



REQUEST FOR PROPOSAL -RFP MHA-001-2011
FOR
INDEFINITE DELIVERY INDEFINITE QUANTITY (IDIQ) CONTRACTS FOR
ON-CALL MAINTENANCE & REPAIR SERVICES

Consisting of:
RFP Instructions
Scope of Work
General Terms & Conditions
Proposal Form

Proposals Due	April 12, 2011 at 4:00 p.m.
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1. OVERVIEW

The Housing Authority of the County of Marin (MHA) is requesting proposals to establish annual indefinite delivery indefinite quantity (IDIQ – also called blanket) contracts for maintenance and repair services (including labor, materials and equipment) on an “on call, as-needed” basis for MHA housing units.

This Request for Proposal (RFP) covers Boiler Service, Electrical, Plumbing, Sewer Cleaning, Tree Removal, HVAC and Glazing Services.

2. LOCATIONS

MHA owns and manages the following public housing units in a variety of configurations, throughout the County. The service requirements will vary by location.

Golden Gate Village	300 Apts.	429 Drake Avenue	Marin City
Kruger Pines	56 Apts.	47 North Knoll Road	Mill Valley
Homestead Terrace	28 Apts.	100 Linden Lane	Mill Valley
Venetia Oaks	36 Apts.	263 N. San Pedro Road	San Rafael
Golden Hinde	40 Apts.	5 Golden Hind Blvd.	San Rafael
Casa Nova	40 Apts.	35 Carmel Drive	Novato
Marin Housing Office		4020 Civic Center Drive	San Rafael

3. RFP INSTRUCTIONS

3.1. RFP CONTACT INFORMATION

This RFP is being issued, as well as any addenda by MHA. The contact person for MHA is:

HOUSING AUTHORITY OF THE COUNTY OF MARIN
 Attention: Jeannie Slusher, Purchasing Agent
 4020 Civic Center Drive
 San Rafael, CA 94903
 415-491-2534

Email: jslusher@marinhousing.org

3.2. RFP Submission and format

Proposals must be submitted via hardcopy (mail, parcel, hand delivery) using the enclosed proposals form including required attachments. **Telephone, email or fax responses will not be accepted for this request.**

The envelope must be sealed and include the following notation, “Request for Proposal Maintenance and Repair As-Needed Basis Enclosed.”

Proposal Deadline: Your proposal must be received by mail at the address above NOT LATER THAN 4 PM Tuesday, April 12, 2011. Proposals received after that time will not be accepted.

3.3. RFP Schedule:

Request for Proposal Released	March 24, 2011
Questions Due	April 5, 2011 4:00 p.m.
Posting of Responses for Questions	April 8, 2011
Proposals Due	April 12, 2011 at 4:00 p.m.
Evaluation Process	April 12, 2011 to ~April 21, 2011
Award Contract	May 2011

3.4. CONTACTS AND QUESTIONS: All questions concerning the RFP shall be directed to Jeannie Slusher, Purchasing Agent. You must submit them in writing jslusher@MarinHousing.org no later than April 5, 2011 4:00 p.m.

3.4.1. To avoid all appearances of impropriety proposer should only contact the above referenced staff person and should not attempt to contact any MHA Commissioner or the Executive Director. No oral request for clarification or information will be accepted.

3.5. PRE-BID CONFERENCE: Not scheduled/required.

3.6. BONDING: Bid or performance bonds are not required.

3.7. SELECTION CRITERIA

3.7.1. Minimum acceptable qualifications

The Contractor shall be a full time, commercial specialty contractor. Contractors not meeting this requirement will not be considered. MHA does not consider general contractors as meeting this requirement.

- The Contractor shall possess and maintain a valid State of California contractor's License, Class B or appropriate specialty contractors license.
- Be able to provide services for all the MHA properties listed.
- Not be debarred by the State or Federal Government for participation in contracting with public agencies.
- The Contractor shall provide evidence of existence in business for a minimum of three (3) years.
- The Contractor shall provide references from at least three (3) commercial facilities and/or municipalities for which work has been completed in the past 12 months. References shall be indicated in the proposal form.

3.7.2. Proposal Evaluation

Once proposals have been received, MHA staff will evaluate each proposal meeting the minimum acceptable qualifications with the following criteria:

Pricing	60 points max.
Service capabilities and experience	30 points max
Section 3 Preference: Is your business at least 51% or more owned by "Section 3 Residents"? Or are at least 30% of your permanent employees "Section 3 Residents"? "Section 3 Residents" are "low-income" residents of Marin County. "Low-income" is defined as having a household income of less than 80% of the median income in these counties. Refer to Section 3 RFP Attachment	10 points max

100 points max

3.8. Release of Information: Information submitted in response to this RFP will not be released by MHA during the proposal evaluation process or prior to a contract award. Once contracts have been awarded, release of information will be subject to the California Public Records Act.

3.9. Disputes: Any protest against a solicitation must be received before the due date for receipt of proposals, and any protest against rejection of a proposal or the award of a contract must be received within ten calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to MHA Executive Director, who shall issue a written decision on the matter.

3.10. MHA RESERVATION OF RIGHTS:

- 3.10.1. MHA reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by MHA to be in its best interests.
 - 3.10.2. MHA reserves the right to select more than one respondent, to select a respondent(s) for specific purposes or for any combination of specific purposes, and to defer the selection of any respondent(s) to a time of MHA's choosing.
 - 3.10.3. MHA reserves the right not to award a contract pursuant to this RFP.
 - 3.10.4. Request an oral interview with, and additional information from, companies/individuals prior to final selection of a provider
 - 3.10.5. MHA reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience written notice to the successful bidder(s).
 - 3.10.6. MHA reserves the right to determine the days, hours and locations that the successful bidder(s) shall provide the services called for in this RFP.
 - 3.10.7. MHA reserves the right to retain all bids submitted and not permit withdrawal for a period of 60 days after the deadline for receiving bids.
 - 3.10.8. MHA reserves the right to negotiate the fees proposed by the bidder entity.
 - 3.10.9. MHA reserves the right to reject and not consider any bid that does not meet the requirements of this RFP, including but not necessarily limited to incomplete bids and/or bids offering alternate or non-requested services.
 - 3.10.10. MHA shall have no obligation to compensate any bidder for any costs incurred in responding to this RFP.
 - 3.10.11. MHA shall reserve the right to at any time during the RFP or contract process to prohibit any further participation by a bidder or reject any bid submitted that does not conform to any of the requirements detailed herein. Each prospective bidder is hereby agreeing to abide by all terms and conditions listed within this document. Any exceptions must be clearly noted in the proposal.
 - 3.10.12. INVALID OR ALTERNATE QUOTES: Failure to complete and submit all required information, or to add any additional requirements not acceptable to the MHA, may invalidate the proposal submitted. Furthermore, the MHA shall reserve the right to reject, without consideration, alternate quotes that do not meet the requirements of this RFP.
4. CONTRACT PERIOD: MHA anticipates that it will award contracts for a one (1) year with the option, at MHA's sole discretion, of four additional one-year option periods, for a maximum total of five (5) years.
- 4.1. Price Escalation: At the discretion MHA, at the end of the first one-year contract period (and at the end of any ensuing extended contract period), there may be an escalation of labor costs allowed at the discretion of MHA, at the end of the first one-year contract period (and at the end of any ensuing extended contract period), there may be an escalation of labor costs allowed in the same amount of any escalation that occurs pertaining to the corresponding or most similar (a) Davis-Bacon Wage Rates, or (b) HUD Maintenance Wage Rate Determination (MWRD) for MHA (either used at MHA's discretion).
 - 4.1.1. Contractors must notify MHA, in writing, of such desired escalation at least 60 days prior to the end of the noted contract period(s). Such escalations may occur no more than once in any 12-month period without the express written consent from MHA.
 - 4.2. Contract Maximum Value: The total value of all work performed under a contract, (including any extension of the contract period) issued pursuant to this RFP shall not exceed \$100,000.
 - 4.3. NO GUARANTEE OF WORK: THIS RFP AND ANY CONTRACT AWARDED DOES NOT GUARANTEE CONTRACTOR ANY VOLUME OR DURATION OF WORK.

5. SCOPE OF WORK

MHA requires the following building maintenance and repair services on an on-call basis: Boiler Service, Electrical, Plumbing, Sewer Cleaning, Tree Removal, HVAC and Glazing Services.

If your proposal is accepted, it will establish an hourly rate schedule and/or unit price, material % mark-up, the period under which MHA may place orders with the contractor, the ordering procedures, and the contract terms and conditions that govern the orders.

6. SERVICE REQUIREMENTS

- 6.1. All work is to be performed by qualified personnel according to industry standards, according to the material manufacturers' recommendations and to the satisfaction of MHA.
- 6.2. Routine Service Requirements: Contractor is expected to respond to MHA routine requests for service within 1 business day, unless agreed to otherwise. Contractor must complete routine task orders, weekdays during normal working hours (8:00AM-5:00PM, Monday-Friday), unless agreed to otherwise. Contractor may elect to perform Work outside of the normal working hours but overtime shall only be charged with prior authorization from the MHA Maintenance Manager.
- 6.3. Urgent/Emergency Service Requirements: Contractor shall have an emergency contact available for after hours and weekend work. Contractor is expected to respond no later than 4 hours after being contacted by MHA.
- 6.4. Service personnel shall wear their company uniform or a name badge at all times.

7. ORDERING PROCEDURES

- 7.1. MHA will evaluate each proposal and rank each offer by the type of service according to the evaluation factors in listed above. Primary IDIQ contracts will be established for each type of work with the 1st-ranked contractor in each service category and, at MHA's option, it may award additional contracts as deemed necessary to maintain secondary/back-up contractors.
 - 7.1.1. When MHA has need of work, the Maintenance Manger (or designee) will attempt to contact the 1st-ranked contractor for that category of work to ascertain as to whether or not that contractor is available to do the work within the time-frame MHA requires for that work. If the primary contractor is not available, MHA will contact one of the other contractors with whom it has established a contract.
- 7.2. Task Order: Contractor shall receive a task order from the Maintenance Manager detailing exactly what tasks to perform, property address, time of performance, and the skill levels required to complete the task. Contractor will be expected to have personnel respond to a task order no later than the next work day unless the task order provides otherwise.
 - 7.2.1. MHA will designate personnel authorized to place task orders.
 - 7.2.2. Task orders may be placed verbally, via fax or in writing, at MHA's option.
 - 7.2.3. All correspondence and invoices must reference the task order number
- 7.3. Access to the property and residential units shall be coordinated with the Maintenance Manager. If furnished keys, Contractor will obtain and return keys to the person who issued them on a daily basis.
- 7.4. MHA will discontinue requesting a contractor's services and terminate the contract if the contractor repeatedly fails to respond to service requests.

8. CLEANUP:

As a condition of completion of the work, Contractor shall remove its tools, construction equipment, debris, and waste material from the worksite and leave the area in a clean and orderly condition to MHA's satisfaction. Building surfaces affected by the Work, including glass, shall be left clean.

9. REGULATIONS AND SAFE CONDUCT OF WORK:

Contractor shall plan and conduct the Work to safeguard persons and property from injury. Contractor shall direct the performance of the Work in compliance with reasonable safety and work practices and with applicable federal, state, and local laws, rules, and regulations, including but not limited to "Occupational Safety and Health Standards" promulgated by the U.S. Secretary of Labor and the California Division of Occupational Safety and Health, including the wearing the required personal protective equipment at the worksite. MHA may designate safety precautions in addition to those in use or proposed by Contractor. MHA reserves the right to inspect the Work and to halt construction to ensure compliance with reasonable and safe work practices and with applicable federal, state, and local laws, rules and regulations. Neither the requirement that Contractor follow said practices and applicable laws, rules, and regulations, nor adherence thereto by Contractor, shall relieve Contractor of the sole responsibility to maintain safe and efficient working conditions.

10. WAGE RATE REQUIREMENTS:

10.1. Minimum Maintenance Wage Rate: The currently known work pertaining to this RFP is maintenance-related rather than construction-related. HUD has determined that, for non-construction maintenance work (work not covered by Davis-Bacon requirements), MHA must ensure that contractors pay their employees that perform such work for the MHA not be less than the HUD Determined Maintenance Wage Rate of \$24.45 /hr plus \$7.34 in fringe benefits.

10.2. Davis-Bacon (D/B) Wage Rates: If MHA is required to pay Davis-Bacon wage rates, MHA will then notify the contractor as it applies to that work. If Davis-Bacon wages rates apply to a specific task order, then MHA will compensate the Contractor for the amount that the applicable Davis-Bacon wage rate is greater than the rate the contractor actually pays to each such person performing the work, as verified by payroll records. MHA shall:

10.2.1. Ascertain the applicable portion of the hourly wage rate(s), as listed within the contract that applies.

10.2.2. Ascertain the current applicable Davis-Bacon Wage Rate(s) that applies; Davis-Bacon wages rates may be viewed by online at [http://www.wdol.gov/ Wage Determination- CA30 "Marin County – Residential Construction"](http://www.wdol.gov/Wage%20Determination-CA30%20Marin%20County%20Residential%20Construction). The current General Decision is CA100030 02/18/2011. MHA will provide wage determinations to Contractor if requested.

10.2.3. Ascertain the difference between the two rates, if any, which amount MHA will pay for that task order only.

10.2.4. Contractor must furnish certified payroll records with invoices for work requiring Davis Bacon wages.

10.3. The Davis-Bacon Wage Rate requirement does not apply to sole proprietors.

11. GENERAL TERMS & CONDITIONS (Please note: MHA has no legal right or ability to at any time negotiate any clauses of the HUD forms included as a part of this RFP.)

11.1. GUARANTEES: In addition to the guarantees provided under a contract, or implied in fact or in law, Contractor shall leave the entire project in satisfactory working order and repair or replace at its expense any part of the Work that develops defects due to faulty design, engineering, workmanship, materials, or any failure to comply with or perform in accordance with the requirements of the RFP within a period of one year after the Work is accepted by MHA. Contractor shall promptly repair or replace, at Contractor's expense, other Work, equipment or property damaged as the result of the defects, or as a result of the repairing thereof, and hold MHA harmless from MHA's repair expenses. The warranty period for a repair or replacement shall be one year from the date of acceptance by MHA of the repair or replacement.

11.2. ASSIGNMENT OF PERSONNEL: The MHA shall retain the right to demand and receive a change in personnel assigned by the successful bidder to provide services to the MHA if the MHA believes that such change is in the best interest of the MHA and the completion of the work or provision of the items.

- 11.3. **UNAUTHORIZED SUBCONTRACTING PROHIBITED:** The successful bidder 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 ensuing Task order or contract) without the prior written consent of MHA. Any purported assignment of interest or delegation of duty, without the prior written consent of MHA shall be void and may result in the cancellation of the PO or the contract with MHA.
- 11.4. **MHA 'S OPERATIONS:** It is necessary that MHA maintain its operations without interruption during the progress of the Work; therefore, no unnecessary interference will be permitted. Contractor shall conduct the Work in a manner that will cause a minimum of inconvenience to MHA's employees, residents and the public.
- 11.5. **INVOICES AND PAYMENT**
- 11.5.1. Contractor shall submit correct, itemized invoices computed in accordance with the terms of the Contract for Work satisfactorily completed.
- 11.5.2. Subject to MHA invoice approval, payment term is Net forty-five (45) days after receipt of a correct invoice. MHA may withhold from the payment any agreed withholding until satisfactory completion of all the Work, or which in MHA's reasonable opinion is necessary to provide security against all loss, damage, expense and liability covered by the indemnity provision. MHA will notify Contractor of any invoice deficiencies or will return the invoice to Contractor with the deficiencies noted. Contractor shall provide to MHA such documents or information correcting such deficiencies, or for invoices.
- 11.6. **RISK OF LOSS OR DAMAGE TO WORK:** Until the Work is completed and accepted by MHA , the risk of loss or damage to the Work shall remain with Contractor.
- 11.7. **LICENSING AND INSURANCE REQUIREMENTS:**
- 11.7.1. Prior to award (but not as a part of the proposal submission) Contractor shall procure and maintain insurance 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 the 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) Workers' Compensation (statutory) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
- Refer to Attachment 2 for MHA detailed indemnity & insurance requirements.
- 11.7.2. If requested, Contractor shall furnish a copy of the license issued by the State of California licensing authority allowing the bidder to provide the services detailed herein.
- 11.8. **SECTION 3 REQUIREMENTS (12 U.S.C. 1701u) (24 CFR Part 135)**
- Section 3 of the Housing and Urban Development Act of 1968 requires Marin Housing Authority to direct a portion of its spending toward low-income persons living in the communities it serves. One way MHA achieves this goal is by awarding contracts to businesses that have made a commitment to providing opportunities to low-income persons in Marin County.
- Contractor's must include the Section 3 Labor Plan & Subcontracting Plan with their proposals and agree to abide by the following terms:
- 11.8.1. 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.

- 11.8.2. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implements 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.
 - 11.8.3. 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 of job titles subject to hire, availability of apprenticeship and training positions, the qualifications of 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.
 - 11.8.4. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and 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.
 - 11.8.5. The contractor will certify that any vacant employment position, 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.
 - 11.8.6. 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.
 - 11.8.7. 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 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).
12. ATTACHMENTS: Documents that apply to this RFP and are attached hereto:
- 12.1. Attachment 1: Proposal Form
 - 12.2. Attachment 2: MHA Indemnification & Insurance Requirements
 - 12.3. Attachment 3: HUD 5369 C - Certifications and Representations of Offerors Non-Construction Contracts
 - 12.4. Attachment 4: HUD form 5370-C Sections I & II "General Conditions for Non-construction Contracts"
 - 12.5. Attachment 5: Section 3 Information Package

ATTACHMENT 1

Submitted by: _____

**PROPOSAL
REQUEST FOR PROPOSAL FOR
ON-CALL MAINTENANCE & REPAIR SERVICES**

The Housing Authority of the County of Marin
Attention: Jeannie Slusher
4020 Civic Center Drive
San Rafael, CA 94903

Having carefully examined RFP MHA-001-2011 for on-call maintenance and repair services at various locations in Marin County, the undersigned agrees to enter into a contract to perform all work set forth in and in accordance with the RFP, and to accept as full payment for said Work, compensation set forth for the various items on the pricing schedule. It is understood that all prices and rates are firm, unless noted otherwise, for the duration of the contract.

1: PRICING SCHEDULE

A. Hourly Labor Billing Rates: The following services shall be performed at an hourly billing rate. Please enter billing rates only for those items of work for which your firm is qualified.

Item	Service Type	Hourly Billing Rate ¹		
		Standard Rate ²	Overtime Rate ³	Premium Rate ⁴
1	Plumbing	\$	\$	\$
2	Sewer Cleaning	\$	\$	\$
3	Boiler Service	\$	\$	\$
4	Electrical	\$	\$	\$
5	Glazing	\$	\$	\$
6	HVAC	\$	\$	\$
7	Tree Removal	\$	\$	\$

1. Hourly billing rates shall include hand & portable power tools, consumable materials, overhead, profit, travel and all administrative costs. Trip charges are not permitted under this contract.
2. Standard Rate - Work performed during MHA regular working Monday-Friday 8am-5pm (exc. Holidays)
3. Overtime Rate – Work performed after 5pm & Saturday.
4. Premium Rate – Work on Sundays & Holidays.

1. If you have a minimum number of hours charged per service call, please indicate here: _____.
2. If you require more than one person to perform the work, please state your minimum crew size: _____.

Submitted by: _____

B. Mark-up for materials and equipment rentals

Materials and rented equipment shall be furnished at the contractor's cost plus a mark-up of _____%.

This fee shall include the cost of picking up the supplies/equipment at the source of supply and delivering such to the work site and all costs shall be F.O.B. MHA site.

C. Rates for Major Vendor-owned Equipment (optional):

List the types and rates for major vendor-owned tools or equipment that may be required in the performance of the work, e.g. backhoe, bucket truck, etc. but are not included in the hourly billing rate.

Equipment Description	Hourly	Daily
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

Rates include transportation to and from the job site.

Rates are for fully maintained equipment without an operator.

Daily rates apply when the sum of the hourly rate exceeds the daily rate.

Remainder of Page Intentionally Blank

Submitted by: _____

2: Contractor's statement of experience

Legal Business Name	
DBA (if used)	
Mailing Address	
Physical Address (if different)	
Phone	
FAX	
Email	
Legal Structure	Sole Proprietor ___ Partnership ___ Corp. ___ LLC ___ JV ___
Years in business under this name	
Trade Specialty & License #	CA License #:
License Issue & Expiration Dates	
Responsible Managing Officer	
Bonding Capacity	
Worker' Comp. Experience Mod Rate	

3. Number of staff in your firm qualified to perform the services in your proposal? _____
4. How many service vehicles are available for the quoted service? _____
5. What is you average response time for routine service calls? _____
6. Do you offer 24/7 emergency service? Yes ___ No ___
7. Has the business or contractor's license of your firm, or any firm with which your company's Principal was associated ever been suspended or revoked? Yes ___ No ___
8. Has your firm, or any firm with which your company's Principal was associated, ever had any performance bond surety company need to complete or arrange for completion (take-over) of any contract originally awarded to your company? Yes ___ No ___
9. Has your firm been disqualified, removed, or otherwise declared in material breach or default of any public works contract by a public agency; or debarred from participating in bidding for any public works contracts? Yes ___ No ___
10. Do you pay at least the federal prevailing wage? Yes ___ No ___
11. Can you provide certified payroll records? Yes ___ No ___
12. Does your firm qualify as a Section 3 Business (refer to RFP – Attachment 5)? Yes ___ No ___
13. References: Please list at three references that MHA may contact for work, within the last 12 months, similar to that covered by this RFP.

Company _____
City, ST _____
Phone Number _____
Contact Name/Title _____
Type of work/contract _____

Submitted by: _____

References continued:

Company	_____
City, ST	_____
Phone Number	_____
Contact Name/Title	_____
Type of work/contract	_____

Company	_____
City, ST,	_____
Phone Number	_____
Contact Name/Title	_____
Type of work/contract	_____

Do you take any exceptions to the terms and conditions to this RFP? Yes___ No___

If "yes" Please attached a separate page titled "Exceptions to the RFP" stating the specific paragraphs and why you are taking exception.

3. CERTIFICATION

The undersigned certifies and represents that he or she is duly authorized to sign this proposal on behalf of the business, has examined and is familiar with the RFP and the attachments listed therein, has checked each figure shown, and understands that MHA will not be responsible for any errors or omissions in preparing this Proposal.

The undersigned further agrees, that if awarded the work, will perform all the Work diligently and in accordance with the RFP documents, and will fully complete the Work within the time schedule specified therein.

This proposal shall be valid for acceptance by MHA for 60 days.

Proposal submitted
by:

(signature) Date

Printed Name

TITLE

Name of Firm

The following additional information and forms are attached to this proposal:

1. HUD 5369 C - Certifications and Representations of Offerors Non-Construction Contracts
2. Section 3 Subcontracting Plan
3. Section 3 Labor & Apprenticeship Plan

END OF PROPOSAL

SECTION 3 COVERED PROJECT
SUBCONTRACTING PLAN

Primary Contractor: _____

Sub-Contractor (if applicable): _____

Completed By: _____ Title: _____ Date: _____

RFP/Q Number: _____ Project Name/Title: _____

Instructions:

If completing plan at bid or Notice to Proceed – list all anticipated subcontracts to be awarded in completion of the covered contract. If completing at 50% or contract close – list only current or closed subcontracts. Subcontracts for materials only should not be listed unless installation is included in the contract.

Name of Firm/Vendor	Service Being Provided	Dollar Amount (\$)	Section 3 (Y or N)

ATTACHMENT 2

Attachment 2
MHA Indemnity & Insurance Requirements

INDEMNIFICATION

Contractor shall indemnify, defend, and hold harmless MHA, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and attorney fees (including, without limitation, costs, attorney fees, expert witness fees, and other expenses of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder, or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of MHA.

Contractor 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 or failure to perform the work hereunder by the Contractor, its agents, representatives, employees or sub-contractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability Code 1 (*any auto*),
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

Contractor 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 the 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. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the MHA. At the option of the MHA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the MHA, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the MHA guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

OTHER INSURANCE PROVISIONS

The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The MHA, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations and with respect to liability arising out of work or operations performed by the Contractor; or arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an appropriate endorsement to the Contractor's insurance or as a separate Owner's policy.
2. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the MHA, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the MHA, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the MHA.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Contractor.

Attachment 2
MHA Indemnity & Insurance Requirements

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Bidders must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Contractor shall furnish the MHA with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the MHA in sufficient time before work commences to permit Contractor to remedy any deficiencies. The MHA 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.

The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to:

Marin Housing Authority
Attention: Richard Blanton
4020 Civic Center Drive
San Rafael CA 94903

SUB-CONTRACTORS

Use of sub-contractors must be pre-approved by the MHA. Contractor shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the MHA to approve them before sub-contractors' work begins. All coverages for sub-contractors shall be subject to all of the requirements stated above.

NOTE: The General Contractor's Commercial General Liability insurance should not include CG 2294 or CG 2295 as these endorsements will eliminate the General Contractor's insurance coverage for its work where the damaged work or the work out of which the damage arises was performed by a sub-contractor.

Notwithstanding this provision, Contractor shall indemnify the MHA for any claims resulting from the performance or non-performance of the Contractor's sub-contractors and/or their failure to be properly insured.

ATTACHMENT 3

Certifications and Representations of Offerors

Non-Construction Contract

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

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

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

1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

3. Certificate of Independent Price Determination

(a) The bidder/offers certifies that—

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

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

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

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor's objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

ATTACHMENT 4

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

Applicability. This form HUD-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

- (d) 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.

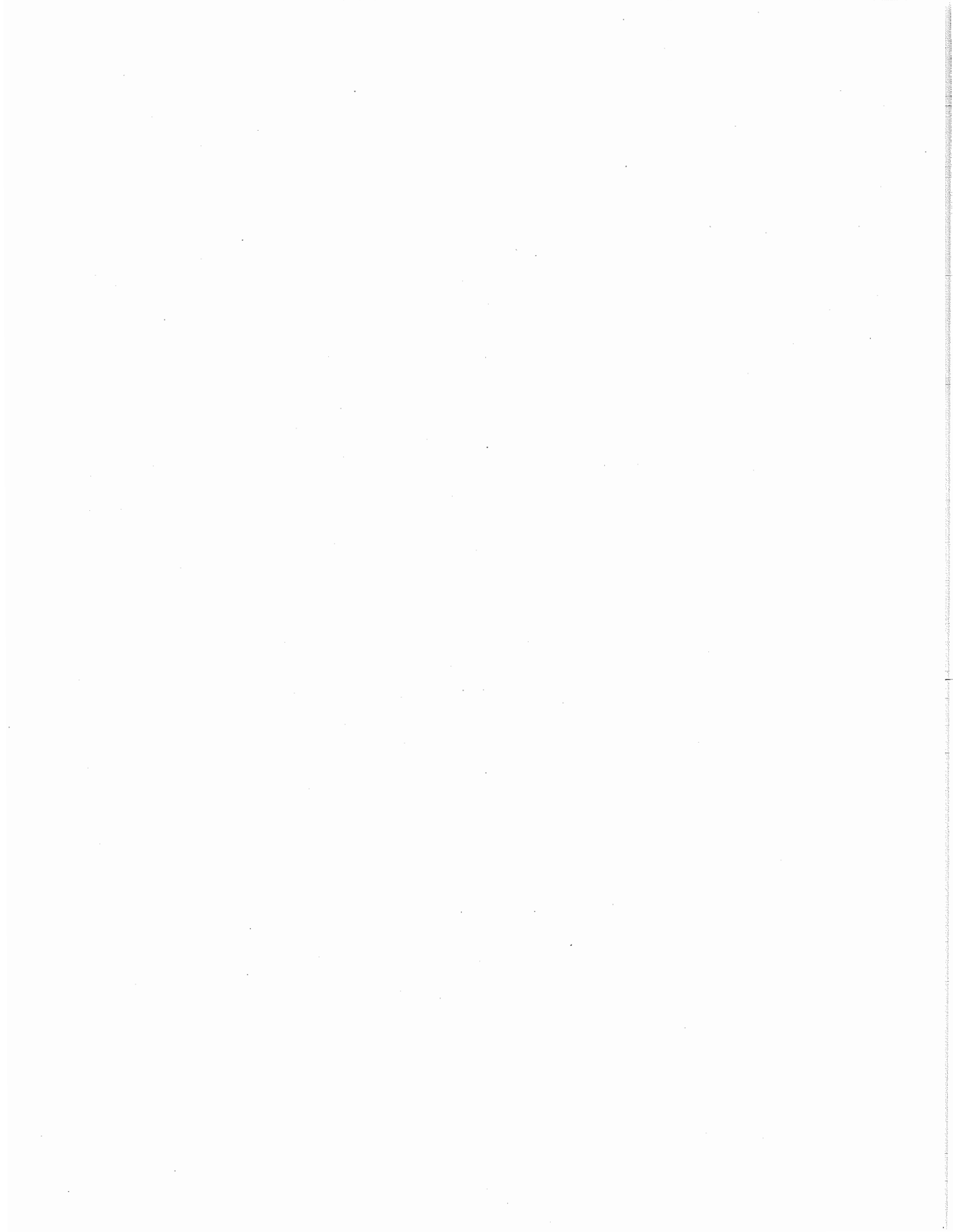
"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with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

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

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

22. Procurement of Recovered Materials

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

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

- 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.

2. Withholding of funds

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

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

1. Minimum Wages

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

3. Records

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

4. Apprentices and Trainees

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

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

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

(iii) A training/trainee program that has received prior approval by HUD.

(b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.

(c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.

(d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

(e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

(a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).

(i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

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

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

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

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

6. Contract Work Hours and Safety Standards Act

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

(a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

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

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

7. Subcontracts

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

8. Non-Federal Prevailing Wage Rates

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

ATTACHMENT 5



Section 3 Business Information Packet

Section 3 – Economic opportunities for low-income persons.

11/02/2010

SECTION 3 FREQUENTLY ASKED QUESTIONS

What is Section 3?

Section 3 of the Housing and Urban Development Act of 1968 requires Marin Housing Authority to direct a portion of its spending toward low-income persons living in the communities it serves. One way Marin Housing Authority (MHA) achieves this goal is by awarding contracts to businesses that have made a commitment to providing opportunities to low-income persons in Marin County.

Who is a Section 3 Resident?

For purposes of Marin Housing Authority, a Section 3 Resident is either:

1. A Marin Housing Authority public housing resident;
- OR
2. A Marin County resident with household income at or below the following income guidelines.

Marin County 2010 Median Household Income Limits							
Household Size	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person
<u>Low (80%) Income Limits</u>	\$60,200	\$68,800	\$77,400	\$86,000	\$92,900	\$99,800	\$106,650

What is a Section 3 Business?

There are three ways in which a business can achieve Section 3 status:

Status 1: Resident Owned Business

Fifty-one percent (51%) or more owned by a Section 3 Resident (either public housing resident or low-income Marin County resident).

Status 2: Resident Employed Business

Thirty percent (30%) of permanent, full-time employees are Section 3 Residents (either public housing residents or low-income Marin County residents).

Status 3: Subcontracting to Section 3 Businesses

Twenty-five percent (25%) of the dollar amount of the awarded contract must be subcontracted to Section 3 Businesses. This option is only available to Primary Contractors.

How does MHA define “new hire”?

MHA considers a contractor’s current workforce to be employees that appear on the contractor’s active payroll for at least 60 of the 100 working days prior to the award of the Section 3 covered contract. Any employee that is hired for work under the covered contract and has not appeared on the contractor’s active payroll for 60 days or more of the 100 working days prior to awarding the covered contract is considered a new hire.

How does MHA define “permanent” and “full-time” employee?

In order to be considered **permanent**, an employee must be:

- A direct employee of the company wishing to achieve Section 3 Business status, and
- Filing a position that is intended to last for the duration of the Section 3 covered project.

While MHA understands that it is difficult to predict how long an employee will remain in a given position, it should be the intention of the company to keep the employee for the duration of the covered project. If, in an audit, it is found that a Section 3 Resident was counted as a permanent employee but let go prior to the completion of the covered project, additional documentation may be required regarding the permanent nature of the position.

In order to be considered **full-time**, an employee must work a minimum of 32 hours per week.

What are my Section 3 requirements as an MHA Contractor?

All MHA contractors and subcontractors on Section 3 covered projects are required to meet the following hiring and contracting goals:

- 30% of all new hires for the covered project must be Section 3 Residents,
- 10% of all building trades subcontracts must be to Section 3 Businesses, and
- 3% of all other subcontracts (excluding materials only contracts) must be to Section 3 Businesses.

What is the difference between a contractor complying with Section 3 regulatory requirements verses a contractor being a Section 3 Business?

In order to **comply with Section 3 regulations** every contractor or subcontractor on a Section 3 covered project must meet the minimum numerical goals listed above regardless of whether they qualify as a Section 3 Business. In order to qualify as a **Section 3 Business** and receive the preferences available to Section 3 Businesses, your company must be **one** of the following:

- **Status 1: Resident Owned Business** – Fifty-one percent (51%) or more owned by a Section 3 Resident (either public housing resident or low-income Marin County resident).
- **Status 2: Resident Employed Business** – Thirty percent (30%) of permanent, full-time employees are Section 3 Residents (either public housing residents or low-income Marin County residents).
- **Status 3: Subcontracting to Section 3 Businesses** – Twenty-five percent (25%) of the dollar amount of the awarded contract must be subcontracted to Section 3 Businesses. This option is only available to Primary Contractors.

What preferences are available for contractors or subcontractors that meet Section 3 Business status?

If your company meets the definition of a Section 3 Business or makes a commitment to meeting the definition in the completion of the covered contract, you will be eligible for preference in the award of the contract. The type of preference available depends on the type of procurement process required. Every MHA Section 3 covered request for proposal, bid, or quote will include the Section 3 Business preference available and the weight of that preference in the selection process. If you are a subcontractor of an MHA primary contractor, any preference provided for Section 3 Businesses in awarding subcontracts will be handled by the primary contractor. Please contact the primary contractor for their Section 3 Business preference information.

What is a MHA primary contractor?

A MHA primary contractor is any business that has a contract directly with MHA. If a primary contractor awards subcontracts under a Section 3 covered project, the primary contractor must include the Section 3 Clause in all covered subcontracts. It must hold its subcontractors to the same contractor compliance requirements the primary contractor must meet. It is also responsible for gathering and maintaining documentation regard its subcontractors' Section 3 compliance and Section 3 Business status.

Can subcontractors of primary contractors meet Section 3 Business status by Status #3: Subcontracting?

No, the regulations do not allow for subcontractors to meet Section 3 Business status by additional subcontracting. Subcontractors of MHA primary contractors can only be Section 3 Businesses by Status 1: Resident Owned or

Status 2: Resident Employed. However, if a subcontractor chooses to subcontract any portion of their Section 3 covered contract, the secondary subcontractor must meet the Section 3 compliance requirements:

- 30% of all new hires for the covered project must be Section 3 Residents,
- 10% of all building trades subcontracts must be to Section 3 Businesses, and
- 3% of all other subcontracts (excluding materials only contracts) must be to Section 3 Businesses.

How long do Section 3 documents need to be stored?

Documents relating to Section 3 status unless otherwise indicated must be stored and made available for Section 3 audits for at least 5 years from the close of the contract to which they apply.

How do I find Section 3 employees?

MCCDC – MHA has partnered with the Marin City Community Development Corporation (MCCDC) to provide a central location for community members to find out about job openings on MHA projects and for MHA contractors to get referrals of qualified job seekers that are Section 3 eligible. If you would like to utilize MCCDC, contact Drew Douglass, Enterprise Development Director, at (415) 339-2843.

Marin Employment Connection – MEC offers a wide range of services to both job seekers and employers. You can do on-site recruitment as well as free job posting. For more information about the services offered, contact MEC Business Services Information Line at (415) 507-2100.

Canal Alliance – Canal Alliance is a social service agency located in the Canal district of San Rafael. They offer a wide range of job search and support services to Marin residents. If you wish to post a job opening, you can contact Bob Jackson, Economic Development Director, at (415) 306-0438.

CAM's Marin Job's and Career Services – Community Action Marin (CAM) offers training, job placement, and job retention services through its Marin Job's and Career Services. You can post job opening and get referrals of qualified candidates. The program works with many formerly incarcerated job seekers, so please include in your posting any minimum requirements with regard to criminal convictions. For more information, contact Josie Dea at (415) 526-7542.

What if I can't find qualified Section 3 Residents using the resources above?

It is the responsibility of the contractor and subcontractor to meet the Section 3 Resident hiring requirements of their contract. If the resources listed above are not helpful, you may need to broaden your search by placing ads with online services such as Craigslist or in local newspapers.

How can I get additional support?

If you have questions not answered in this packet or need additional support in meeting your Section 3 compliance requirements, you may contact Rachel Trares, Compliance Officer for Grants and Contracts, at 415-491-2350 or rtrares@marinhousing.org.

**SECTION 3 COVERED PROJECT
SUBCONTRACTING PLAN**

Primary Contractor: _____

Sub-Contractor (if applicable): _____

Completed By: _____ Title: _____ Date: _____

RFP/Q Number: _____ Project Name/Title: _____

Instructions:

If completing plan at bid or Notice to Proceed – list all anticipated subcontracts to be awarded in completion of the covered contract. If completing at 50% or contract close – list only current or closed subcontracts. Subcontracts for materials only should not be listed unless installation is included in the contract.

Name of Firm/Vendor	Service Being Provided	Dollar Amount (\$)	Section 3 (Y or N)

SECTION 3 BUSINESS SELF-CERTIFICATION

Name of Business: _____

Address of Business: _____
(Street) (City) (Zip)

Contact Person: _____ Phone: _____

Please check the box next to the appropriate status type of your Section 3 Business.

Note: Below each status type is a list of **documents required as evidence of your Section 3 eligibility**. MHA or its contractors must receive all required documents before your business can receive any preference based on your Section 3 Business status.

STATUS 1: RESIDENT OWNED BUSINESS

Fifty-one percent (51%) or more owned by a Section 3 Resident (either public housing resident or low-income Marin County resident)

Attached Documentation Required:

For sole proprietor:

- Completed Section 3 Resident Self-Certification form

Additional documents for other business types:

- Copy of Articles of Incorporation, partnership agreement, or corporation annual report

STATUS 2: RESIDENT EMPLOYED BUSINESS

Thirty percent (30%) of full-time, permanent employees are Section 3 Residents (either public housing residents or low-income Marin County residents).

Attached Documentation Required:

- Completed Labor Plan form, and
- Completed Section 3 Resident Self-Certification forms for all employees claimed as Section 3 Residents

STATUS 3: SUBCONTRACTING TO SECTION 3 BUSINESSES

Twenty-five percent (25%) of the dollar amount of the awarded contract is subcontracted to Section 3 Business who qualified as Status 1 or Status 2. **Note:** This type of Section 3 Business status is only available to contractor's that contract directly with MHA. It is not available to subcontractors of a MHA primary contractor.

Attached Documentation Required:

- Completed Subcontracting Plan form, and
- Section 3 Business Self-Certification form for each subcontractor claiming Section 3 status

SECTION 3 CERTIFICATION STATEMENT

By signing below, I certify that:

- I am an authorized representative of the company named above,
- The company named above meets the requirements of the Section 3 status checked,
- I understand that the documents required as evidence of Section 3 status must be kept for at least 5 years from the date of closure of the contract for which they apply,
- I understand that noncompliance with HUD's regulations in 24 CFR part 135 (known as Section 3) may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

SIGNATURE

PRINT NAME

DATE

SECTION 3 RESIDENT CERTIFICATION

Name: _____ Phone: _____

Home Address: _____

Purpose of Section 3

Section 3 of the Housing and Urban Development Act of 1968, requires that Marin Housing Authority ensure employment and other economic and business opportunities generated by the Department of Housing and Urban Development (HUD) financial assistance, to the greatest extent feasible, are directed to low-income persons, particularly recipients of government housing assistance, in Marin County.

A Section 3 Resident is:

1. A Marin Housing Authority public housing resident; **Or**
2. An individual or family who lives in Marin County and whose income is at or below the following low-income guidelines set by HUD.

Marin County Median Household Income Schedule (FY 2010)							
Household Size	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person
<u>Low (80%) Income Limits</u>	\$60,200	\$68,800	\$77,400	\$86,000	\$92,900	\$99,800	\$106,650

Statement of Certification

I, _____, certify that I have reviewed the Section 3 qualifications listed above and am eligible for Section 3 status because (check one):

I am a Marin Housing Authority public housing resident; **Or**

I am a Marin County resident with household income below the amount listed above.

I understand that if requested, I must provide evidence of my eligibility by producing my most recent tax return and residential lease or mortgage statement in place at the date of signing this certification.

If you are unable to provide evidence of Section 3 eligibility, DO NOT SIGN BELOW. Penalties for falsely certifying Section 3 eligibility or being unable to provide evidence when requested may include termination of employment.

Signature: _____ Date: _____

I have read the definition of a Section 3 Resident and it does not apply to me.

Signature: _____ Date: _____