

HOUSING AUTHORITY OF CLACKAMAS COUNTY

REQUEST FOR PROPOSALS

WEBSTER ROAD APARTMENTS
MASTER LEASE OR MANAGEMENT AGREEMENT



Issue Date: August 12, 2020
Proposal Due Date: ~~October 09, 2020~~ Extended to October 23, 2020
Extended to October 30, 2020
Submittal Location: Housing Authority of Clackamas County
13900 S. Gain St.
Oregon City, OR 97045

REGISTRATION FORM

HOUSING AUTHORITY OF CLACKAMAS COUNTY OREGON CITY, OREGON

August 12, 2020

PERMANENT SUPPORTIVE HOUSING OPERATORS AT WEBSTER ROAD APARTMENTS

This registration is necessary to ensure timely delivery of addenda or supplements to this RFP.

Complete this form and email to RFP contact.

Name of Firm: _____

Contact: _____

Business Address: _____

Telephone: _____

Email: _____

HOUSING AUTHORITY OF CLACKAMAS COUNTY
REQUEST FOR PROPOSAL
FOR PERMANENT SUPPORTIVE HOUSING OPERATORS
AT WEBSTER ROAD APARTMENTS

Issue Date: August 12, 2020

SECTION 1. INVITATION

The mission of the Housing Authority of Clackamas County (HACC) is to provide and develop affordable housing with supportive services for individuals and families on their path to improved health, wellness, prosperity and inclusion. HACC has a special responsibility to those who encounter barriers to housing because of income, disability or special need.

HACC is seeking a qualified provider of Permanent Support Housing (PSH) at Webster Road Apartments. HACC will Master Lease or sign an Agreement to an operator that will be responsible for providing property management, resident services, and case management—or partner with another qualified provider for these services—for the residents of Webster Road Apartments. Responses should include an operational plan to provide PSH services and property management which may be performed through a combination of internal staff, contracted vendors, and community partners.

Issue Date:	August 12, 2020
Deadline to Submit Questions:	September 24, 2020 by 4:00 P.M. October 9, 2020 by 4:00 P.M.
RFP Submittal Deadline:	October 9, 2020 by 4:00 P.M. October 23, 2020 by 4:00 P.M. October 30, 2020 by 4:00 P.M. Submissions must be delivered electronically as a PDF document no larger than 15MB. Please submit an electronic copy of your proposal to jvennes@clackamas.us using the following subject line: MASTER LEASE OR MANAGEMENT AGREEMENT for WEBSTER ROAD APARTMENTS. Submissions received after this deadline will not be considered.
Registration:	In order to receive further updates, changes and notifications in the form of addenda, you must register your interest in this RFP. A Registration Form is located at page 2 of this packet. Please email the completed form to jvennes@clackamas.us
RFP Contact:	Joe Vennes, Asset Management - Project Manager Housing Authority of Clackamas County Tel: 971.219.4006 Email: jvennes@clackamas.us

Every effort will be made to keep to this schedule. However, all dates are subject to change if it is deemed to be in the best interest of HACC. Those who have submitted a registration form will be promptly notified of any changes.

SECTION 2. SCOPE OF SERVICES AND PROPERTY INFORMATION

Project Description

Webster Road Apartments is the redevelopment of a former congregate care facility located at 18000 Webster Rd in Gladstone, Oregon. Once complete, the 48-unit property will consist of a mix of SRO and studio units.

Programming will consist of service-enriched housing for very low income (30% AMI and below) households aged 55 year and older, including twelve permanent supportive housing units providing wrap-around services and intensive case management. HACC is the developer/sponsor of the project and will be the General Partner in the LIHTC Partnership. Webster Road Apartments is presently in pre-construction with construction completion anticipated in ~~late fall 2021~~ **spring 2022**. Walsh Construction will be performing the rehabilitation work.

Webster Road Apartments will be financed through a combination of funding sources including the Low Income Housing Tax Credit (LIHTC) program, OHCS Permanent Supportive Housing pilot funds, a County HOME loan, and Phase 1 Metro Affordable Housing Bond funds. Webster Road Apartments' operating expenses will be funded through a combination of rental income, project-based vouchers, and OHA PSH Services funds.

Webster Road Apartments is Clackamas County's Phase 1 Metro Housing Bond project. Projects utilizing Housing Bond resources are subject to the goals and requirements of [Metro's Affordable Housing Program Work Plan](#) and [Clackamas County's Local Implementation Strategy](#). These documents provide guiding principles and unit production targets to ensure bond proceeds are used to deliver the outcomes described in the Bond Measure. At the project level, these goals and guidelines will influence leasing practices, ongoing reporting, community engagement, and services delivery.

Status

The project is scheduled to begin construction in ~~fall 2020~~ **spring 2021** with construction completion anticipated in ~~late fall 2021~~ **spring 2022**.

Proposal

The selected organization will master lease the Webster Road Apartments to provide all property management functions and will be responsible for any and all regulatory compliance and reporting and property management. The same selected organization will also be responsible for providing case management and resident services that are appropriate for a PSH program. HACC is seeking a PSH operator to provide property management, case management and resident services. Property management, case management and resident services may be performed through a combination of internal staff, contracted vendors, and community partners. Responses to this RFP should include an operational plan describing how all required services will be provided. The successful applicant will enter into an initial three year contract to provide services as listed immediately above.

All units will be restricted to households with incomes at or below 30% AMI and supported with Project-Based Voucher rental subsidy.

Project-Based Vouchers

Project-Based Vouchers (PBV), which will be administered through HACC's Rent Assistance Department, will subsidize all 48 units. PBV units must be managed in accordance to the Housing Assistance Payments Contract for Webster Road Apartments, which will include specific waiting list policies, standard eligibility and screening criteria for applicants, and a standard lease for residents.

Unit Mix

The table below summarizes the unit configuration, contract rents, PBV rents, and income limits.

Unit Type	# of Units (OHCS)	OHCS Rent	# of Units (PBV)	PBV Fair Market Rents*	Income Restrictions (% AMI)
SRO	38	\$725	8	\$840	30%
Studio	10	\$967	40	\$1120	30%

*Rents are based on the Clackamas County payment standard for Project-Based Vouchers rents from the 1/1/20 schedule. The property will pay all the utilities.

Services Funding for Permanent Supportive Housing

The Oregon Health Authority (OHA), in partnership with OHCS, will fund some services associated with the PSH units. Funding will be administered quarterly. The level of funding will be based on number of units per project. This funding is intended to support 2 FTE of Supportive Services per 30 supported residents (1 per unit), as well as barrier removal funds.

Funding Sources	Service
NOFA Funding Package (2 FTE/30 Clients)	Housing Manager Programming Supervisor Tenancy Support Service Coordinator Direct Tenant Support (Organization, Cleaning, Scheduling) Health Navigation (Connection to Medical/BH Services) Benefit Navigation
*Medicaid or NOFA	Case Management Peer Specialist Employment Supports
**Medicaid: MOU/Agreement with Licensed/ Credentialed Medical Providers (not in budget)	Licensed Behavioral Health Services: <ul style="list-style-type: none"> • ACT/CTI/ICM • Outpatient Behavioral Health Care (LCSW/PsychNP/MD) • Supported Employment Primary Care Services <ul style="list-style-type: none"> • Specialty Health Care Services • RN Health Management Oral Healthcare

In order to provide guidance on what services funded positions can supply, please note the chart below.

**Services in this area may be funded by the NOFA package directly, but we encourage you to seek MOU/Funding arrangements with providers who can bill Insurance carriers, as many of these services are covered.*

***While services within this column may be financed through other insurance provisions, as well, services within this column need to be provided within a licensed and credentialed BH environment in order to ensure continuity of care and mitigate potential risk. Accessing these services through the Behavioral Health System also allows HIPAA considerations to be managed within an entity already versed with such risk management issues.*

Expected Resident Profile

HACC prioritizes PSH services for seniors, 55 years or older, with long experiences of homelessness who have disabilities that are severe enough to require long-term housing support. These households could include:

- Persons experiencing chronic homelessness
- Persons with disabilities, including physical and behavioral health, that are severe enough to require long-term housing support
- Persons with demonstrated vulnerability factors (e.g. exposure to violence, age, criminal justice involvement, historic or generational trauma, survivors of domestic violence or sexual assault)

While priority populations will often align with those meeting the U.S. Department of Housing and Urban Development (HUD) definition of chronic homelessness, eligibility is not intended to be exclusively limited to HUD-defined chronically homeless households. Similarly, while many referrals are anticipated to come through Coordinated Access, referrals that meet population priorities may come from other sources. Client referral sources will be determined through ongoing collaboration among HACC, Clackamas County, and the selected operator.

Minimum Qualifications Necessary for Consideration:

To be qualified to respond, respondents must:

1. Not be debarred, suspended, or otherwise ineligible to contract with HACC or any Federal or State Housing Program 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;
2. Have at least five years' experience in successfully managing a low income housing tax credit project;
3. Have a demonstrated track record in meeting Oregon Housing and Community Services (OHCS) LIHTC compliance reviews including satisfactory tenant file management and unit condition inspections;
4. Previous experience managing housing designated for households aged 55 and older with special needs;
5. Demonstrated success in working in partnership with service providers;
6. Previous experience with PSH populations;
7. Previous experience with project based vouchers.

SECTION 3. PROPOSAL CONTENT & EVALUATION PROCESS

The intent and purpose of this RFP is to select the best qualified and property management firm that can serve a diverse low income population facing multiple social and economic challenges. To be considered responsive and responsible, each respondent must meet the minimum qualifications in Section 2 and respond to the questions on pages 8 through 12 of this RFP. In addition to these questions please provide a cover letter explaining your interest in engaging in management of this property where you would be contracted to provide resident and supportive services necessary to operate a fully compliant LIHTC project. Responses must be specific and relevant to the question asked. Any submittal that, in the opinion of HACC, does not fully and completely address these requirements may be disqualified.

Review Process: All proposals will be scored according to the criteria listed above. Scoring thresholds are listed in the table below:

Submission Requirement	Points
i. Cover letter expressing interest in this Management Partnership	5
1. Experience and Qualification	20
2. Capacity	10
3. Services and Programming	20
4. Occupancy and Rent Collection	10
5. Maintenance	5
6. Software, Compliance, Accounting & Record Keeping	10
7. Management Fee	15
8. Completeness of Required Attachments and References	5
TOTAL	100

Proposers whose submissions best meet the submission requirements and score within a competitive range will be contacted for an interview and presentation to HACC.

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 4:00p.m. on ~~September 24, 2020~~ October 9, 2020.** If in HACC's opinion, additional information or interpretation is necessary; such information will be supplied in the form of an Addendum through email to the same contact as identified on the registration form. Such addenda shall have the same binding effect as though contained in the main body of the Request for Proposals. 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 submission deadline.

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

Submit either written narratives or specific documents as listed. Where applicable you may use tables, charts or other graphics.

1) Experience and Qualification (20 Points)

a. General Experience:

- How many residential units, and individual properties do you now manage?
- How many units are affordable through a Federal or State housing program?
- How many of these properties are located in the Portland metropolitan area?

Please list in a matrix (example below) your years of experience managing each type listed, and the number of units currently in your portfolio that represent:

- Properties with Permanent Supportive Housing units that are filled by referral through the Coordinated Housing Access system or a similar system.
- Properties with Project Based Vouchers through a local Public Housing Agency (PHA)
- HOME financed properties
- Senior Housing
- Disabled Housing
- HUD Section 8 Properties
- HUD's Affirmative Fair Housing Requirements
- HUD waitlists and priority preferences

Type	Years Experience with Type	Number of Units in Type
Example: LIHTC Properties	# of Years	# of Units

b. Project Based Voucher Experience:

- Describe your experience working with Housing Authorities that administer the Section 8 Voucher program (e.g. all types of vouchers).
- What is your firm's procedure to ensure accurate, timely, and effective rent increases for Project Based Voucher (PBV) units?
- Please describe your firm's process to ensure that the HACC is notified of upcoming vacancies and ensuring vacancies are filled in a timely manner.

c. Low Income Housing Tax Credit Experience:

- Describe your experience with LIHTC tenant compliance. Please include number of years of staff experience, LIHTC training certifications, managing compliance with layered funding (e.g. LIHTC, HOME, Metro Bonds etc.) working relationship with OHCS, reporting to OHCS and limited partner.
- Describe your experience leasing up LIHTC projects? How many have you done? What have the primary challenges been? What have you learned from these experiences?
- Has your firm ever had any compliance findings which resulted in an 8823 being submitted to the I.R.S. and was not resolved?
- How does your firm ensure quality control to reduce or avoid compliance findings?
- How does your firm prepare for monitoring visits including both file compliance and physical inspections?

d. Permanent Supportive Housing (PSH) Experience:

- Describe your experience working with historically marginalized populations and communities of color that are aged 55 or older.
- Provide a list of properties under management or ownership that are Permanent Supportive Housing for individuals or families who are formerly homeless with special needs. Identify for each asset:
 - Name of Property
 - Type of Property (Garden style, mid-rise, high-rise, etc.)
 - Number of Units
 - Number of years managing or providing services
 - Number of properties in geographic proximity.
- How will you support property management’s coordination with on-site case management or resident services personnel?
- Describe your experience working with diverse resident populations, including persons aged 55 and older, minorities, and/or homeless population.
- Describe the organization’s qualifications to serve the proposed population(s). Include in the description if the lead organization or any partnering organizations are either culturally- specific or mainstream organizations with culturally-responsive programming and practices.

2) Capacity (10 Points)

- a. Describe your firm's approach and philosophy to property management of affordable housing. When answering this question, be sure to explain your thinking on:
- The overall role of the owner in the management process.
 - The ideal relationship between the owner and a management company.
 - Describe the ideal relationship between Property Management and Resident Services.
 - Your initiatives to promote and support Diversity, Equity and Inclusion.
- b. Provide your proposed staffing plan (the titles in the table below are only suggestions). Specify whether you propose any staff to live on site. Please specify the titles, FTE levels and compensation for each proposed staff member or contracted provider.
- c. If available, provide the name and experience of the proposed property manager that would supervise Webster Road Apartments. What is the maximum number of units and properties assigned to the property manager?
- d. Provide your proposed staffing plan for both the lease-up period and after stabilization.

Position	FTE level	Wage rate	Benefits
Site Manager			
Assistant Manager			
Maintenance			
Case Managers			
Resident Services Coordinators			
Other Maintenance/ Other Staff:			

- e. Describe your approach to recruiting, evaluating, hiring, developing and retaining a skilled site manager for Webster Road Apartments.
- f. Describe your plan to manage emergency coverage for the residents of Webster Road Apartments 24- hours a day.
- g. How will you handle neighborhood issues and other neighbors?

3) Services and Programming (20 Points)

- a. Describe the resident services you plan to provide for participants.
 - Describe the value of Resident Services to an affordable housing community.
 - What is your approach to resident retention/community building?
 - Describe your experience working with diverse groups of resident populations.
 - Describe your experience working and collaborating with a Resident Services program, and/or Resident Services staff.
- b. Describe the type and scale of supportive services you plan to provide for participants.
 - How do you intend to fund resident/supportive services?
 - How will the project meet the specific needs of the population(s) it proposes to serve?
 - How will you deliver services?
 - What other services will you leverage?
 - How will the services you provide assist participants in maximizing their ability to live independently?
- c. What outreach efforts will be used to identify people in need? How will referrals be received and preferences applied?
- d. How will you support property management's coordination with on-site case management or resident services personnel?

4) Occupancy and Rent Collection (10 points)

- a. Lease-up/Marketing:
 - Please provide a lease-up proposal, including budget, for the property.
- b. Rents:
 - What is your average percent "collected rents"? What percentage would you expect to achieve at this property and why?
 - What rules/processes will be key for maintaining a healthy revenue stream at this property?
 - What is your evaluative process to determine rent increases?

5) Maintenance (5 points)

- a. Describe your system for managing routine, cyclical and emergency work orders. Include how residents report work orders, how they're distributed to technicians, how quality control is overseen, what is the average time to complete work orders, and how you measure resident satisfaction.
- b. Please describe your Preventative Maintenance Inspection (PMI) process and include your PMI deficiency corrective process, and who on your staff is responsible for its completion? Be sure to include which inspection standard(s), or industry standard(s) that are used as an evaluation criteria for your PMI inspection
- c. Describe your experience with maintaining properties to meet the Uniform Physical Conditions Standards (UPCS) and passing Real Estate Assessment Center (REAC) inspections facilitated by HUD or Oregon Housing and Community Services (OHCS)? Please identify staff trained in UPCS & REAC standards and inspection processes and provide any applicable training certifications.
- d. What process does your company utilize to prepare for, and follow-up on for physical inspections conducted by project funders?
- e. Describe the types of repairs which you contract out to a vendor and what procedures are followed when you do so. In your answer(s) please specify, but do not limit yourself to:
 - The process for monitoring costs on outsourced jobs.
 - How your organization oversees the work done to ensure its quality.
 - The process to secure owner approval of major improvements.

6) Software, Compliance, Accounting & Record-Keeping (10 points)

a. Property Management Software:

- What property management software does your firm use? What are the advantages of this software compared to other products used in affordable housing management?
- Is your property management software fully integrated? Meaning, does it wholly incorporate operational activity, accounting, compliance and maintenance? If not, please identify which elements are not integrated, and what additional property management systems that are utilized to track unincorporated components.
- Does your property management software allow for owner's access? If so, is there a cost related to this access?
- What type of access is typically granted to Owners in your property management software?

b. Compliance:

- Who at your organization is responsible for the following, and what is their training and experience?
 - Income certifications
 - Fiscal reporting to lenders and owners
 - Reporting to the HACC related to PBV units
 - Reporting to OHCS, Clackamas County Compliance, Other funders and the Limited Partner
 - Preparing for, and following up on compliance reviews by OHCS, Clackamas County, etc.

c. Accounting and Audit:

- Describe the internal controls used in your processes and accounting system that ensure accuracy and integrity of financial records.
- What accounting software do you use? Can you provide both cash-based and accrual-based financial statements?
- What procedural steps does your firm employ to ensure timeliness and accuracy in the audit process?
- Please describe your experience with single program audits by a third party auditing firm. Have you ever had audit findings? If so, please describe the nature of these findings.

d. Record-Keeping: Describe the record keeping procedures for your tenant files.

Please specify, but do not limit yourself to

- Who is responsible for file audits?
- Do you conduct internal audits of tenant files?
- How is confidentiality guaranteed?

7) Management Fee (15 points)

- a. What management fee would you charge for your company's services and how is it calculated?
- b. What services does your fee cover?
- c. What project administrative costs are NOT included in that fee-e.g. payables processing fees, screening fees, software licensing fees, etc.?

8) Required Attachments (10 points)

Please include the following documents in your response packet:

- Organizational chart
- Job descriptions for all relevant staff positions
- Property management procedures, including (if available):

- proposed screening criteria
- proposed collections procedures
- fair housing policy
- marketing plans
- tenant grievance procedures
- Describe your company's goals for diversity and equity
- Resumes of current lead staff who would staff this contract (portfolio managers, accountants, field representatives, lead maintenance personnel, property managers)
- Sample monthly financial statement and report to owner (names may be blocked)
- A draft Property Management Agreement form used for similar properties
- Three current client names and contact information for references most relevant to properties for which you are proposing services.

SECTION 4. RFP REQUIREMENTS AND CONDITIONS

Selection of Qualified Entity

HACC will evaluate proposals and will rate proposals using the scoring methodology described in Section 3 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 HACC. Such events may include but are not limited to failure of the project to reach completion, withdrawal of funding for the project

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. Renewal terms will be negotiated.

The successful firm must be approved by the limited partner, Oregon Housing and Community Services (OHCS) or other entities who may gain such purview for approval under any of the financing or regulatory agreements that may be executed to finance this project.

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.

The selected candidate will be notified by first class mail.

Insurance Requirements

Prior to executing a contract, the consultant team shall provide the following documents: Proof of \$1,000,000 per occurrence (\$2,000,000 general aggregate) general liability insurance,

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

All required insurance other than Professional Liability, Worker's Compensation, and Personal Automobile Liability shall include the "HACC of Clackamas County, its agents, officers, and employees" as an additional insured. Insurance coverage shall include and endorsement for primary and non-contributory coverage of the owner (i.e. HACC).

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.

Cost of Preparation

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

References

HACC reserves the right to investigate references including other than those listed in the response to this RFP. 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.

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

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 for influencing or attempting to influence an officer or employee of an 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 of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement 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 statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

* APPLICANT'S ORGANIZATION <input type="text"/>	
* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
Prefix: <input type="text"/>	* First Name: <input type="text"/> Middle Name: <input type="text"/>
* Last Name: <input type="text"/>	Suffix: <input type="text"/>
* Title: <input type="text"/>	
* SIGNATURE: <input type="text"/>	* DATE: <input type="text"/>



**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters Primary
Covered Transactions**

Exhibit B

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application 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 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 primary participant shall attach an explanation to this proposal.

Business Name _____

Date _____

By _____

Name and Title of Authorized Representative

Signature of Authorized Representative

INSTRUCTIONS FOR CERTIFICATION

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 or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which 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 submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
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 Transactions," 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 the ineligibility 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 or default.

Instructions to Offerors Non-Construction

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



- 03291 -

Exhibit C

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

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

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

Certifications and Representations of Offerors
Non-Construction Contract

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)

- Black Americans Asian Pacific Americans
- Hispanic Americans Asian Indian Americans
- Native Americans 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

obsolete

page 1 of 2

form **HUD-5369-C** (8/93)
ref. Handbook 7460.8

(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

U.S. Department of Housing and Urban Development

Section II – (With Maintenance Work)

Office of Public and Indian Housing
Office of Labor Relations

Exhibit E

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

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

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

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

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

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1. Minimum Wages

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

(ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

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

3. Records

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

4. Apprentices and Trainees

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

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

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

5. Disputes concerning labor standards

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

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

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

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

6. Contract Work Hours and Safety Standards Act

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

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

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

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

7. Subcontracts

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

8. Non-Federal Prevailing Wage Rates

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