

RFP Document

REQUEST FOR PROPOSALS (RFP):  
PROFESSIONAL BANKING AND LOAN PROCESSING SERVICES FOR  
OPERATING FUND FINANCING PROGRAM

BY

HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS  
1701 ROBERTSON RD.  
MODESTO, CA 95351

RFP Issued: June 3, 2019  
Proposal Deadline: June 17, 2019



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### INTRODUCTION & BACKGROUND

The Housing Authority of the County of Stanislaus (Authority) is public entity that was formed in 1949 to provide federally subsidized housing and housing assistance to low-income families within Stanislaus County. It is governed by a seven-person board of commissioners and is subject to the requirements of Title 24 of the Code of Feral Regulations (CFR).

Currently, the Authority owns and/or manages approximately 1,700 rental units throughout Stanislaus county under a variety of affordable housing programs and administers 4,751 Housing Choice Vouchers throughout its service area of Stanislaus, Alpine, Amador, Calaveras, Tuolumne, Mariposa, Mono and Inyo counties. The HACS employs approximately 90 employees.

The Authority is planning to acquire and renovate an existing Hotel for conversion to Public Housing Administration Offices. The project will be financed with \$7 million of existing public housing operating reserves. All proposals submitted in response to this solicitation must conform to all of the requirements and specifications outlined within this document and any designated attachments in its entirety.

Public housing operating reserves cannot be disbursed to pay for construction costs. These reserves can, however, be used to make principal and interest payments on debt service for modernization and development projects. It is, therefore, necessary for the Authority to enter into a loan agreement to borrow the construction funds, with the loan secured by the public housing cash balances. Once the loan proceeds are received by the Authority, the loan will immediately be repaid from the public housing operating reserves and the loan will be terminated.



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The U.S. Department of Housing and Urban Development (HUD) allows PHAs to enter into a loan agreement with a bank, once the transaction has been approved through HUD's Operating Fund Financing Program (OFFP). The OFFP requires the Authority to provide HUD with substantial documentation related to the proposed development project.

An initial application for approval of the OFFP has been submitted to HUD. Once the application is accepted by HUD, additional documentation will be required including approved loan documents. For that reason the Authority is seeking a Professional Financial Institution to provide the needed services.

**RFP INFORMATION AT A GLANCE**

AUTHORITY CONTACT PERSON	Mary Ramirez, Asset Manager, Procurement and Development Telephone (209) 557-2007 E-Mail: <a href="mailto:mramirez@stancoha.org">mramirez@stancoha.org</a>
HOW TO OBTAIN THE RFP DOCUMENTS ON THE INTERNET	Access <a href="http://www.stancoha.org">www.stancoha.org</a>
PRE-PROPOSAL CONFERENCE	A non-mandatory proposal conference has been scheduled for 2:00 PM June 10, 2019 at the Housing Authority located at 1701 Robertson Rd., Modesto
HOW TO FULLY RESPOND TO THIS RFP BY SUBMITTING A PROPOSAL SUBMITTAL	As instructed within Section 3.0 of this RFP document, submit 1 original and 3 copies of your "hard copy" proposal to the Authority Business Office.
PROPOSAL SUBMITAL RETURN & DEADLINE	2:00 P.M., PDT, on June 17, 2019, at the Authority Business Office located at 1701 Robertson Road, Modesto, CA 95351
ANTICIPATED APPROVAL BY AUTHORITY BOARD OF COMMISSIONERS	July 2019

**1.0 AUTHORITY'S RESERVATION OF RIGHTS:**

- 1.1 The Authority reserves the right to reject any or all proposals, to waive any informalities in the RFP process, or to terminate the RFP process at any time if deemed by the Authority to be in its best interests.
- 1.2 The Authority reserves the right not to award a contract pursuant to this RFP.
- 1.3 The Authority reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon ten (10) days written notice to the successful proposer(s).
- 1.4 The Authority reserves the right to determine the work schedule and locations that the successful proposer(s) shall provide the services described in this RFP.
- 1.5 The Authority reserves the right to retain all proposals submitted and not permit withdrawal for a period of 60 days subsequent to the deadline for receiving proposals without the written consent of the Authority.



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- 1.6 The Authority reserves the right to negotiate the fees proposed by the proposer entity as described in sections 5.2 and 5.8 of this RFP.
- 1.7 The Authority reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including, but not necessarily limited to, incomplete proposals and/or proposals offering alternate or non-requested services.
- 1.8 The Authority shall have no obligation to compensate any proposer for any costs incurred in responding to this RFP.
- 1.9 The Authority shall reserve the right to at any time during the RFP or contract process prohibit any further participation by a proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein.

**2.0 SCOPE OF SERVICES:**

It is the intent of the Authority to use the selected Financial Institution to provide short term loan financing for the Purchase and rehabilitant of the Public Housing Administrative Office. Relevant information for the preparation of the proposal is presented below:

The loan amount will be \$ 7,000,000.00

Repayment period will be as brief as possible.

The type of loan will be at the discretion of the bank as long as the loan requirements conform to the HUD requirements.

A General Depository Agreement will be required for the bank where the funds will reside. A copy of the HUD sample document is provided (Attachment H).

The loan agreement must contain language required by HUD as presented below:

**Non-Recourse Language** - "This financing is non-recourse to any public housing property (real or personal property including all public housing assets or income), or disposition proceeds approved pursuant to Section 18 of the United States Housing Act of 1937 (unless explicitly permitted by HUD in the Section 18 approval letter)." The Authority, however, will provide lenders recourse to the reserve funds pledged as part of the proposed OFFP transaction.

**Indemnification Clause** - "The PHA's indemnification is limited to eligible non-public housing assets (asserts not subject to the Declaration of Trust and not acquired or merged with assets acquired with public housing funding under the United States Housing Act of 1937)."

**HUD Not Liable:** "Loans and bonds connected with the financing activities are obligations of the PHA and are not guaranteed or insured by HUD or the U.S. Government."



### 3.0 PROPOSAL FORMAT:

3.1 **Tabbed Proposal Submittal:** To demonstrate experience, proposers shall submit a Statement of Qualifications (SOQ) Proposal. The Authority intends to retain the successful proposer pursuant to a "Best Value" basis, not a "Low Bid" basis. Therefore, so that the Authority can properly evaluate the offers received, all proposals submitted in response to this RFP must be formatted in accordance with the sequence detailed below. Each category must be separated by numbered index dividers (which number extends so that each tab can be located without opening the proposal) and labeled with the corresponding tab reference noted below. None of the proposed services may conflict with any requirement the Authority has published herein or has issued by addendum. SOQ Proposal submittals shall contain the following information:

- **Tab 1, Form of Proposal:** This form is Attachment A of this RFP document. This one-page form must be fully completed, executed where provided and submitted under this tab as a part of the proposal submittal.
- **Tab 2, Form HUD 5369-B (8/93), *Certifications and Representations of Offerors, Non-Construction Contract*:** This form is Attachment B of this RFP document. This two-page form must be fully completed, executed where provided and submitted under this tab as a part of the proposal submittal.
- **Tab 3, Profile of Firm Form:** The Profile of Firm Form is Attachment C of this RFP document. This two-page form must be fully completed, executed, and submitted under this tab as a part of the proposal submittal. NOTE: As instructed, place the required resumes under Tab #5.
- **Tab 4, Capabilities:** Clearly detail information submitted under this tab that relates to the firm's capabilities to provided banking and loan processing services for the Authority. This selection should demonstrate the firm's capabilities for the variety of anticipated work as described in the Scope of Services section.
- **Tab 5, Managerial Capacity/Financial Viability:** The proposer entity must submit under this tab a concise description of its managerial and financial capacity to deliver the proposed services, including brief professional resumes for the persons identified in areas five (5) and six (6) of the *Profile of Firm Form*. And any other key personnel identified within the Firm's Organization, including title, years of experience, past projects related to Authority needs, and education.
  - **Organization:** Provide information about key personnel who will be assigned to the Authority's projects.
    - The "Principal in Charge" should be identified as a one person contact for all on-going projects. The "Principle in Charge" shall remain the point of contact for the duration of the contract.
    - How staff are retained, screened, trained and monitored.



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- **Tab 6, Client Information:** The proposer shall submit a listing of at least six (6) former or current clients for whom the proposer has performed services similar or the same as those being proposed that the Authority can contact to evaluate the firm's past work experience. The list shall, at a minimum, include:
    - The clients' name;
    - The clients' contact name;
    - The clients' telephone number;
    - A brief description and scope of the service(s) and the dates the services were provided.
  - **Tab 7, Subcontractor/Joint Venture Information (Optional Item):** The proposer shall identify whether or not he/she intends to use any subcontractors for this job, if awarded, and/or if the proposal is a joint venture with another firm. Please remember that all information required from the proposer under the proceeding tabs must also be included for any major subcontractors (10% or more) or from any joint venture.
  - **Tab 8, Section 3 Business Preference Documentation (Optional Item):** For any proposer claiming a Section 3 Business Preference Attachment D, he/she shall under this tab include the fully completed and executed Section 3 Business Preference Certification Form attached hereto as Attachment D and any documentation required by that form. If the proposer does not claim any Section 3 preference, please place hereunder a statement that "NO SECTION 3 BEING CLAIMED".
  - **Tab 9, Other Information (Optional Item):** The proposer may include hereunder any other general information that the proposer believes is appropriate to assist the Authority in its evaluation. If no pertinent information is to be placed under this tab, please place hereunder a statement that "NO INFORMATION IS BEING PLACED HEREUNDER".
  - If no pertinent information is to be placed under any of the tabs (especially the "Optional" tabs), please place thereunder a statement such as "NO INFORMATION IS BEING PLACED UNDER THIS TAB" or "THIS TAB LEFT INTENTIONALLY BLANK".
- 3.2 Proposal Submission:** All proposals must be submitted, time-stamped, and received in the Authority Business Office by no later than the submittal deadline stated or within any ensuing addendum. A total of one (1) original signature copy (marked "ORIGINAL") and three (3) exact copies of the proposal submittal, each complete with cover and extending tabs, shall be placed, unfolded, in a sealed package and addressed to:

The Authority Business Office located at  
1701 Robertson Road, Modesto, CA 95351

The package exterior must clearly denote the above noted RFP number and must have the proposer's name and return address. Proposals submitted after the published deadline will not be accepted. Late, emailed, or faxed submittals will not be accepted.



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- 3.3 Submission Conditions:** DO NOT FOLD OR MAKE ANY ADDITIONAL MARKS, NOTATIONS OR REQUIREMENTS ON THE DOCUMENTS TO BE SUBMITTED! Proposers are not allowed to change any requirements or forms contained herein, either by making or entering on these documents or the documents submitted any revisions or additions. If any such additional marks, notations or requirements are entered on any of the documents that are submitted to the Authority by the proposer, that proposal may be invalidated. If, after accepting such a proposal, the Authority decides that any such entry has not changed the intent of the proposal, the Authority may accept the proposal and the proposal shall be considered by the Authority as if those additional marks, notations or requirements were not entered.
- 3.4 Submission Responsibilities:** It shall be the responsibility of each proposer to be aware of and to abide by all dates, times, conditions, requirements and specifications set forth in all applicable documents issued by the Authority, including the RFP document, the documents listed within the RFP, and any addenda and required attachments submitted by the proposer. By virtue of completing, signing and submitting the completed documents, the proposer is stating his/her agreement to comply with the all conditions and requirements set forth in those documents. Written notice from the proposer not authorized in writing by the Authority to exclude any of the Authority requirements contained within the documents may cause the proposer to not be considered for award.
- 3.5 Proposer's Responsibilities--Contact with the Authority:** It is the proposer's responsibility to address all communication and correspondence pertaining to this RFP process to the Authority Business Office only. Proposers may not make inquiry or communicate with any other Authority staff member or official (including members of the Board of Commissioners) pertaining to this RFP. Failure to abide by this requirement may be cause for the Authority to not consider a proposal submittal received from any proposer who may has not abided by this directive.
- 3.6 Pre-Proposal Conference:** The scheduled pre-proposal conference identified on page 3 of this document is, pursuant to HUD regulation, not mandatory. The purpose of this conference is to assist prospective proposers in having a full understanding of the RFP documents so that he/she feels confident in submitting an appropriate proposal; therefore, at this conference the Authority staff will conduct an overview of the RFP documents, including the attachments. Prospective proposers are encouraged to review the RFP documents in detail prior to attending the conference. Prospective proposers may ask questions at this conference, though the Authority may require that such questions are delivered in writing prior to a response being given.



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**3.7 Attachments:** It is the responsibility of each proposer to verify that he/she has downloaded the following attachments pertaining to this RFP:

Attachment A: Form of Proposal;

Attachment B: Form HUD 5369-B (8/93), *Certifications and Representations of Offerors, Non-Construction Contract*;

Attachment C: Profile of Firm Form;

Attachment D: Section 3 Business Preference Documentation;

Attachment E: Form HUD 5370-C1 (01/2014), *General Contract Conditions, Non-Construction*;

Attachment F: Terms & Conditions and Mandatory Contract Clauses for Small Purchases Other than Construction;

Attachment G: General Insurance Requirements for Most Contracts;

Attachment H: General Depository Agreement;

Attachment I: Operating Fund Financing Program.

**4.0 PROPOSAL EVALUATION:**

**4.1 Evaluation Method:** The Authority will evaluate each proposal submitted in accordance with the RFP procedures shown in Chapter 7 of the HUD Procurement Handbook No. 7460.8 REV 2 and within the Authority Procurement Policy.

- Proposals shall be reviewed, evaluated, and ranked by a committee composed of Authority staff and guest evaluation committee members from other local public agencies. If a guest evaluator is used as a reference the guest evaluator must remove themselves from the evaluation of the firm being reviewed.
- Each submittal shall be judged as to the proposer's capabilities and experience to perform Professional Banking and Loan processing services. Starting with the highest average composite ranked firm and progressing in descending order, a short list of firms will be generated by the evaluation committee. The number of firms placed on the short list shall be limited to the number deemed appropriate by the evaluation committee and Authority staff to meet its requirements and thus, may not include all firms ranked in the evaluation process.
- **Restrictions:** All persons having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a proposer entity will be excluded from participation on the Authority evaluation panel. Similarly, all persons having ownership interest in and/or contract with a proposer entity will be excluded from participation on the Authority evaluation panel.





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- An evaluation committee shall review and rank the submittals based on the below criteria. The top-rated firms shall be short-listed and invited to an interview with Authority staff. Based on the submittals and price negotiation results, proposer(s) shall be recommended to the Authority's Executive Director for award of a Professional Banking and Loan Processing Services contract.
- The Authority recognizes that the selected service proposer (s) may not have experience or capacity to provide professional services in all disciplines. In such event the firm may supplement their capabilities by teaming with sub-consultants. In such cases, proposers shall identify these sub-consultants, as their expertise will be considered by the Authority in addition to the proposer's capabilities as described in the selection criteria below.

**4.2 Evaluation Criteria:** Selection shall be based the following criteria (100 points maximum):

NO.	MAX POINT VALUE	CRITERION DESCRIPTION
1	35 points	<b>Capabilities, Experience and Past Performance</b> - Each firm shall be evaluated on its demonstrated capabilities and experiences to provide Professional Banking and Loan Processing services to Authority, other Housing Authorities or other regional public agencies. Past performances on similar types of work shall be reviewed and judged on quality of work, adherence to schedules, availability and compliance to HUD, local, State and Federal codes and regulations.
2	20 points	<b>Quality of Service</b> - Responses will be compared to determine services and technologies available as well as convenience of branch offices. Structure of Customer Service will be taken into consideration.
3	20 points	<b>Ability to Accomplish Work</b> - Each firm shall be evaluated on its ability to provide Professional Banking and Loan Processing services in a timely manner. Items to be considered include number of qualified staff, support staff, available equipment and facilities.
4	10 points	<b>Bank Rating</b> - Responses will be evaluated for financial soundness. Bank ratings may be used.
5	10 points	<b>Specialized Knowledge</b> - Responses will be compared for display of understanding the special needs of the Authority and experience with government loan processing. Responses will be compared to determine the experience of personnel assigned to the Agency and respondent experience providing services for Housing Authorities and Public Agencies.
6	5 points	<b>Other</b> - Each firm shall be evaluated on any additional supportive information that demonstrates their capabilities to best suit the needs of the Authority.
	100 points	<b>Maximum Points (Before Section 3, MWBE, Recycle Materials, etc. Bonus Points/Preferences)</b>

**4.3 Preference Evaluation Factors:** The following factors will be utilized by the staff member assigned by the Authority to evaluate each proposal submittal received:

NO.	MAX POINT VALUE	FACTOR DESCRIPTION
8	5 points	<b>Section 3 BUSINESS PREFERENCE PARTICIPATION:</b> A firm may qualify for preference points as detailed within Attachment D



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**5.0 CONTRACT AWARD:**

- 5.1 If a contract is awarded pursuant to this RFP, the procedures shown in Chapter 7, Section 7.3 of the HUD Procurement Handbook No. 7460.8 REV 2 and within the Authority Procurement Policy will be followed.
- 5.2 The top-rated proposers shall be short-listed and invited to enter into price negotiations with Authority staff. Based on the submittals and price negotiation results, proposer(s) shall be recommended to the Authority's Executive Director for award of a Professional Banking and Loan Processing services contract. Should the Authority and the selected proposer be unable to agree on contract terms, award of contract shall be offered to the next-highest-ranking firm, and so forth as necessary.
- 5.3 **Contract Conditions:** The following provisions are considered mandatory conditions of any contract award made by Authority pursuant to this RFP:
- **Contract Form:** The Authority will not execute a contract solely on the successful proposer's form. By submitting a proposal the successful proposer agrees to do so. Please note that the Authority reserves the right to amend this form as the Authority deems necessary. However, the Authority will consider any contract clauses that the proposer wishes to include. The failure of the Authority to include such clauses does not give the successful proposer the right to refuse to execute the Authority's contract form. It is the responsibility of each prospective proposer to notify the Authority in writing prior to submitting a proposal, of any contract clause that he/she is not willing to include in the final executed contract and abide by. The Authority will consider and respond to such written correspondence, and if the prospective proposer is not willing to abide by the Authority's response (decision), then that prospective proposer shall be deemed ineligible to submit a proposal.
  - **Assignment of Personnel:** The Authority shall retain the right to demand and receive a change in personnel assigned to the work if the Authority believes that such change is in the best interest of the Authority and the completion of the contracted work. Contractor shall select and employ the replacement personnel.
  - **Unauthorized Sub-Contracting Prohibited:** The successful proposer shall not assign any right, nor delegate any duty for the work proposed pursuant to this RFP (including, but not limited to, selling or transferring the contract) without the prior written consent of the Authority. Any purported assignment of interest or delegation of duty, without the prior written consent of the Authority shall be void. It may result in the cancellation of the contract with the Authority, or may result in the full or partial forfeiture of funds paid to the successful proposer as a result of the proposed contract; either as determined by the Authority.
- 5.4 **Contract Period:** The selected proposer(s) shall provide services for no more than 365 days.
- 5.5 **Licensing and Insurance Requirements:** Prior to award (but not prior to submission of the proposal) the successful proposer will be required to provide to the Authority:



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- Copies of any required current City, State and/or Federal licenses. Failure to maintain these licenses in a current status during the term(s) of this contract shall constitute a material breach thereof.
- Proof of insurance coverage as outlined in the Authority document *Insurance Requirements for Most Contracts* (Attachment G).
- The requested related information shall also be entered where provided for on the Profile of Firm Form. **DO NOT ATTACH COPIES TO THE PROPOSAL SUBMITTED.** The Authority will garner the necessary certificates from the successful proposer prior to contract execution.

**5.6 Right to Negotiate Final Fees:** The Authority shall retain the right to negotiate the amount of fees that are paid to the successful proposer. Such negotiations shall begin after the Authority has chosen a top-rated proposer. If such negotiations are not, in the opinion of the Authority, successfully concluded, the Authority shall retain the right to end such negotiations and begin negotiations with the next-highest-rated proposer. The Authority shall also retain the right to negotiate with and make an award to more than one proposer, as long as such negotiation(s) and/or award(s) are addressed in the above manner (i.e. top-rated first, then next-rated following until a successful negotiation is reached).

**5.7 Contract Service Standards:** All work performed pursuant to this RFP must conform and comply with all applicable local, State and Federal laws.



**FORM OF PROPOSAL  
(Attachment A)**

(This Form must be fully completed and placed under Tab No. 1 of the "hard copy" tabbed proposal submittal.)

**Instructions:** Unless otherwise specifically required, the items listed below must be completed and included in the proposal submittal. Please complete this form by marking an "X," where provided, to verify that the referenced completed form or information has been included within the "hard copy" proposal submittal submitted by the proposer. Also, complete the Section 3 Statement and the Proposer's Statement as noted below:

X=ITEM INCLUDED	SUBMITTAL ITEMS <i>(Three copies of each proposal, including one with original signatures)</i>
_____	Tab 1 Form of Proposal (Attachment A)
_____	Tab 2 Form HUD-5369-B (Attachment B)
_____	Tab 3 Profile of Firm Form (Attachment C)
_____	Tab 4 Capabilities
_____	Tab 5 Managerial Capacity/Financial Viability
_____	Tab 6 Client Information
_____	Tab 7 Subcontractor / Join Venture Information (Optional)
_____	Tab 8 Section 3 Business Preference Documentation (Optional)
_____	Tab 9 Other Information (Optional)

**SECTION 3 STATEMENT**

Are you claiming a Section 3 business preference? YES\_\_\_ or NO\_\_\_. If "YES," pursuant to the Section 3 portion within the Conditions and Specifications, and pursuant to the documentation justifying such submitted under Tab No. 9, which priority are you claiming?  
\_\_\_\_\_.

**PROPOSER'S STATEMENT**

The undersigned proposer hereby states that by completing and submitting this Form and all other documents within this proposal submittal, he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and that if the HA discovers that any information entered herein to be false, such shall entitle the HA to not consider or make award or to cancel any award with the undersigned party. Further, by completing and submitting the proposal submittal, and by entering and submitting the costs where provided within the noted Internet System, the undersigned proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by the HA, either in hard copy or on the noted Internet System, including an agreement to execute the attached Sample Contract form. Pursuant to all RFP Documents, this Form of Proposal, and all attachments, and pursuant to all completed Documents submitted, including these forms and all attachments, the undersigned proposes to supply the HA with the services described herein for the fee(s) entered within the areas provided within the noted Internet System pertaining to this RFP.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Company

# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **7. Contract Award**

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

(b) The HA may

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

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

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

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

#### **8. Service of Protest**

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

#### **9. Offer Submission**

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

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

[Describe bid or proposal preparation instructions here:]

**REQUEST FOR PROPOSALS (RFP) NO. 1819-12**

<b>PROFILE OF FIRM FORM (Attachment C)</b>
--

(This Form must be fully completed and placed under Tab No. 3 of the "hard copy" tabbed proposal submittal.)

- (1) Prime \_\_\_\_ Sub-contractor \_\_\_\_ (This form must be completed by and for each).
- (2) Name of Firm: \_\_\_\_\_ Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_
- (3) Street Address, City, State, Zip: \_\_\_\_\_
- (4) Please attached a brief biography/resume of the company, including the following information:  
 (a) Year Firm Established; (b) Year Firm Established in [JURISDICTION]; (c) Former Name and Year Established (if applicable); (d) Name of Parent Company and Date Acquired (if applicable).
- (5) Identify Principals/Partners in Firm (submit under Tab No. 5 a brief professional resume for each):

NAME	TITLE	% OF OWNERSHIP

- (6) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; please submit under Tab No. 5 a brief resume for each. (Do not duplicate any resumes required above):

NAME	TITLE

- (7) Proposer Diversity Statement: You must circle all of the following that apply to the ownership of this firm and enter where provided the correct percentage (%) of ownership of each:

Caucasian American (Male) \_\_\_\_\_%     
  Public-Held Corporation \_\_\_\_\_%     
  Government Agency \_\_\_\_\_%     
  Non-Profit Organization \_\_\_\_\_%

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise (Qualifies by virtue of 51% or more ownership and active management by one or more of the following:

Resident-Owned\* \_\_\_\_\_%     
  African American \_\_\_\_\_%     
  \*\*Native American \_\_\_\_\_%     
  Hispanic American \_\_\_\_\_%     
  Asian/Pacific American \_\_\_\_\_%     
  Hasidic Jew \_\_\_\_\_%     
  Asian/Indian American \_\_\_\_\_%

Woman-Owned (MBE) \_\_\_\_\_%     
  Woman-Owned (Caucasian) \_\_\_\_\_%     
  Disabled Veteran \_\_\_\_\_%     
  Other (Specify): \_\_\_\_\_%

WMBE Certification Number: \_\_\_\_\_

Certified by (Agency): \_\_\_\_\_

(NOTE: A CERTIFICATION/NUMBER NOT REQUIRED TO PROPOSE - ENTER IF AVAILABLE)

\_\_\_\_\_  
 Signature                                  Date                                  Printed Name                                  Company

**PROFILE OF FIRM FORM  
(Attachment C)**

(This Form must be fully completed and placed under Tab No. 3 of the "hard copy" tabbed proposal submittal.)

- (8) Federal Tax ID No.: \_\_\_\_\_
- (9) [APPROPRIATE JURISDICTION] Business License No.: \_\_\_\_\_
- (10) State of \_\_\_\_\_ License Type and No.: \_\_\_\_\_
- (11) Worker's Compensation Insurance Carrier: \_\_\_\_\_  
Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_
- (12) General Liability Insurance Carrier: \_\_\_\_\_  
Policy No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_
- (13) Professional Liability Insurance Carrier: \_\_\_\_\_  
Policy No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_
- (14) Debarred Statement: Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of \_\_\_\_\_, or any local government agency within or without the State of \_\_\_\_\_? Yes  No   
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.
- (15) Disclosure Statement: Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the HA? Yes  No   
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.
- (16) Non-Collusive Affidavit: The undersigned party submitting this proposal hereby certifies that such proposal is genuine and not collusive and that said proposer entity has not colluded, conspired, connived or agreed, directly or indirectly, with any proposer or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price of affiant or of any other proposer, to fix overhead, profit or cost element of said proposal price, or that of any other proposer or to secure any advantage against the HA or any person interested in the proposed contract; and that all statements in said proposal are true.
- (17) Verification Statement: The undersigned proposer hereby states that by completing and submitting this form he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and agrees that if the HA discovers that any information entered herein is false, that shall entitle the HA to not consider nor make award or to cancel any award with the undersigned party.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Company



## Attachment D

### The Section 3 Clause

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected 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.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).



## Section 3 Contracting Preference

A business seeking to elect the *Section 3 Contracting Preference* shall self-certify or submit evidence that the business is a Section 3 Business. All contractors/subcontractors (contractors) claiming a Section 3 Preference in contracting must maintain that status throughout the life of the contract.

**To receive a Section 3 Preference:**

1. Contractors must certify as a Section 3 Business prior to, or at the time of the submission of bids, quotes, or proposals. To determine your status as a Section 3 Business, please answer the following questions:

I. Is your business 51% or more owned by a Section 3 Resident(s)?  YES  NO

**\*A Section 3 Resident is:**

- 1) lives in Public Housing or Subsidized/Assisted Housing; or participates in the Housing Choice Voucher Program (Section 8); **-OR-**
- 2) lives in Stanislaus County, and meets one of the household income eligibility guidelines in the chart below:

<b>Stanislaus County Income Guideline (FY 2016)</b>								
Number of People in Household →	1	2	3	4	5	6	7	8
My household income is less than the amount listed for my household size.	\$12,600	\$16,240	\$20,420	\$24,600 0	\$28,780	\$32,960	\$37,140	\$39,550
My household income is within the range listed for my household size.	\$12,601- \$33,550	\$16,241- \$38,350	\$20,421- \$43,150	\$24,601- \$47,900	28,781- \$51,750	32,961- \$55,600	36,141 \$59,400	\$39,551- 63,250

II. Do you employ, or will employ, 30% or more Section 3 Residents as permanent full-time employees?  YES  NO

III. Will you subcontract 25% or more of this contract to a qualified Section 3 Business?  YES  NO

**\* A Section 3 Business is:**

- 1) A business that is 51% or more owned by Section 3 Resident(s); or,
- 2) A business that employs 30% or more Section 3 Residents (or were Section 3 Residents within the last 3 years) as permanent, full-time staff; or,
- 3) A business that commits to subcontract 25% of its original contract amount to other Section 3 Businesses.

- If you marked "YES" for *any* of the questions above, your business *qualifies* for the Section 3 Business Preference.
- If you marked "NO" for *all* of the questions above, your business *does not qualify* for the Section 3 Business Preference.

**Once you have determined your Section 3 Business status, complete the attached Section 3 Business Status & Preference Request form and submit the form with your bid documents.**

3. Contractors must sign the Section 3 Assurance which is included in the bid package, regardless of the contract award. All required Section 3 forms must be submitted with your other bid documents at the time of your bid. Bids without the Section 3 Assurance and Section 3 Business Status & Preference Request form will be considered non-responsive and is grounds for rejection of the bid.
4. Any HACS contract recipient, regardless of its Section 3 Business status, must comply with the Section 3 requirements when any hiring or contracting is essential to completing the work on the Section 3 project. HACS contract recipients must make their best efforts to offer any available opportunities to certified Section 3 Residents and Businesses. There is no waiver from this requirement. Any contractor found in violation of HACS Section 3 policy may have their contract terminated.
5. For Contractors that do not win an award for this project, the submitted Section 3 information will remain on file and you will be notified of future Section 3 contracting opportunities.



## SECTION 3 BUSINESS STATUS and PREFERENCE REQUEST

Business Name \_\_\_\_\_ Main Phone ( ) \_\_\_\_\_

Contact Person & Title \_\_\_\_\_ Cell Phone ( ) \_\_\_\_\_

Business Address \_\_\_\_\_ FAX ( ) \_\_\_\_\_

Street Address

Suite #

Email/Web \_\_\_\_\_

City

State

Zip Code

Type of Business  Corporation  Partnership  Sole Proprietorship  Joint Venture

Attach applicable documentation of evidence of formation of business entity:

- Copy of Business License  Copy of Articles of Incorporation, if applicable  Business Formation Documents  
 Partnership Agreement  Certificate of Good Standing

**I am not certifying as a Section 3 Business.** I acknowledge that I will not receive a Section 3 Contracting Preference, but I will comply with the requirements of Section 3 if a need to hire workers or subcontract any work to complete the project arises during the life of the project.

**I do not qualify as a Section 3 Business.** I will comply with the requirements of Section 3 if a need to hire workers or subcontract any work to complete the project arises during the life of the project.

**I am certifying and requesting preference as the following type of Section 3 Business Concern** (check one):

**Section 3 Resident-Owned Business:** 51% or more of this business is owned by Section 3 Residents.

Attach one of the following documentation as evidence:

- Copy of resident lease.
- Copy of evidence of participation in a public assistance program.
- Owner(s) signed Section 3 Resident Self-Certification.

**Section 3 Resident Employed Business:** 30% or more of my permanent, full-time employees are current Section 3 Residents or were within the past 3 years; **or**, I will employ (*within 10 days of contract start date*) 30% Section 3 Residents as newly hired workforce for this contract and throughout the entire contract period.

Attach all of the following documentation as evidence:

- List of all current full-time employees.
- List of employees with Section 3 status & a Section 3 Resident Self-Certification (Form S3-R) for each.
- If employing 30% Section 3 Residents, provide number of available new jobs for this project, and every effort you will use to notify and offer these jobs to Section 3 Residents (ex. Post signs at public housing sites, request list of qualified Section 3 Residents from Section 3 database, run ads in local papers, etc.).

**Subcontract to Section 3 Businesses:** I can provide evidence of a commitment to subcontract 25% or more of the dollar amount awarded to qualified Section 3 Businesses.

Attach the following documentation as evidence:

- List of subcontracted Section 3 Business(es) and the subcontract amount.

**Evidence of ability to perform successfully under the terms and conditions of the proposed contract** (at least one):

- Current financial statement  List of owned equipment  
 Statement of ability to comply with public policy  List of all contracts for the past 2 years

**I certify that the information provided above is true and complete to the best of my knowledge.**

Corporate Seal

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

\_\_\_\_\_  
Notary

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Term Expires

**NOTE: This document must be submitted with bid documents.**



## SECTION 3 ASSURANCES

We, the undersigned \_\_\_\_\_ (Representative), as official representative of \_\_\_\_\_ (Business) agree to comply with Section 3 requirements for the \_\_\_\_\_ (Project Name). It is understood that failure to comply may result in the following sanctions: cancellation, termination, or suspension in whole or in part of this contract.

**Estimated Project Workforce Breakdown:** Please provide estimates of hiring needs below.

Job Category	Total Estimated Positions Needed to Complete Project	Number of Positions Occupied by Current Employees	Number of Available Positions for New Hires	Number of Positions To be Filled with Section 3 Residents*
Supervisor				
Professional				
Technical				
Office/Clerical				
Others				
TRADE:				
Journeypersons				
Apprentices				
Trainees				
Others				
TRADE:				
Journeypersons				
Apprentices				
Trainees				
Other				

**Proposed Contracts/Subcontracts Breakdown:** Please provide estimates of contracting needs below.

Type of Contract (Business or Professional)	Total Number	Total Approximate Dollar Amount	Estimated Number of Contracts to Section 3 Businesses	Estimated Dollar Amount to Section 3 Businesses

\_\_\_\_\_  
Signature of Person Completing Form

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

***NOTE: This document must be submitted with bid documents.***



## SECTION 3 AFFIRMATIVE ACTION PLAN

\_\_\_\_\_ (Contractor) agrees to comply with the requirements of Section 3 of the HUD Act of 1968<sup>1</sup> (Section 3) by assuring, *to the greatest extent feasible*, that:

1. Training and employment opportunities will be directed to qualified Section 3 Residents as provided by the HACS order of providing preferences for hiring, with a hiring goal of 30%; and,
2. Contracts for work in connection with this project will be awarded to qualified Section 3 Businesses as provided by the HACS order of providing preferences for awarding contracts, with a contracting goal of 10% for construction trades work, and 3% for non-construction work.

\_\_\_\_\_ (Contractor) will initiate the following actions to insure utilization of Section 3 Residents as employees or trainees and to incorporate Section 3 Businesses as subcontractors and suppliers:

1. The Contractor will establish and maintain a directory of service organizations, job referral agencies and manpower training programs operating within, or servicing, project area residents.
2. The Contractor will submit prior to the award of a contract, a signed assurance that it will comply with Section 3 regulations and requirements.
3. The Contractor will provide, prior to the signing of a contract, a Statement of work force needs, including trainee positions.
4. The Contractor will notify Community based organizations of available employment opportunities, and shall maintain records of response from such organizations.
5. The Contractor will make continuing personal recruitment efforts directed to such service organizations and to schools with lower income resident training programs with which he is familiar.
6. The Contractor will maintain a file of the names and addresses of each low income resident worker referred to him and that action was taken with respect to each such referred worker and, if the worker was not employed the reasons therefore. (Attached.)
7. The Contractor will include the Section 3 clause in every subcontract for work in connection with H.U.D. projects. (Attached.)
8. For each subcontract, the Prime Contractor will submit, prior to Contract award, the Section 3 Affirmative Action Plans of its subcontractors.
9. The Contractor will not attempt to circumvent Section 3 Provisions.
10. The Contractor will make a good faith effort to employ or fill training positions with lower income project area residents, it will, as a minimum, provide evidence of the following:
  - Attempts to recruit from the project area through local advertising media, community organizations, public and private agencies operating within or serving the project area, such as the Department of Labor Employment Department, and the Private Industry Council.
  - Maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and that he has employed such persons if otherwise qualified and if an opening exists.
11. The Contractor will make good faith effort to incorporate project area businesses as Subcontractors and Suppliers.
12. The Contractor will provide the Section 3 workforce and business utilization reports required under this contract.

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

Printed Name and Title \_\_\_\_\_

Business Name \_\_\_\_\_

**NOTE: This document must be submitted with bid documents.**

<sup>1</sup>At 12 USC 1701u, and implemented by 24 CFR 135.



# PREFERENCES FOR SECTION 3 BUSINESS CONCERNS

## Eligibility for Preference

A business seeking to elect the Section 3 *Contracting Preference* must apply for certification as a Section 3 Business prior to, or at the time of submission of bids, quotes, or proposals. By electing a Section 3 Contracting Preference, a business will receive a competitive edge over a non-Section 3 Business. A Section 3 Business Status & Preference Request form is included in each bid package, and can also be obtained from the HACS Business Office.

## Order of Preferences for Section 3 Business Concerns

The Housing Authority of the County of Stanislaus has established the following order of providing preferences when awarding contracting opportunities to a Section 3 Business Concern (Section 3 Business):

### **Tier I:**

- A. Businesses that are 51% or more owned by Section 3 Residents of the HACS housing development(s) where the Section 3-covered assistance is expended.
- B. Businesses whose full-time permanent workforce includes 30% of current Section 3 Residents (or were Section 3 Residents within three (3) years of the date of first employment with the business) of the HACS housing development(s) where the Section 3-covered assistance is expended.

### **Tier II:**

- A. Businesses that are 51% or more owned by Section 3 Residents of another HACS housing development(s).
- B. Businesses whose full-time permanent workforce includes 30% of Section 3 Residents of another HACS housing development(s), or were Section 3 Residents within three (3) years of the date of first employment with the business.

### **Tier III:**

- A. Businesses that are 51% or more owned by Section 3 Residents of Stanislaus County, including Housing Choice Voucher Participants (formerly Section 8).
- B. Businesses whose full-time permanent workforce includes 30% of Section 3 Residents of Stanislaus County (or were Section 3 Residents of Stanislaus County within three (3) years of the date of first employment with the business).
- C. Businesses that subcontract in excess of 25% of the total amount of subcontracts to Section 3 Businesses.



## SECTION 3 CONTRACTOR'S ADVANTAGE

Procurement of sealed bids:

HUD directs within 24 CFR 135 that the HACS may award a contract to a qualified Section 3 business with the highest preference ranking and the lowest responsive bid if that bid is:

- (a) Within the maximum total contract price established by the HACS; or
- (b) Not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

"X" = LESSER OF:	
When the lowest responsive bid is less than \$100,000	10% of that bid, or \$9,000.00.
When the lowest responsive bid is at least:	
• \$100,000.00, but less than \$200,000.00	9% of that bid, or \$16,000.00.
• \$200,000.00, but less than \$300,000.00	8% of that bid, or \$21,000.00.
• \$300,000.00, but less than \$400,000.00	7% of that bid, or \$24,000.00.
• \$400,000.00, but less than \$500,000.00	6% of that bid, or \$25,000.00.
• \$500,000.00, but less than \$1,000,000.00	5% of that bid, or \$40,000.00.
• \$1,000,000.00, but less than \$2,000,000.00	4% of that bid, or \$60,000.00.
• \$2,000,000.00, but less than \$4,000,000.00	3% of that bid, or \$80,000.00.
• \$4,000,000.00, but less than \$7,000,000.00	2% of that bid, or \$105,000.00.
• \$7,000,000.00, or more	1.5% of the lowest responsive and responsible bid, with no dollar limit.



# General Conditions for Non-Construction Contracts

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

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

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 3/31/2010)

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.

## 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.

TABLE 5.1 of HUD Procurement Handbook 7460.8 REV 2

*MANDATORY CONTRACT CLAUSES FOR SMALL PURCHASES OTHER THAN  
CONSTRUCTION*

The following contract clauses are required in contracts pursuant to **24 CFR 85.36(i) and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act**. HUD is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy. The PHA and contractor is also subject to other Federal laws including the U.S. Housing Act of 1937, as amended, Federal regulations, and state law and regulations.

**Examination and Retention of Contractor's Records.** The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three 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.

**Right in Data and Patent Rights (Ownership and Proprietary Interest).** The PHA 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 the Contract.

**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.

**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

*MANDATORY CONTRACT CLAUSES FOR SMALL PURCHASES OTHER THAN  
CONSTRUCTION*

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.

**Termination for Cause and for Convenience (contracts of \$10,000 or more).**

(a) The PHA may terminate this contract in whole, or from time to time in part, for the PHA's convenience or the failure of the Contractor to fulfill the contract obligations (cause/default). The PHA 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: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the PHA all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.

(b) If the termination is for the convenience of the PHA, the PHA 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 (cause/default), the PHA may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the PHA, any work described in the Notice of Termination; (2) 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 PHA; and (3) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by the PHA by the Contractor. In the event of termination for cause/default, the PHA shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

## **INSURANCE REQUIREMENT FOR CONSULTANTS**

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, its agents, representatives, employees or subcontractors.

### **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01 11 88)
2. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, code 1 (any auto).
3. Errors and Omissions liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.
4. Workers' Compensation insurance as required by State law and Employer's Liability Insurance.

### **Minimum Limits of Insurance**

Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions liability: \$1,000,000 per occurrence.
5. Workers' Compensation: Statutory Limit.

### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the Housing Authority of the County of Stanislaus (HACS). At the option of the HACS, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the HACS, its



officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the HACS guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### **Other insurance Provisions**

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The HACS, its officers, officials, employees and volunteers are to be covered as insurers as respects: liability arising out of work or operations performed by or on behalf of the consultant; or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the HACS, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the HACS, its officers, officials, employees or volunteers shall be excess of the consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the HACS.

### **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than B+:VI, unless otherwise acceptable to the HACS.

### **Verification of Coverage**

Consultant shall furnish the HACS with original certificates and amendatory endorsements effecting coverages and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the HACS or on other than the HACS's forms provided those endorsements conform fully to HACS requirements. All certificates and endorsements are to be received and approved by the HACS before work commences in sufficient time to permit contractor to remedy any deficiencies. The HACS reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

### **Subcontractors**

Contractor shall include all subcontractors as insurers under its policies or seal furnish separate certificates and endorsements for each subcontractor in a manner and in such time as to permit Authority to approve them before subcontractors' work begins. All coverages for subcontractors shall be subject to all of the requirements stated herein.

Public reporting burden for this collection of information is estimated to average 1 hour per response. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. HUD will use this information to ensure PHAs use all Program Receipts received from HUD or otherwise associated with public housing funds for purposes of public housing, by requiring such financial assistance to be deposited into interest-bearing accounts at certain financial institutions. The information requested does not lend itself to confidentiality.

**This Agreement**, entered into this \_\_\_ day of \_\_\_, 20\_\_\_ by and between \_\_\_ (herein called the "HA"), a duly organized and existing public body corporate and politic of the \_\_\_ of \_\_\_ and \_\_\_ (herein called the "Depository"), located at \_\_\_.

**Witnesseth:**

**Whereas**, the Department of Housing and Urban Development (herein called "HUD") has entered into one or more Annual Contributions Contracts (herein called the "ACC" with the HA for the purpose of providing financial assistance to develop and operate lower income housing projects, as authorized by the United States Housing Act of 1937, as amended (42 USC 1437, et seq.); and

**Whereas**, under the terms of the ACC the HA is required to select as depositories of its funds, financial institutions whose deposits or accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF) as long as this Agreement is in force and effect.

**Now Therefore**, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

- 1.** The deposits and accounts of the Depository shall continue to be insured by the FDIC Corporation or NCUSIF.
- 2.** All monies deposited by the HA with the Depository shall be credited to the HA in a separate interest-bearing deposit or interest-bearing accounts, designated "Accounts" (herein the "Accounts"). Any portion of HA Funds not insured by a Federal insurance organization shall be fully (100%) and continuously collateralized with specific and identifiable U.S. Government or Agency securities prescribed by HUD in a notice. Collateralization is required on a daily basis at the end of the business day. Such securities shall be pledged and set aside in accordance with applicable law or Federal regulations. The HA shall have possession of the securities (or the HA will take possession of the securities) or an independent custodian (or an independent third party) holds the securities on behalf of the HA as a bailee (evidenced by safe keeping receipt and a written bailment for hire contract) and will be maintained for the full term of deposit. The Depository may substitute other securities as collateral to equal or increase the value. If the HA is an agency of an Indian tribe, the collateral shall be in United States bonds and otherwise as may be prescribed for public funds by the United States Secretary of the Treasury.
- 3.** Except as stated in Paragraph 5, the Depository shall honor any (a) check or other order to pay from the Accounts, or (b) directive to purchase investment securities with monies from the Accounts or to sell securities, if such order or directive is in writing and signed on behalf of the HA by an officer or member designated by resolution of the Board of Directors of the HA to have such authority. To assist the Depository in its obligation, the HA shall furnish the Depository with a certified copy of the resolution.
- 4.** Any securities received from the HA or purchased by the Depository with monies from the Accounts shall be considered to be a part of the Accounts and shall be held by the Depository in safe-keeping for the HA until sold. Interest on such securities and the proceeds from the sale thereof shall be deposited in the Account upon receipt
- 5.** If the Depository receives written notice from HUD that no withdrawals by the HA from the Accounts are to be permitted, the Depository shall not honor any check or other order to pay from the Accounts or directive to purchase or sell securities, or permit any withdrawals by the HA from said Accounts until the Depository is authorized to do so by written notice from HUD.
- 6.** The Depository is not obligated to be familiar, and shall not be charged, with knowledge of the provisions of the ACC, and shall be under no duty to investigate or determine whether any action taken by either the HA or HUD in respect of the Accounts are consistent with or are authorized by the ACC or whether either HA or HUD is in default under the provisions of the ACC. The Depository shall be fully justified in accepting and acting on, without investigation, any certificate or notice furnished to it pursuant to the provisions of this Agreement and which the Depository shall in good faith believe to have been duly authorized and executed on behalf of the party in whose name the same purports to have been made or executed
- 7.** The rights and duties of the Depository under this Agreement shall not be transferred or assigned by the Depository without the prior written approval of the HA and HUD. This Agreement may be terminated by either party hereto upon thirty days' written notice to the other party, and HUD. The rights and duties of the Depository hereunder shall not be transferred or assigned nor shall this Agreement be terminated during any period in which the Depository is required to refuse to permit withdrawals from the Accounts as provided in Paragraph 5.

8. HUD is intended to be a third-party beneficiary of this Agreement and may sue to enforce its provisions and to recover damages for failure to carry out its terms.

9. The Depository shall provide the HA with remote, electronic access to the Accounts for the purpose of monitoring the crediting or depositing of any monies in the Accounts.

10. The provisions of this Agreement may not be modified by either Party without the prior written approval of HUD

11. **Strike this paragraph if inapplicable:** Previous General Depository or Savings Depository Agreements, if any, entered into between the Depository and the HA are hereby terminated and all monies and securities of the HA on deposit with or held by the Depositories pursuant to the terms of said Agreement shall continue to be held for account of the HA pursuant to and in accordance with the provisions of this Agreement.

12. **Strike this paragraph if paragraph 2 applies:** For use only in certain States that have statutes that prohibit HAs from implementing paragraph 2.

At no time shall the HA Funds in the Accounts be permitted to exceed the amount insured by Federal deposit insurance (herein the "Insured Amount"). At any such time as the amount of funds in the Accounts reach the Insured Amount, whether by the accrual of interest or otherwise, the Depository shall promptly, as directed by the HA, and in an amount sufficient to limit the funds in the Accounts to the Insured Amount, either: (a) remit payment to the HA or, (b) on behalf of the HA, purchase securities approved for investment by the HA. Such securities shall not be considered to be a part of the Account pursuant to Paragraph 4 hereof but shall be held by the Depository as custodian or trustee for the HA in a separate account established for that purpose by the Depository (herein the "Securities Account"). The Securities Account shall be designated as \_\_\_\_\_.

Income or other proceeds from securities held in the Securities Account shall, as directed by the HA, upon receipt, be paid to or on behalf of the HA; provided, however, that such proceeds shall, to the extent consistent otherwise with the provisions of this Paragraph, be deposited in the Accounts. If the Depository receives written notice from HUD pursuant to Paragraph 5 hereof that no withdrawals by the HA from the Accounts are to be permitted, the Depository shall not honor any directive from the HA to sell securities, or permit any withdraws by the HA, from the Securities Account until the Depository is authorized to do so by written notice from HUD.

During the pendency of such restrictions on the Accounts and the Securities Account, the Depository, except as directed in writing by HUD, shall not remit any payment to the HA for the purpose of limiting the amount of funds in the Account to the Insured Amount but shall instead purchase securities approved for investment by the HA and hold such securities in the Securities Account.

13. Notice required under the terms and conditions of this agreement shall be deemed to have been given when it made by:

\_\_\_\_\_, on behalf of \_\_\_\_\_  
Title Organization (HA)

\_\_\_\_\_, on behalf of \_\_\_\_\_  
Title Organization (Depository)

\_\_\_\_\_, on behalf of \_\_\_\_\_  
Title Organization (HUD)

Notice shall be made in writing. Notice may be delivered in person, by United States Postal Service mail, by receipted commercial mail delivery, by facsimile machine or other electronic means that clearly identifies the sender as one of the persons so authorized in this paragraph. **Notice under the terms of this agreement shall be implemented by the Depository within 24 hours of actual receipt.**

**In Witness Whereof**, the HA and the Depository have caused this Agreement to be executed in their respective names and their respective seal to be impressed hereon and attested as of the date and year first above written.

\_\_\_\_\_  
HA  
(SEAL)  
ATTEST:  
By \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Depository  
(SEAL)  
ATTEST  
By \_\_\_\_\_

## **Operating Fund Financing Program**

### **Summary**

Under the Operating Fund Financing Program (OFFP), Public Housing Authorities (PHAs) are permitted to borrow private capital to finance development and modernization of public housing. Under this program, a PHA may use a portion of its Operating Fund reserve balances to collateralize financings and pay debt service and customary financing costs where the financing is used for public housing development or modernization (including public-housing mixed-finance developments).

Operating reserve balances are those funds accumulated through the operation of public housing, assistance from the Operating Fund program authorized by section 9(e) of the 1937 Act, and operating receipts as defined in section 2 of the Annual Contributions Contract (7/95) (ACC). The FFY 2012 Appropriations Act, P.L. 112-55, permits HUD to adjust the CY 2012 Operating Fund allocation by up to \$750 million from excess reserve amounts by PHAs. For more information on the implementation of this offset, see notice PIH 2011-55.

PHAs may use Operating Funds as outlined by Section 9(e), 9(g) and 9(l) of the 1937 Act, notice PIH 2012-2, and HUD regulations. PHAs may use Capital Funds as outlined by Section 9(d) of the 1937 Act and HUD regulations. In addition to these statutorily permitted uses, pursuant to P.L. 112-55 and for FFY 2012 only, PHAs may use operating reserves above the HUD recommended minimum for capital improvements, except PHAs may not use operating reserves above the HUD recommended minimum for large modernization projects or development in the absence of an OFFP approval. Because of the added flexibility provided by P.L. 112-55, in FY 2012 there may not be a need for PHAs to undertake OFFPs unless they want to pursue large-scale modernization or a development project. For more information about the use of operating funds generally, and the use of operating reserves above the HUD recommended minimum for capital improvements in FFY 2012, see notice PIH 2012-2.

Written approval is required before a PHA undertakes an OFFP transaction. HUD is implementing the OFFP on a case-by-case basis and has approved a small number of transactions to date. PHAs interested in participating in the OFFP should follow the general guidelines and instructions outlined on this web page. PHAs should note that financing proceeds from an OFFP transaction will be subject to regulations associated with Capital Funds, including all applicable modernization or development requirements under the 1937 Act and HUD regulations (including procurement and environmental review).

In reviewing OFFP proposals, HUD will determine the amount of reserves available for financing by analyzing the PHA's financial statements over a two to three year period. The amount available for financing is calculated by taking short term assets, subtracting short term liabilities, and then subtracting an amount equal to four or six months of operating expenses, depending upon PHA size (four months for PHAs with 250 or more units, six months for PHAs with 249 or fewer units).

The results of the above noted calculations indicate the maximum amount of operating reserves HUD would approve for financing. PHAs may undertake smaller financings based upon their risk tolerance. PHAs should be aware that the decision to pursue an OFFP will not cause HUD to calculate operating eligibility in a manner different than provided for by statute and regulation. PHAs should consider these risks when determining whether or not to undertake an OFFP transaction, and the size of their borrowing if they do pursue an OFFP transaction.

### **Typical Transaction**

A typical transaction involves a PHA requesting HUD approval of a loan for the purpose of modernization and/or development activities. The PHA collateralizes the loan with the Operating Fund reserves and at the completion of construction, utilizes the Operating Fund reserves to pay the principal and interest on the loan.

### **Suggested Guidelines and Required Documentation**

PHAs interested in participating in the OFFP should follow the guidance provided below and submit the following documents:

- 1. Approval** - PHAs must request approval from the Deputy Assistant Secretary, Office of Public Housing Investments. The Deputy Assistant Secretary for the Office of Public Housing Investments, the General Deputy Assistant Secretary and the Assistant Secretary for the Office of Public and Indian Housing are the only authorized HUD officials who can grant approval.

PHAs must submit a minimum of one hard copy and one electronic copy of the complete OFFP Proposal to:

*Attention:* Shauna Sorrells, Director  
Office of Public Housing Programs  
Room 4232  
451 7th Street SW  
Washington, DC 20410

An electronic copy of a complete OFFP Proposal should also be sent to the Director of the Financial Management Division (FMD) and appropriate Director, Office of Public Housing in the Field Office.

- 2. Operating Reserves Amounts** - To participate in the OFFP, PHAs should demonstrate that they have taken steps to maintain their operating reserves at a level that can be reasonably anticipated to sustain necessary operations given a moderate level of fluctuation in operations or appropriations. PHAs with 250 units or more should have at least 4-months worth of operating reserves available above the amount proposed as part of an OFFP transaction; PHAs with less than 250 units should have at least 6-months worth of operating reserves available. When reviewing OFFP proposals, HUD will also evaluate the impact of the allocation adjustment in the FFY 2012 Appropriations Act. To the extent that PHAs have reserve amounts in excess of 4 or 6 months as applicable, in addition to amounts associated with the proposed 2012 allocation adjustment, they may request approval to use excess operating reserves as

part of an OFFP transaction.

**3. Proposal** - PHAs interested in applying for participation in the OFFP should submit the following documentation as part of their initial application package:

**Cover Letter** - The cover letter must be signed by the PHA Executive Director (or Chief Executive Officer, if applicable) and should request HUD's approval of the OFFP Proposal. PHAs should also describe the proposed financing and the intended use of proceeds, as well as the amount of the Operating Fund reserves available. In the event that PHAs have experienced substantial fluctuations in reserve levels, PHAs should also provide an explanation of the variations in reserve levels. Finally, PHAs should include the amount of the Operating Fund reserves the PHA intends to use for debt service payments (principal and interest).

The cover letter should describe any security interest or other encumbrance being provided as well as the recourse the lender will have in the event of a default, if any. This description will provide the basis of HUD's approval of any security interest.

The cover letter must indicate whether the PHA has undertaken any other financing associated with its public housing program. If it has, it should include a schedule detailing the terms of the financing (original principal amount, current principal outstanding, interest rate, periodicity of debt service payment requirements, amount of debt service payments, source of debt service payments, security interest provided, description of what financing was used for).

**OFFP Financing Limit Spreadsheet** - As part of their submission PHAs should include the OFFP Financing Limit spreadsheet demonstrating the availability of the requisite reserve amounts listed in paragraph 2, based on their most recent two years of financial statements approved in FASSPHA (including audited and unaudited). Be advised that the methodology to calculate operating reserves is based on data calculated with full accrual accounting. Therefore, PHAs must use accrual accounting when calculating their reserves.

Unless the current FASPHA financial data reflects a decrease in financing capacity over the two year period reviewed, PHAs can use their most recent financial data from their internal books and records to determine financing capacity. If a PHA chooses to do so, they assume the risk of any unrecognized expenses or accounting errors or adjustments.

As part of its assessment, HUD will also complete two OFFP Financing Limit spreadsheets based upon FASPHA data from the most recent two years.

**Financial Statements** - PHAs should also include, within their initial application package, the most recent, year -to-date financial documents available, which should support the OFFFP Financing Limit spreadsheet submitted by the PHA.

**Financial Schedules** - PHAs should include a debt service schedule in their OFFFP application package.

- The PHA should provide the terms of the financing, including:
  - The name of the lender
  - The term of the financing
  - The principal amount
  - The interest rate

**Annual Statement/Performance and Evaluation Report (HUD-50075.1)** - PHAs should submit an Annual Statement budgeting the use of the proceeds from the OFFFP financing.

- <http://portal.hud.gov/hudportal/documents/huddoc?id=50075.1.pdf>

**Disclosure of all Existing Financing** - PHAs must disclose any existing financing it has undertaken in their OFFFP application package. The PHA should include a schedule detailing the terms of any financing (original principal amount, current principal outstanding, interest rate, periodicity of debt service payment requirements, amount of debt service payments, source of debt service payments, security interest provided, description of what financing was used for). If a PHA has no existing financing, it should include a statement to that effect.

**4. Transactional Documents** - Once HUD has received and reviewed a PHA's initial submission (as outlined above in paragraph 3), and determined that the proposal is acceptable to HUD, the PHA will then submit the following additional documentation to complete the application package:

**Board Resolution** - PHAs must submit evidence of a PHA Board resolution that authorizes the PHA to undertake the loan up to a specified amount; provide all security interests required by the loan; and repay the loan with its Operating Fund reserves as required by the financing documents.

- **Authorization** - The Board resolution must also provide authorization for the Executive Director, Chief Executive Officer, or other executive staff to negotiate and enter into all legal documents required as part of the transaction.

**Counsel's Opinion** - The PHA must also submit PHA counsel's opinion, which opines that the PHA has the authority to enter into the transaction, and that the transaction complies with the requirements of the 1937 Act, as amended, federal regulations, and the ACC, as amended. The PHA should share the OFFFP ACC Amendment with their counsel prior to obtaining the opinion.

- [Sample Opinion of Counsel](#) (MS-Word, 72 KB)

**Depository Agreement** - The PHA must submit a depository agreement that covers all of the financing proceeds of the OFFP transaction. The Operating Fund reserves collateralizing the loan must also be subject to a depository agreement.

□ [Sample Depository Agreement](#)

**Fairness Opinion** - If the terms of the transaction proposed by the PHA are outside the range of what is generally submitted to HUD, HUD reserves the right to request that an independent third-party fairness opinion be submitted.

**OFFP Amendment to the ACC** - Where, pursuant to an OFFP approval, a PHA will use excess reserves to prepay a CFFP, they will need to amend their CFFP Amendment to the ACC. For information on prepaying a CFFP, please contact the Director of the Office of Capital Improvements. All other PHAs receiving an OFFP approval must execute an OFFP Amendment to the ACC.

**Declaration of Trust (DOT)/Declaration of Restrictive Covenants (DRC)** – Where PHAs are providing a security interest or other encumbrance in a public housing project as part of their OFFP, the PHA must provide evidence of compliance with public housing restrictive use requirements.

- If a PHA proposes to use OFFP proceeds for modernization, for any property the OFFP proceeds are used upon, or any property that is mortgaged or otherwise encumbered as part of the OFFP, PHA counsel must opine and HUD's Office of General Counsel will concur, that in each instance the DOTs are recorded prior (both in time and position) to the security interest or other encumbrance that will be recorded pursuant to the OFFP, and that they will remain current and effective for the term of the financing. PHA counsel shall further opine that a Development DOT has been recorded prior to the recordation of any other encumbrance. If the PHA Counsel is unwilling to offer such a certification, the PHA may submit a title report, along with a certification from the PHA that the DOTs and the title report cover all of the public housing properties, both real and personal property, that will be subject to the security interest or encumbrance related to the OFFP, or that will be the recipient of OFFP proceeds. Further, where HUD determines a higher level of documentation is needed, HUD reserves the right to require a title report.
- Where OFFP proceeds are used for development, title insurance must be obtained in compliance with 24 CFR 941. The title documentation must establish that an effective DOT or mixed-finance Declaration of Restrictive Covenants will be filed in first position.



- PHAs that intend to fund mixed-finance development or modernization with OFFP proceeds are not required to submit DOT/DRC documentation as part of their OFFP proposal since that review will be completed as part of HUD's review of the mixed-finance proposal.
- DOTs/DRC documentation shall be submitted to the Director, Office of Public Housing at the appropriate Field Office for review by Field Office counsel.

**5. Reporting** - Once construction begins, PHAs should submit Performance and Evaluation reports (HUD 50075.1, see link above in Section 3 of this guidance, Annual Statement/Performance Evaluation) detailing the obligation and expenditure of OFFP proceeds on a quarterly basis to the Field Office until all borrowed funds are expended and included in the audited year-end financial statement.

Each OFFP transaction is subject to fiscal closeout in the same manner as a Capital Fund Grant. Fiscal closeout includes the submission of an Actual Modernization Cost Certificate (AMCC) or Actual Development Cost Certificate (ADCC), and audit, if applicable, and a final Performance and Evaluation Report.

**6. Loan Documents** - Loan documents are not required to be submitted as part of the OFFP proposal. Please find below sample language that may be used on loan documents at the discretion of the PHA. Please note that the OFFP amendment to the ACC contains certain requirements related to loan documents. Complying with those requirements is the responsibility of the PHA. The below language may help PHAs in drafting documents that comply with the requirements of the OFFP amendment to the ACC, but may or may not need to be modified to do so.

- a. Non-Recourse Language** - "This financing is non-recourse to any public housing property (real or personal property including all public housing assets or income), or disposition proceeds approved pursuant to Section 18 of the United States Housing Act of 1937 (unless explicitly permitted by HUD in the Section 18 approval letter)."

It should be noted that PHAs can provide lenders recourse to the reserve funds pledged as part of the proposed OFFP transaction and should modify, as needed, the language above if they chose to provide such recourse.

- b. Indemnification Clause** - "The PHA's indemnification is limited to eligible non-public housing assets (assets not subject to the Declaration of Trust and not acquired or merged with assets acquired with public housing funding under the United States Housing Act of 1937)."
- c. HUD Not Liable:** "Loans and bonds connected with the financing activities are obligations of the PHA and are not guaranteed or insured by HUD or the U.S. Government."

**7. Paperwork Reduction Act** - The information collection requirements contained in this document are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 2510-3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The OMB control number for the Capital Fund Financing Program is: 2577-0157

If you have any questions or concerns regarding the necessary documentation required for an OFFP proposal, please contact Todd Thomas at 678-732-2056 or [Todd.C.Thomas@hud.gov](mailto:Todd.C.Thomas@hud.gov)