development loans for the remainder of the 5-year period beginning on the date the seller acquired the project." Paragraph 7.5 A.
  - L. **Purchase Statement Regarding Appraisal.** A statement by the purchaser that that reflects, "The market value appraisal referenced in item 13 below was completed in accordance with HB-1-3560, Chapter 7, Attachment 7-C." In addition, the purchaser must acknowledge whether there are any current restrictions or prepayment prohibitions on the property and must state that, "All restrictions and prepayment prohibitions were considered by the appraiser in determining the market value."
- 3. **MFH Transfer & Assumption Application Supplement.** Attachment 7-B-2.
  - 4. **Partial Release or Subordination (if applicable).** If the proposed transaction includes partial release or subordination of Rural Development's lien, include Application for Partial Release. *Form RD 3560-1.*
  - 5. **Purchase and Sale Agreement.** Submit the applicable document, executed by purchaser and seller, in its entirety, including all attachments and amendments. Include any side agreements. The document must clearly recite all consideration to be paid to the seller, {7 CFR 3560.460 (d)(6)}. Purchasers and sellers may use *Form RD 440-34* as the purchase and sale agreement.
  - 6. **Current Preliminary Title Report.** 7 CFR 3560.406.(d)(13)]. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D.)

7. **Legal Services Agreement.** [7 CFR 3560.62(a)]. Provide a copy of any written contract for legal services that will be paid with Rural Development loan funds.

#### **The Project and Proposed Repairs**

8. **Capital Needs Assessment (CNA).** See Paragraph 7.22. The CNA will be reviewed by the Rural Development CNA Reviewer and may need to be revised or adjusted to conform to Rural Development program requirements. Final approval of the CNA must be provided by the Rural Development CNA Reviewer prior to final approval of the transfer. May be omitted for Deceased Borrower transfer (Paragraph 7.5 D).
9. **Current Self Evaluation/transition Plan.** See HB-2-3560, Chapter 3, Paragraph 3.5. Submit a current (less than 3 years old) Self Evaluation/transition Plan, if applicable and completed in accordance with 7 CFR 3560 ISb.
10. **Repair Agreement [7 CFR 3560.406 (d)(7)].** May be omitted for Deceased Borrower transfer (Paragraph 7.8 B 6). This should be developed in light of the CNA and should address the following:
  - A. Must be signed by seller and purchaser.
  - B. Must address known compliance issues.
    - Must identify all repairs known by the borrower to be necessary to bring the project into compliance with Rural Development requirements.
    - Must include any repairs required to correct any compliance violations previously cited by Rural Development.
    - Repairs to correct compliance issues must either be completed by the seller prior to transfer, or be subject to a workout agreement between the Rural Development and the purchaser.
  - C. If the CNA was prepared on the assumption that certain repairs have been completed, provide:
    - Evidence of Rural Development approval of the repair agreement and cost estimate for the third-party funded repairs.
    - Cost estimate for the repairs.
    - Month-to-month estimate for repair expenditures.
    - How the repairs are proposed to be funded.
  - D. Tenant relocation costs if tenant relocation is necessary to rehabilitate the property.

- E. The repair agreement must identify each up-front repair or enhancement item, the timeframe for completion, estimate of costs for each item, funding source for each phase of completion, who will do the work, and any Identify of Interest between the transferee and the party doing the work or providing materials and services.
- F. Division of responsibility for repairs between purchaser and seller.
- G. If equity is proposed to be paid out prior to completion of repairs, a guarantee acceptable to Rural Development that any repair costs in excess of the estimate will be paid from non-project funds.

11. Cost Estimate (if applicable). Fonn RD 1924-13. *"Estimate and Certificate of Actual Cost"*. Applicable if repairs will be funded by Rural Development.

#### Documentation of Market Rents and Value

Rural Development strongly recommends that purchasers consult with Rural Development before ordering appraisal products, to verify that the correct instructions are being provided to the appraiser. See HBI-3560, Chapter 7 and Attachment 7-C for Rural Development requirements regarding instructions to the appraiser. Purchasers may request that Rural Development provide Attachment 7-D of HB-1-3560 Information Sheet. Purchasers may request Rural Development assistance in assembling the information referenced in Attachment 7-F of HB-1-3560 Appraisal Data Package Checklist. In all cases, appraisals will be required when new debt is added or when the transfer will be using new rates and terms. For transfers processed on 'same rates and terms' where no new Rural Development debit is requested, the Loan Servicer may waive the appraisal requirement if the Loan Servicer determines that the security is adequate for the Rural Development indebtedness being assumed. Appraisal fees are purchaser/seller expense and may not be paid from project funds. Loan Servicers must document their review and determinations based on a review of Rural Development reports conducted in accordance with the requirements of {7 CFR part 3560, subpart H (3560.3511 through 3560.400)}.

12. Market Value Appraisal "Prospective Market Value, Subject to Restricted Rents within 7 CFR 3560.752 (b) (1) (i)". Rural Development staff will use this appraisal in order to determine security value. See HB-1-3560, Chapter 7 and Attachment 7-C for appraisal guidance.

- A. The instructions to the appraiser must include language specified by Rural Development (see HB-1-3560, Attachment 7-C).
- B. This appraisal is required if the sum of the USDA loan balance at the time of transfer, plus any subsequent loan, will exceed \$100,000. This may be omitted for Deceased Borrower transfer (Paragraph 7.5 D).

13. Market Value Appraisal- "Market Value, within 7 CFR 3560.752 (b)(1)(ii) with any current restrictions or prohibitions currently existing on the property taken into

consideration"; or "Market Value with 7 C F R 3560.752 (b)(1)(ii) Premised upon a Hypothetical Condition As If Unsubsidized Conventional Housing." This appraisal establishes a value for used in analyzing the Rural Development's limitations on sale price and equity pay-out. See HB-1-3560, Chapter 7 and for appraisal guidance.

- A. This appraisal is required whenever an equity pay-put is proposed to the seller.
  - B. The instructions to the appraiser must include language specified by Rural Development (See HB-1-2560, Chapter 7, Attachment 7-C).
  - C. If, at the time of the appraisal, a Restrictive-Use Provision or Restrictive-Use Covenant will be in effect, see HB-1-3560, Chapter 7, Attachment 7-C regarding Rural Development requirements that restrict (and may prohibit) the inclusion as a component of market value any value of the hypothetical future ability of the owner to convert the property to conventional housing use.
14. Rent Comparability Study (RCS) or Area Market Rents Study (ARMS). If neither of the preceding appraisal products is required for this transaction, an acceptable RCS or ARMS may be required to establish Conventional Rents for Comparable Units (CRCU).
- A. See Paragraph 7.7 B regarding when an RCS may be used.
  - B. If an RCS is used, Rural Development's Statement of Work must be used. See Paragraph 7.7 B.
15. If No Appraisal Product is required. Submit the purchaser's best available evidence for CRCU. See Paragraph 7.8 F. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).

#### Financial Aspects of the Transaction

16. Application for Federal Assistance. Form SF-424. Required for all transfers other than Deceased Borrower transfers (Paragraph 7.5 D).
- A. Application for Federal Assistance. *Form SF-424.*
  - B. Budget - Construction Programs. *Form SF-424C.*
  - C. Assurances - Construction Programs. *Form SF-424D.*
17. Proposed Project Budget. Required for all transfers. Purchaser's proposed project operating budgets covering the first year of operation following the transfer or sale. This budget form should set forth the project's current Rural Development - approved budget in the "Current Budget" columns and the projects' proposed budget after acquisition in the Proposed Budget columns.

- A. *Form RD 3560-7.*
  - B. **Narrative justification of changes in budget. It is important that any and all differences between the current and proposed budget be fully explained and justified.**
18. **Sources and Uses of Funds Statement. May be omitted for Deceased Borrower transfer (Paragraph 7.5 D). Must be accompanied by a certification that:**
- A. **All sources of funding contemplated by the purchaser are included.**
  - B. **Itemizes each proposed use of funds to be paid to the seller, the purchaser, any affiliate of the seller, or any affiliate of the purchaser. Each such use will identify the proposed amount, identify the entity to whom it is to be paid, disclose the nature of any identify of interest or affiliation with seller and/or purchaser, and discuss why the proposed amount is reasonable. If any portion of the amount to be paid to the seller will remain unpaid after the closing of the transfer, the purchaser must certify that no project revenue or assets (other than authorized RTO earned and paid to the purchaser) may be used to pay such amounts and that the purchaser's obligation to pay such amounts will be unsecured.**

*Note Regarding Evidence of Insurance Coverage. See Paragraph 7.16 F and [7 CFR 3560.406(d)(1)]. Evidence of insurance coverage is not required as part of the transfer application package. However, the transfer cannot be closed until Rural Development has approved the purchaser's insurance coverage.*

**Third-Party Funding (If Applicable)**

- 19. **Application for Funding. Any application submitted by the purchaser to the proposed funder.**
- 20. **Financial Pro Forma Information. Include any estimates of repair costs, any information regarding proposed sources and uses of funds, and any revenue and expense projections submitted to the proposed funder, whether or not such documents were included in the application.**
- 21. **Environmental Information. Any environmental reports or analyses submitted by the purchaser to the proposed funder.**
- 22. **Commitment Letter or Equivalent (if applicable). Commitment letters may be conditional at the time of application. For LIHTC/TCAP/TCEP funding, provide a copy of the following: the reservation letter, any subsequent correspondence from the state allocating agency, and any Letter of Intent or similar correspondence from the proposed equity investor describing terms and conditions of its proposed investment. Before the transaction may be closed, the following will be required:**
  - A. **Commitment Letter**
  - B. **Documentation that any conditions in the commitment letter have been satisfied.**

23. **Regulatory Requirements.** Documentation for any requirements to be imposed on the project and/or the purchaser as a condition of the proposed third-party funding.
- A. **For Low-Income Housing Tax Credits:**
- The proposed Land Use Restriction Agreement or equivalent, showing the LIHTC set-aside by income level and unit type; and
  - The current LIHTC income limits and maximum rents for the county in which the project is located.
- B. For a proposed loan, a copy of the proposed loan agreement, note, security instrument (if applicable) and regulatory agreement (if applicable).
- C. For a proposed grant, a copy of the proposed grant agreement and regulatory agreement (if applicable).
24. **Interim Financing.**
- A. Include a month-by-month projection of interim financing draws and interest cost. This projection should take into account:
- Applicable Rural Development requirements regarding the use of project operating funds to pay debt service. See Paragraphs 7.7 C and 7.12 A.
  - Any net interest cost for permanent loan funds that are borrowed up front but not available to the project until funding conditions (such as completion of rehabilitation) have been satisfied.
  - Monthly costs for rehabilitation and other costs.
  - Monthly receipts from other sources of funds such as tax credit equity.
- B. If a source of repayment is from tax credit equity, the schedule of equity pay-in from the syndicator.
- C. If a source of repayment is from permanent financing, the funding conditions that must be satisfied before the permanent financing will be available to the project.
25. (Advisory to purchasers, no submission required) **Sources and Use Comprehensive Evaluation (SAUCE) Analysis.** Purchasers proposing to use a subsequent Rural Development loan should note that Rural Development must prepare a SAUCE analysis, or accept the tax credit agency's sources and uses analysis, as a pre-requisite to the closing of the transfer. A SAUCE analysis is not required for transfers not utilizing a subsequent Rural Development loan.

#### **The Proposed Purchaser**

For purposes of the following documents, the terms "principal" and "affiliate" and "participation" are defined in *Form HUD-2530 Previous Participation Certification*.



26. **Purchaser's Resume.** May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).
  - A. Proposed organizational structure.
  - B. Resume for each principal of the purchaser who has no previous participation with Rural Development. Resumes should be in sufficient detail for Rural Development to understand the nature of the new principal's real estate experience.
  - C. Disclosure of any proposed role(s) in the ownership or management of the project by affiliates of the purchaser or affiliates of the seller.
  
27. **Previous Participation Certification (Form HUD-2530).** This form reflects the participation by principals of the proposed purchaser in other HUD and USDA multifamily projects over the past ten years. May be omitted for Deceased Borrower transfer (Paragraph 7.5 D).
  
28. **Identity of Interest Certification.** As applicable, either:
  - A. Certification of No Identity of Interest, *Form RD 3560-30*; or
  - B. Identity of Interest Disclosure, *Form RD 3560-31*.
  
29. **Debarment/Suspension Certification.** As applicable, either:
  - A. Certification Regarding Debarment, Suspension and other Responsibility Matters *Form AD 1047*; or
  - B. Certification Regarding Debarment Suspension: Ineligibility and Voluntary Exclusion *Form AD 1048*.
  
30. **Purchaser's Financial Statements.** May be omitted for Deceased Borrower transfers (Paragraph 7.5 D). Current financial statements for:
  - A. The applicant (i.e., the entity that will own the project). If the applicant is an entity that has not yet been formed, financial statements should be *proforma* (after completing the proposed purchase).
  - B. Each proposed principal.
  - C. Non-profit applicants/principals may satisfy this requirement by submitting their current *IRS Form 990 "Return of Organization Exempt from Income Tax"* (with Schedules A & B).
  - D. Attachment 7-8-4, MFG Transfer & Assumption Certification for Financial Statements, must be included with all financial statements.
  
31. **Credit Report Fees.** May be omitted for Deceased Borrower transfers (Paragraph 7.5 D), Purchaser's check, made out to USDA, for the required credit reports obtained initially as part of the transfer application and subsequently for any additional credit reports necessary prior to closing to verify the applicant's continued eligibility for participation in the transfer. Contact your local Rural Development Office to verify what the current credit reports fees are (current fees as of February 2008 are \$28 for each individual and \$40 for each other principal; e.g. a corporation or partnership).

- A. The purchaser.
- B. Each general partner of a purchaser that is a partnership, and spouse.
- C. Each managing member of a purchaser that is an LLC, and spouse.
- D. Each other partner/member who will have a 10 percent or greater interest.
- E. If an entity is existing or newly-formed, order a credit report. If an entity is to-be-formed, order a credit report (s) for existing principal(s) of the entity.

**32. Proof of Citizenship.** For each proposed principal, documents establishing citizenship (including social security or tax identification number).

### **Proposed Management**

**33. Management Plan.** The purchaser may satisfy this requirement by accepting the existing Rural Development-approved management plan and lease and occupancy rules of the seller. The management plan should include:

- A. A narrative description of the proposed record-keeping system.
- B. A copy of the proposed lease.
- C. A copy of the proposed occupancy rules.

**34. Attorney Opinion Regarding Proposed Lease.** This is required only if the purchaser will not continue to use the Rural Development-approved lease currently used by the seller. Transferee attorney's opinion regarding legal sufficiency and compliance of lease with State/local laws, ordinances and Rural Development regulations.

**35. Management Certification. Form RD 3560-13.** Required for all transfers, each time a management agreement or management plan is executed.

**36. Affirmative Fair Housing Marketing Plan. Form HUD 935.2A.** May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).

### **Proposed Organizational Documents of the Purchaser**

**37. Purchaser's Organizational Documents.** May be omitted for purchasers who are individuals. If the Transferee is an entity that has not yet been formed, draft documents may be submitted. The submission must include all amendments.

- A. Purchaser is a corporation: provide the charter, articles of incorporation and bylaws, or equivalent.
- B. If the Transferee is a non-profit the following should also be submitted.

- Tax-exempt ruling from the IRS conferring 501(c)(3) or 501(c)(4) status.
  - List of members on Board of Directors Purchaser is a partnership: provide the partnership agreement.
- C. Purchaser is a partnership: provide the partnership agreement.
- D. Purchaser is a trust: provide the trust agreement.
- E. The documents shall show that the corporation, partnership or trust is authorized to operate the property and to execute and be bound by the Regulatory Agreement.
- F. The documents (or minutes of meetings, as applicable) should establish clearly the authority of the persons executing the Regulatory Agreement and other documents for the Transferee.
38. **Attorney Certification.** Letter from the purchaser's attorney certifying the legal sufficiency of the organizational documents. The attorney must certify:
- A. The transferee's legal capacity to successfully assume and operate the project for the life of the Rural Development loan.
  - B. That the organizational documents comply with the requirements of Paragraph 4.16 B of HF-1-3560 and [7 CFR 3560.55].
  - C. For partnership purchasers, that the term of the partnership extends at least through the latest maturity of all existing and proposed Rural Development debt.
  - D. For partnership purchasers, that the partnership agreement requires the General Partner(s) to maintain a five percent financial interest in the residual or refinancing proceeds of the partnership.
  - E. That the organizational documents required prior written Rural Development approval for any of the following: withdrawal of a general partner/managing member, admission of a general partner/managing member, amending the organizational documents, and selling all or substantially all of the assets of the purchaser.

**Other**

39. **Assurance Agreement.** *Form RD 400-4, Certifying civil rights compliance.*
40. **Equal Opportunity Agreement.** *Form RD 400-1.*
41. **Lobbying Certifications (s).**
- A. Attachment 7-B-5, MFH Transfer & Assumption Certification for Contracts. Required.
  - B. Lobbying Disclosure. *Form SF-LLL.* If applicable.
42. **Certification Regarding Drug-Free Workplace Requirements.** Either:
- A. *Form AD 1050* (for individual purchasers); or
  - B. *Form AD 1049* (for other purchasers).
43. **Certification Regarding Collection Policies.** *Form RD 1910-11.*

**Other**

- 44. (For Projects with HUD Section 8 Housing Assistance Payments (HAP) Contracts).**  
Applicant should submit a letter from HUD indicating HUD's approval of the Section 8 HAP funding transfer. Fonnal approval from HUD is a pre-requisite for the closing of the transaction. Purchasers should note that HUD Section 8 rents are adjusted in accordance with HUD procedures and that generally, no rent adjustment should be expected in conjunction with the transfer.
- 45. Request for Rental Assistance.** *Form RD 3560-25.* If Rental Assistance is being requested.

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**ATTACHMENT 7-B-2  
MFH TRANSFER & ASSUMPTION APPLICATION  
SUPPLEMENT**

Name of Project: \_\_\_\_\_

Street Address of Project (w/zip code) \_\_\_\_\_

Name of Project's Current Owner \_\_\_\_\_

The following information supplements *Form SF-424*. This information is submitted along with an application to assume the USDA debt associated with the above-mentioned security property. A complete application is or will be submitted promptly.

The undersigned is in accordance with the terms of the security instruments held by USDA Rural Development (hereinafter referred to as "USDA") on their property is applying for release or subordination of the liens of said security instruments and consent to the following transaction:

1. Transfer of the USDA security property in full as outlined below.
2. Assumption of the full balance of all USDA loans associated with the security property on new rates and terms.
3. Subordination of the USDA security instruments as outlined below.
4. Other (*explain*). \_\_\_\_\_

**A. Applicant/Buyer/Transferee Information**

The following information is supplied about the applicant (i.e., the legal entity to acquire title to the property, not the developer/sponsor):

**Applicant Legal Name:** \_\_\_\_\_

*Provide exact legal name of the entity that will take title to the real property and be USDA's borrower, at the conclusion of the transaction - e.g., "Happy Valley Associates, LP, a Maryland limited partnership".*

Type of organization: \_\_\_\_\_

*e.g. limited partnership, general partnership, 11011-profit, corporation, LLC, tribe, public body, cooperative, individual*

Tax ID#: \_\_\_\_\_

Date of Formation: \_\_\_\_\_

Official Mailing Address: \_\_\_\_\_

Developer/Sponsor Name \_\_\_\_\_

*(1) [there is a developer sponsoring the applicant entity].*