



RFP Number: P-004137

Date of Issuance: October 3, 2011

Proposal Due Date: November 1, 2011 (11:00 A.M.)

To Prospective Offerors:

The Philadelphia Housing Authority (“PHA” or the “Authority”) is hereby requesting proposals for:

SALE AND DEVELOPMENT OF THE LIDDONFIELD SITE

The Philadelphia Housing Authority (PHA) is organized under the laws of the Commonwealth of Pennsylvania to develop, acquire, lease and operate affordable housing for low-income individuals. PHA is the largest housing agency in the Commonwealth and the fourth largest in the United States. The Authority has approximately 81,000 residents in 34 conventional developments and about 5,500 scattered site units. Additionally, PHA currently administers over 16,000 Housing Choice Vouchers. PHA has an annual budget of approximately \$371 million, which is primarily funded by the U.S. Department of Housing and Urban Development (HUD).

On March 4, 2011, PHA entered into a voluntary Cooperative Endeavor Agreement (CEA) with HUD. The CEA names Michael P. Kelly as the Administrative Receiver/Executive Director and Estelle Richman, the HUD Chief of Operations, as the PHA Board of Commissioners. The purpose of the CEA is to facilitate cooperation and coordination between the HUD receiver team and the local municipal government during the term of the receivership. This agreement essentially transfers possession of the PHA’s assets, projects and programs to HUD to improve the general administration of PHA. The term of the CEA is for approximately one year from the date of execution.

This procurement is being implemented in accordance with the CEA. It shall be subject to the approval of the HUD representative acting for the Board of Commissioners as required by the CEA and the requirements of PHA’s Controlled Policy and Procedure Issuance No. 10, Procurement Policy.

Offerors must submit one original and six (6) copies of their proposal, including the required proposal forms, as well as an electronic copy (on one or more CDs) in Microsoft Excel, Microsoft Word, and/or Portable Document Format (PDF) formats, and the proposal shall be based upon and in conformity with this Request for Proposal. The proposal shall be enclosed in an envelope, which shall be sealed and clearly labeled with the name of the offeror, the RFP number, and the proposal due date. Proposals must be received by PHA Contracts Department at 3100 Penrose Ferry Road, Philadelphia, PA 19145, no later than 11:00 A.M. on the proposal due date indicated above. Late proposals will not be considered. Photo identification is required for entrance into our facility. **Proposals sent via email will not be accepted.**

Requests for additional information should be directed to Vanessa Martin, Contract Specialist Philadelphia Housing Authority, 3100 Penrose Ferry Road, Philadelphia, PA 19145, e-mail; vanessa.martin@pha.phila.gov, Fax (215) 684-1213. Note that inquiries received later than seven (7) days before receipt of proposals may not receive a response.

Michael P. Kelly
Administrative Receiver

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A. INSTRUCTIONS TO OFFERORS

1. Preparation of Offers

- (a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.
- (b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to PHA.
- (c) Offers for services other than those specified will not be considered.
- (d) If this solicitation requires proposing on all items, failure to do so will result in the proposal being rejected. If proposing on all items is not required, proposers should insert the words "NO PROPOSAL" in the space provided for any item for which no price is submitted.

2. Amendments to Solicitations

- (a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (b) Offerors shall acknowledge receipt of any amendments to this solicitation by (1) signing and returning the amendment; (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer; (3) letter or telegram, or (4) facsimile, if facsimile offers are authorized in the solicitation. PHA must receive the acknowledgement by the time specified for receipt of offers.

3. Explanation to Prospective Offerors

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

4. Responsibility of Prospective Contractor

- (a) PHA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -
 - (i) Have adequate financial resources to perform the Contract, or the ability to obtain them;
 - (ii) Have a satisfactory performance record;
 - (iii) Have a satisfactory record of integrity and business ethics;
 - (iv) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
 - (v) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the PHA/HUD.
- (b) Before an offer is considered for award, the offeror may be requested by PHA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

5. Late Submissions, Modifications, and Withdrawal of Offers

- (a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -
 - (i) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
 - (ii) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA that the late receipt was due solely to mishandling by PHA after receipt at PHA;

- (iii) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term “working days” excludes weekends and U.S. Federal holidays; or
 - (iv) Is the only offer received.
- (b) Any modification of an offer, except a modification resulting from PHA’s request for “best and final” offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.
- (c) A modification resulting from PHA’s request for “best and final” offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by PHA after receipt at PHA.
- (d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull’s-eye postmark on both the receipt and the envelope or wrapper.
- (e) The only acceptable evidence to establish the time of receipt at PHA is the time/date stamp of PHA on the offer wrapper or other documentary evidence of receipt maintained by PHA.
- (f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the “Express Mail Next Day Service-Post Office to Addressee” label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. “Postmark” has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull’s-eye postmark on both the receipt and the envelope or wrapper.

- (g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to PHA will be considered at any time it is received and may be accepted.
- (h) Proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by an offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award.

6. Contract Award

- (a) PHA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to PHA, cost or price and other factors, specified elsewhere in this solicitation, considered.
- (b) PHA may (1) reject any or all offers if such action is in PHA's interest, (2) accept other than the lowest offer, (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.
- (c) PHA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.
- (d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, PHA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by PHA.
- (e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

7. Service of Protest

- (a) Any protest against the award of a contract pursuant to this solicitation shall be served on PHA by obtaining written and dated acknowledgement of receipt from PHA at PHA Contracts Department, 3100 Penrose Ferry Road, Philadelphia, PA 19145. The determination of PHA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protester.
- (b) An actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Protests based on the contents of the solicitation must be submitted prior to the date and time for receipt of proposals. Protests based on contract award must be made within seven days after the protestor knows or should have known the facts giving rise to the protest.
- (c) All protests shall be resolved in accordance with PHA's protest policy and procedures, copies of which are maintained at PHA.

8. Offer Submission

- (a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to PHA Contracts Department, 3100 Penrose Ferry Road, Philadelphia, PA 19145, and (2) showing (on the face of the envelope) the time specified for receipt, the solicitation number, and the name and address of the offeror. One original and six (6) copies of the Offer and modifications, including the required proposal forms, shall be submitted, as well as an electronic copy (on one or more CDs) in Microsoft Excel, Microsoft Word, and/or Portable Document Format (PDF) formats.
- (b) Telegraphic, e-mail, or facsimile offers, modifications, or withdrawals will not be considered unless authorized by the solicitation.
- (c) It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

(d) To be considered for award, offers must include the following:

- Proposal Form (Section H)
- Technical Proposal (Per SOW)
- Certifications and Representations (Section I)
- Affirmative Action Forms (Section J) (if submitted)
- Section Three Program (Section K) (if submitted)
- Proposal Security (if required)
- Electronic copy

9. Pre-Proposal Conference

A mandatory non-mandatory pre-proposal conference/meeting will be held at **1:00 p.m. on October 18, 2011 at PHA, Contracts Department, 3100 Penrose Ferry Road, Philadelphia, PA 19145.**

No proposed form of contract is available in connection with this RFP because PHA intends to execute a Letter of Intent (LOI) and subsequently an Agreement of Sale with the successful Respondent.

Statement of Work
for
Sale and Development of the Liddonfield Site

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Part I: General Background Information

PHA is soliciting proposals for the sale and development of the Liddonfield ("Site") - either a portion of the Site or the entire Site. PHA is open to various proposal structures, including residential, retail, recreational, commercial and/or mixed use.

The Site is located in the Northeast area of the City of Philadelphia and is approximately 32.1 acres bounded by Torresdale Avenue, Megargee, Cottage and Tolbut Streets. The property is accessible from I-95 North via the Academy Road exit.

The Liddonfield Homes development was comprised of two phases: Liddonfield Homes I, which was developed by the Philadelphia Housing Authority (PHA) as public housing in 1955; and Liddonfield Homes II, which was developed in 1968 as senior public housing. The Site contained a total of 464 units, consisting of 412 row house units housed in 52 two (2)-story concrete slab frame structures and 52 flats housed in six (6) – two (2)-story block and wood frame structures. In addition, the Site contained community, management and maintenance facilities.

As of April 15, 2011 all buildings have been demolished including foundation removal, underground utilities removal and utility services capped at the property line. PHA abated and removed all known asbestos and removed underground storage tanks. However, PHA does not warrant that there may not be any underground obstructions or environmental issues encountered.

Part II: The Liddonfield Site

A. Site Description

The Site is located on approximately 32.2-acre parcel which is bounded by Torresdale Avenue, Megargee, Cottage and Tolbut Streets, and is accessible from Interstate 95 North via the Academy Road exit. A plan depicting the current site is attached to this Solicitation as **Attachment A**.

B. Proximity to Transportation

The Site is located approximately 30 minutes from Center City, Philadelphia and readily accessible to public bus routes and SEPTA R-7 line.

C. Area Description

The Site is conveniently located in the Torresdale residential section of Philadelphia. A large shopping area is located on Frankford Avenue to the west of the Site and a mixed-use warehouse district lies to the east. Rowhouse communities border the Site on the north and south. There are several playgrounds and the Fairmount Park Pennypack Creek recreation is nearby.

D. Environmental Conditions

Any necessary hazard reduction efforts must be conducted in accordance with all applicable federal, state and local regulations. It will be the responsibility of the successful respondent to address environmental compliance. A Phase I Environmental Site Assessment was conducted prior to site

demolition and is available for Offeror review upon request. A limited soils assessment was conducted post-demolition as is attached as **Attachment B**. There has been no Phase II or follow up environmental assessment subsequent to demolition and removal of the underground tanks. The Developer or Development Partner shall be responsible for any and all additional required environmental remediation

E. Zoning

The Site is currently zoned R-11A Low Density Multifamily Residential. The PHA will use reasonable efforts to act as an advocate for the selected project and will assist the successful respondent in obtaining necessary public approvals such as securing any necessary zoning.

Part III: Scope of Services (Intent and Purpose)

The Site is available for sale and development pursuant to the two scenarios outlined below. **A deed restriction will require the Developer to improve the Site in accordance with an approved development plan and schedule.** On the basis of the proposals submitted in response to this Request for Proposals (RFP), PHA expects to designate a Developer(s) or Development Partner that will purchase and build a high quality retail/commercial, recreational, market-rate and/or affordable residential or mixed-use commercial development project.

A. Sale Scenarios

Proposals for the purchase of the Site should be based upon one or more of the scenarios outlined below. Respondents may include a proposal for any or all of the scenarios or the options within each scenario. Respondents should complete the pricing sheet (page H-1) wherein they should include the proposed purchase price to be paid by the Respondent under each scenario and option. Such price must be payable in cash, United States currency and expressed as an absolute dollar figure. In addition, all contingencies relating to the purchase of the Site must be clearly identified.

1. Scenario 1: Purchase Parcel for Development

Scenario 1 requires the selected respondent to be responsible to develop the property in accordance with Option A or Option B. Options A and B involve subdivision of the site into two parcels with the subsequent conveyance of both parcels to the Developer(s). Subdivision would be the responsibility of the Developer(s).

▪ Option A:

The Site would be subdivided into East and West parcels as defined below with separate developers for each parcel.

East Parcel - bounded by the 8800 block of Torresdale Avenue to the East (approximately 1000 ft.), the center of the drainage easement along the stricken 8800 block of Jackson Street to the East, the southern property line of the properties located on the 4500-4700 blocks of Tolbut Street to the North and the 4500-4700 blocks of Megargee Street on the South (approximately 1000 ft.). The East Parcel is approximately 20 acres (the "East Parcel"). This parcel is for recreational /athletic uses.

West Parcel - bounded by the 8800 block of Cottage Street to the East (approximately 1000 ft.), the center of the drainage easement along the stricken 8800 block of Jackson Street to the West, the southern property line of the properties located on the 4400 block of Tolbut

Street to the North and the 4400 block of Megargee Street to the South (approximately 350 ft.). The West Parcel is approximately 12 acres (the "West Parcel"). This parcel is for residential development with preference for senior housing and/or mixed-income development.

- **Option B:**

Developer purchases the entire site and redevelops in accordance with Option A above.

2. Scenario 2: Purchase Entire Parcel for Development - Developer Proposal

PHA is open to consider additional alternative scenarios as proposed by respondents.

Part IV: Submission Requirements and Guidelines

Proposal Submission: Each Proposer must submit one **(1) complete, signed original (unbound)** and six **(6) copies and one (1) CD-RW** containing the entire proposal package. Proposals must be submitted in a sealed envelope clearly marked Solicitation Number P-004137 – "Sale and Development of the Liddonfield Site".

Proposal Contents and Format: Each proposal must include sufficient information to allow PHA to verify all of the Proposer's claims of meeting the RFP requirements. All Proposers shall submit the information in the following order:

Section	Title
A	Letter of Interest
B	Development Team Description
C	Development Plan
D	Financial Plan and Budget
E	Development Schedule
F	Additional Data and Attachments
G	Section H – Proposal Form
H	Certifications and Representations of Offerors (Section I)
I	MBE/WBE and Section 3 Plan (Section J & K)

A. Letter of Interest

Provide a letter of interest listing the Developer members and identifying the primary contact person. The letter must be signed by an authorized principal of the Developer's firm and include a statement that the proposal will remain valid for not less than one hundred eighty (180) days from the proposal due date.

B. Development Team Description

As per the evaluation criteria stated on page G-1, emphasis shall be placed on developers or development teams that demonstrate sufficient financial resources to construct and complete the project and sufficient experience to successfully manage and/or market the project. Each proposal must include, to the extent possible, a detailed description of the development team, including:

1. Name, address and telephone number of all members of the prospective development team (to the extent such members have been selected at this preliminary stage) including developer, architect, engineers, general contractors, construction manager, attorney, and any other person(s) or entities intended to operate or manage the proposed development.
2. Background information on all members of the development team, including the relevant experience of all principal members of the development team. Background information should reference specific

experience in planning, building, financing, marketing and operating developments comparable to that which is proposed. This information must be submitted for every participating entity in a joint venture. The form and structure of any proposed partnership or joint venture must be clearly defined.

3. Written credit references from senior bank officers for each development entity/participant.
4. Three business references for each entity/participant. At least one business reference must be from a lender that respondent assumes would be involved in the project.
5. A description of any previous participation in developments with PHA, the City of Philadelphia, or other municipalities or public sector entities.
6. Any additional documentation or information evidencing the strength of the development team and its ability to complete the proposed project.

C. Development Plan

Each proposal must include a narrative describing the fundamental aspects of the project, including but not limited to, the planning approach to the project, the site plan and its components, zoning analysis, building footprints, and any other significant features of the proposal.

- Architectural Documentation - Include two copies of conceptual drawings, at 1"=100" scale on 24"x 36" paper, that show all the components of the development proposed to be constructed on the site. The site plan must indicate: all building pavements, curbs, sidewalks, building access points, driveways, parking areas, and landscaping.
- Zoning Analysis - Submit a zoning analysis showing all calculations and identifying all anticipated permits and authorizations that will be needed.

D. Financial Plan and Budget

Each proposal must include financial projections for the development including the following:

1. Sources and uses of funds.
2. Operating Pro forma.
3. A general description of the proposed financing to Implement the development plan.

E. Development Schedule

Each proposal must provide a detailed schedule for the completion of the proposed development. It should include key activities and their completion dates.

F. Additional Data and Attachments

Material and data not specifically requested for evaluation, but which the Offeror wishes to submit may be included, but only in the "Additional Data" section.

G. Proposal Form (Section H)

Cost proposal shall be submitted on the forms provided in Section H.

H. Certifications and Representations of Offerors (Section I)

Submit Section I of this solicitation package.

I. MBE/WBE and Section 3

PHA is dedicated to furthering the growth of minority-owned business enterprises - (MBEs), women owned business enterprises (WBEs) and local businesses. Proposals from minority-owned and women-owned business enterprises, as well as joint ventures or similarly structured business entities including MBEs or WBEs, are highly encouraged as per evaluation criteria stated on Page G-1. All respondents are urged to include in their proposals a recitation of methods for facilitating the participation of MBEs and WBEs in the development as members of the development, financing, design or construction teams. In addition, all respondents should indicate construction and permanent employment opportunities for PHA residents. At a minimum, the selected developer shall be required to comply with Section 3 of the Housing and Urban Development Act of 1968 to ensure employment and other economic opportunities are directed to low and very low income persons.

Part V: Proposal Review and Evaluation Process

A. Submission and Review

Respondents must submit a development proposal in accordance with the instructions contained in this RFP. PHA will evaluate each submission, in accordance with the criteria established on page G-1 of this solicitation package. If necessary, inquiries may be made by PHA regarding the submitted proposal materials, the respondent and other participants named in the materials. Submission by the respondent shall constitute permission by the respondent for PHA to make such inquires as it deems necessary.

Proposals that are not complete may, in PHA's sole discretion, be eliminated from consideration. This RFP may be reissued, amended, or withdrawn if PHA deems it to be in the best interest of the PHA to do so or if, in the judgment of PHA, all submissions are unacceptable.

B. Notification Process

PHA expects to execute a Letter of Intent (LOI) **Attachment C** with the selected respondent outlining obligations for a contract of sale for the purchase and development of the Site. The LOI will be executed within 180 days of the submission of proposals in response to this RFP. The 180-day period may be extended. PHA will not terminate negotiations with other respondents until a

contract of sale is executed and reserves the right to terminate negotiations on any proposal and to conduct negotiations on an alternative proposal. Upon the signing of an LOI the Developer will be obligated to pay a non-refundable security deposit in the amount of \$50,000.00 to PHA. Thereafter, the designated Developer will be granted an exclusive right to negotiate with the PHA with respect to a contract for sale, for 180 days from the date of execution of a LOI, which period may be extended at the sole discretion of PHA. Upon the execution of a contract for sale, the security deposit will be applied to the sale price in a manner acceptable to the PHA. The LOI will set forth a time period by which a sale must take place or the LOI will be terminated.

Failure to obtain project financing for any reason shall not excuse a designated developer or development partner from its obligations under the LOI or contract of sale. In the event that a designated developer or development partner fails to obtain a bona fide construction loan (or comparable financing) within the time period allotted in the LOI or contract of sale, PHA in its sole discretion may terminate the designated developer or development partner and the LOI or contract of sale and may retain the security deposit as liquidated damages.

C. Environmental and Land Use Review

The Developer shall be responsible for any required environmental, zoning and other land use approvals and permits.

D. Site Disposition and Approval Process

PHA will secure all HUD approvals necessary to convey the Site. All other public approvals will be the responsibility of the Developer. Developer will be required to cooperate with PHA in order to establish compliance with HUD requirements and, at its sole cost and expense, to provide such documentation as is necessary to obtain HUD approvals.

Part VI: Conditions, Terms and Limitations

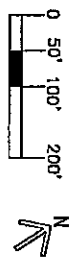
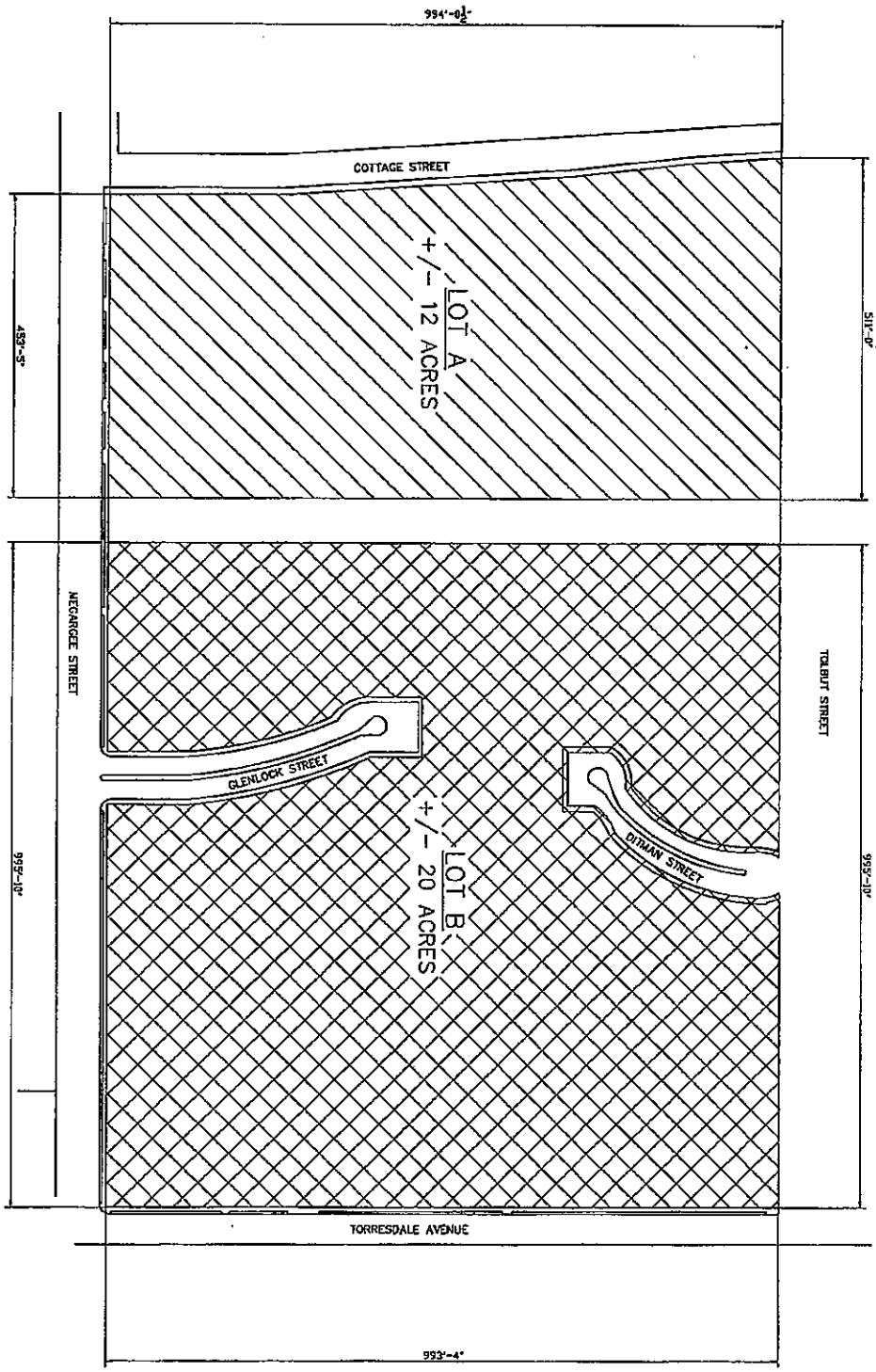
In addition to those stated elsewhere, this RFP is subject to the specific conditions, terms and limitations stated below:

1. The information set forth in this RFP concerning the Site and its condition, development tasks and procedures, legal requirements, and other matters is believed to be accurate but is not warranted. PHA assumes no responsibility for errors and omissions, makes no representation whatsoever as to the physical condition of the Site, status of title thereto, its suitability for any specific use, or the required approval necessary for the redevelopment of the site, the absence of hazardous waste and other toxic materials, or any other matter. All measurements are approximate. Respondents are urged to satisfy themselves with respect to the physical condition of, and all arrangements affecting the Site. Respondents are advised to verify independently the accuracy of all information contained herein and otherwise proved to the respondent and to make their own judgments of the risks involved in developing the Site as contemplated in this RFP.
2. PHA makes no representations as to the accuracy of any statement made herein regarding any environmental condition on the Site and any information provided with regard to the environmental condition of the Site is not to be relied upon and should

be independently verified.

3. PHA is not obligated to pay and shall not pay any costs in assisting the selected respondent or the project, or incurred by any Developer at any time unless PHA has expressly agreed to do so in writing.
4. This is a Request for Proposals not a Request for Bids. PHA shall be the sole judge of each response's conformance with the requirements of the RFP and of the merits of the individual proposals. PHA reserves the right to waive any conditions or modify any provision of the RFP, to negotiate with one or more of the applicants, to establish additional terms and conditions, to encourage applicants to work together, or to reject any or all responses, if in its judgment it is in the best interest of PHA to do so. PHA reserves the right to negotiate any and all terms of the proposals. Prior to execution of a LOI or contract of sale and after an execution of a LOI, or contract of sale if such LOI or contract of sale is terminated, PHA reserves the right to negotiate a LOI or sale with other respondents.
5. The developer shall pay all applicable taxes and settlement costs payable with respect to the conveyance of the Site and the development and operation of the Developer's component of the project.
6. If all the proposals are rejected, the RFP may be withdrawn and the Site may be retained, re-offered under the same or different terms and conditions in an amended or new RFP, or disposed of by any other method. PHA reserves the right to accept proposals for the development of less than the entire Site. In all cases, PHA shall be the sole judge of the acceptability of the proposals. Other than the approval for disposition, PHA does not represent or warrant that all requisite discretionary federal, state, and city public approvals for the project will be obtained from the appropriate authorities and PHA will not be held liable for any damages associated with the failure to obtain such approvals.

ATTACHMENT A

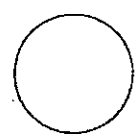


1 SITE PLAN
A-1 SCALE: 1"=200'

Philadelphia Housing Authority
Planning Department



Program Development
and Design
3100 Parkway Ferry Rd
Philadelphia, PA 19104
215-981-2100



No.	Revision Description	Date

Project Title
**LIDDONFIELD I AND II
PHILADELPHIA, PA**

Drawing Title
SITE PLAN

Scale
AS NOTED

Sheet
A-1

Project No.
Contract No.
Drawing No.



Stantec

Stantec Consulting Services Inc.
161 Gaither Drive Suite 205
Mount Laurel NJ 08054
Tel: (856) 234-0800
Fax: (856) 234-5928

ATTACHMENT B
1 of 3

April 29, 2011

Bernadette Callahan, PE
Stantec
1500 Spring Garden
Suite 100
Philadelphia, PA 19130

Reference: Limited Surficial Soil Investigation & Assessment at 4401 Megargee Street, Philadelphia, Pennsylvania

Dear Bernadette,

Stantec Consulting Services Inc., (Stantec) mobilized to the former Apartment Complex located at 4401 Megargee Street in Philadelphia, Pennsylvania, hereinafter known as the subject property. Stantec understands that the apartment complex was demolished and that the contractor requested pre and post-demolition testing of the site soils. The area surrounding the subject property is understood to be primarily residential in nature and has been historically residential in nature.

Stantec completed a limited soil investigation consisting of the collection of surface soil samples (i.e., from the 0-6 inch interval) across the parcel, pending the analytical results additional soil delineation was proposed as necessary. Based on previous site uses, Stantec recommended that the soil samples be analyzed for RCRA 8 Metals and Asbestos.

It should be noted that the limited investigation was not a historic fill investigation. Urban residential areas are typically underlain by excavated indigenous soils mixed with non-indigenous material and do not meet the definition of historic fill unless the historic fill material was contaminated prior to emplacement (i.e. incinerator ash).

The pre-demolition sampling was conducted at ten (10) random locations across the site on July 12, 2010. The RCRA Metals and Asbestos analytical results from the pre-demolition testing did not report any constituent concentrations above the applicable Pennsylvania Department of Environmental Protection Residential Direct Contact Soil Remediation Standard (PADEP RDCSRS) or PADEP Soil to Groundwater Remediation Standards (SGWRS).

The post-demolition soil sampling was conducted in the general vicinity of the pre-demolition soil sampling locations on April 7, 2011. The RCRA Metals and Asbestos results from the analytical laboratory for the post-demolition testing did not report any constituent concentrations above the applicable PADEP RDCSRS or PADEP SGWRS. Stantec has attached the PADEP Medium Specific Criteria consisting of the soil contact values and impact to groundwater standards (Table 1). To be conservative, Stantec used the Hexavalent Chromium Standards instead of the trivalent

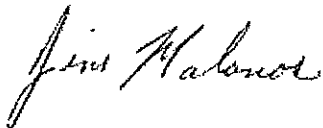
April 29, 2011
Limited Surficial Soil Sampling & Assessment
Page 2 of 2

Chromium Standards. The PADEP allows the consultant to utilize either of the impact to groundwater criterias. Therefore the generic values were utilized since the samples were not collected in water.

If you have any questions regarding this submittal, feel free to contact me at (856) 234-0800.

Sincerely,

STANTEC CONSULTING SERVICES INC.



Jim Malanos
Environmental Manager
Tel: (856) 234-0800
Fax: (856) 234-5928
jim.malanos@stantec.com

Attachment:

c.

Reference: 4401 Megargee Street, Philadelphia, Pennsylvania,

Table 1
Soil Analytical Results
4401 Megaragee Street
Philadelphia, Pennsylvania

Sample Location	Date Sampled	Depth Interval (inches)	Arsenic (mg/kg)	Barium (mg/kg)	Cadmium (mg/kg)	Chromium (mg/kg)	Lead (mg/kg)	Mercury (mg/kg)	Selenium (mg/kg)	Silver (mg/kg)	Asbestos %
PADDP Residential Direct Contact Soil Remediation Standard			12	15,000	47	94	500	66	1,100	1,100	---
PADDP Soil to Groundwater Remediation Standard (Generic)			150	8,200	38	190	450	10	26	84	---
SB #12	7/12/2010	0"-6"	5.71	75.4	0.806	26.7	37.6	0.070	ND(1.30)	ND(0.162)	NA
SB #12A	4/7/2011	0"-6"	5.22	74.5	0.269 J	23.9	48.5	0.082	ND(1.33)	0.170 J	ND
SB #19	7/12/2010	0"-6"	3.91	50.9	0.533	17.5	10.1	0.013 J	ND(1.19)	ND(0.149)	NA
SB #19A	4/7/2011	0"-6"	2.90	106	ND(0.159)	37.7	23.3	0.051	ND(1.27)	ND(0.159)	ND
SB #23	7/12/2010	0"-6"	3.84	94.3	0.525	37.0	79.6	0.154	2.09 J	0.203 J	NA
SB #23A	4/7/2011	0"-6"	4.02	59.9	ND(0.156)	24.4	17.7	0.042	ND(1.24)	ND(0.156)	ND
SB #36	7/12/2010	0"-6"	6.36	75.0	0.418	28.6	49.4	0.099	2.80 J	ND(0.176)	NA
SB #36A	4/7/2011	0"-6"	5.42	73.4	ND(0.171)	26.8	30.6	0.067	ND(1.37)	ND(0.171)	ND
SB #38	7/12/2010	0"-6"	6.40	78.4	0.316 J	29.1	48.9	0.083	2.77	ND(0.160)	ND
SB #38A	4/7/2011	0"-6"	5.15	66.8	ND(0.154)	25.1	27.8	0.059	ND(1.23)	ND(0.154)	ND
SB #43	7/12/2010	0"-6"	4.65	63.1	0.673	26.8	77.9	0.112	1.70 J	ND(0.156)	NA
SB #43A	4/7/2011	0"-6"	4.50	113	0.221 J	33.3	36.9	0.070	ND(1.27)	ND(0.158)	ND
SB #49	7/12/2010	0"-6"	6.46	97.5	0.482	30.1	75.1	0.130	2.34 J	0.247 J	NA
SB #49A	4/7/2011	0"-6"	5.73	76.6	0.204 J	24.1	75.1	0.105	ND(1.33)	ND(0.166)	ND
SB #52	7/12/2010	0"-6"	5.51	65.7	0.307 J	30.3	41.2	0.090	2.20 J	ND(0.160)	NA
SB #52A	4/7/2011	0"-6"	5.56	81.1	0.285 J	31.1	62.2	0.104	ND(1.27)	ND(0.159)	ND
SB #58	7/12/2010	0"-6"	6.18	87.1	0.478	29.0	75.0	0.096	2.46 J	ND(0.165)	NA
SB #58A	4/7/2011	0"-6"	4.87	76.2	0.250 J	20.8	35.5	0.055	ND(1.23)	ND(0.154)	ND
SB #61	7/12/2010	0"-6"	4.64	73.7	1.05	36.7	48.8	0.114	ND(1.23)	ND(0.154)	NA
SB #61A	4/7/2011	0"-6"	4.96	72.0	0.217 J	23.7	24.2	0.50	ND(1.12)	ND(0.140)	ND

All concentrations represented in milligrams per kilogram (mg/kg)

PADDP - Pennsylvania Department of Environmental Protection

Bold - Concentrations above the PADDP applicable remediation standard

J - Estimated concentration

NA - Not analyzed

ND(-) - Not detected (method detection limit)

SAMPLE FORM OF LETTER OF INTENT

(To Be Modified Accordingly Prior To Execution)

Michael P. Kelly
Executive Director
Philadelphia Housing Authority
12 South 23rd Street
Philadelphia, PA 19103

Re: Letter Of Intent To Purchase and Develop Land Located At PHA's Former Liddonfield Homes Site

Dear Mr. Kelly:

X Company, Inc. intends to purchase and develop PHA property located at the former Liddonfield Homes public housing development site, which is bounded by Torresdale Avenue, Megargee, Cottage and Tolbut Streets. We will purchase and develop (Lot A only, Lot B only or Lots A and B) as identified on the site map included with the request for proposals ("RFP"), consisting of _____ acres of land (the "Site").

X Company, Inc. will pay _____ in consideration for the purchase of the land, and intends to develop _____ **(Describe development plan and method)**, as set forth in our proposal response to PHA's RFP. Delivered herewith is a certified check in the amount of \$50,000 as the non-refundable good faith deposit (the "Deposit") for the exclusive right to negotiate an agreement of sale with PHA in connection with the purchase and development of the site, over a period of time not exceeding 180 days from the date hereof. Upon the execution of an agreement of sale, the Deposit will be applied to the sale price in a manner acceptable to PHA. It is understood that PHA will **not** terminate negotiations with other RFP respondents until a contract of sale is executed.

During the aforementioned 180 day period PHA will pursue HUD approval for the disposition of the Site; and X Company will undertake its due diligence in connection with environmental, zoning and other land use approvals and permits, and financing of the development project. Should PHA and X Company (also referred to as the "Parties") be unable to enter into an agreement of sale, pursuant to good faith negotiations between the Parties, X Company will forfeit the Deposit and negotiations will be terminated. Notwithstanding the foregoing, if X Company discovers and sufficient evidences and documents certain aspects of the Site, during this 180 day period, in connection with soils contamination requiring extensive and substantive remediation, then and in that event, the Parties may negotiate a revised purchase price or terminate negotiations and X Company will have its Deposit returned.

Letter Of Intent
Liddonfield Proposal
Page 2 of 2

X Company agrees that it will be responsible for all closing costs including, but not limited to, real estate transfer taxes, the cost of title insurance, and all other like charges. PHA will provide X Company's title company with a Limited Indemnification in connection with judgments of record against PHA at the time of closing.

If the Parties are successful in entering into an agreement of sale within the foregoing 180 period, the terms of such agreement of sale will supersede this Letter of Intent; and such agreement of sale will become the binding contract between the Parties. It is understood that this Letter of Intent is intended to establish an agreement in principle to help bring the Parties to execution of an agreement of sale. This Letter of Intent is considered binding only as to the conditions set forth herein.

X Company

Philadelphia Housing Authority

By: _____

By: _____

Attest: _____

Attest: _____

D. TERMS & CONDITIONS

SECTION I HUD STANDARD TERMS & CONDITIONS

1. Definitions

The following definitions are applicable to this Contract:

- (a) "PHA" or "Authority" or "Housing Authority" means the Philadelphia 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) PHA 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, PHA 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 PHA decides that the facts justify it, PHA may receive and act upon a proposal submitted before final payment of the Contract.

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

3. Termination for Convenience and Default

- (a) PHA may terminate this Contract in whole, or from time to time in part, for PHA's convenience or the failure of the Contractor to fulfill the Contract obligations (default). PHA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to PHA 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 PHA, PHA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the Contract (default), PHA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by PHA, any work as described in subparagraph (a)(ii) above, and compensation shall 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 PHA; and (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 PHA by the Contractor.
- (d) If, after termination for failure to fulfill Contract obligations (default), it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of PHA, 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) PHA, 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 PHA, 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)

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

7. Disputes

- (a) All disputes arising under or relating to this Contract, including any claims for damages for the alleged breach thereof 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 PHA. A claim by PHA against the Contractor shall be subject to a written decision by PHA.

- (c) PHA shall, with reasonable promptness, but in no event in more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of PHA's decision, shall notify PHA 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 PHA 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 PHA that it submit a final voucher and release, whichever is earlier, then PHA'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 PHA.

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 PHA 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 PHA.

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 PHA a certificate and release, in a form acceptable to PHA, of all claims against PHA 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 Conflict 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. PHA may, however, terminate the Contract or task/delivery order for the convenience of PHA if it would be in the best interest of PHA.
- (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, PHA 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) PHA 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 PHA 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 PHA within 7 days of notification or a later date if extended by PHA.

- (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, PHA 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 PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which PHA 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.
- (3) Selling activities by independent sales representatives.

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.

- (c) **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.
- (d) **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.
- (e) **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

The Contractor shall not disseminate or disclose information or material to the general public, the news media, or any person or organization without prior express written approval by PHA.

18. Contractor's Status

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

19. Other Contractors

PHA 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 PHA 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 PHA employee.

20. Liens

The Contractor is prohibited from placing a lien on PHA'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.

E. TERMS & CONDITIONS

SECTION II PHA STANDARD TERMS & CONDITIONS

1. Minimum Acceptance Period

- (a) "Acceptance period," as used in this provision, means the number of calendar days available to PHA for awarding a contract from the date specified in this solicitation for receipt of proposals.
- (b) PHA requires a minimum acceptance period of 90 calendar days. If the award is delayed by a required approval of another governing agency, then the acceptance period shall be 120 days.
- (c) A proposal allowing less than the PHA's minimum acceptance period will be rejected.

2. Billing and Payment

- (a) The Contractor shall submit invoices to the PHA as provided pursuant to the terms of this Contract. Invoices must show the type of service performed and the amount charged to the Contract during the billing period. PHA's billing address is:

Philadelphia Housing Authority
Attn: Contract Administration
P.O. Box 8737
Philadelphia, PA 19104-9742
- (b) PHA shall pay the Contractor within thirty (30) days of receipt of an accurate/uncontested invoice, given fulfillment of deliverable(s), and if Contractor is in compliance with all Contract terms and conditions. PHA reserves the right to withhold payment for performance deficiencies.
- (c) No interest shall be payable to the Contractor from PHA for delayed progress or final payment.

3. PHA Option for Payment by Electronic Funds Transfer

- (a) At PHA's option:
 - (i) All payments by PHA under this Contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(ii) of this clause. As used in this clause, the term EFT refers to the funds transfer and may also include the payment information transfer.

- (ii) In the event PHA is unable to release one or more payments by EFT, the Contractor agrees to either (1) Accept payment by check or some other mutually agreeable method of payment; or (2) Request PHA to extend payment due dates until such time as PHA makes payment by EFT (but see paragraph (d) of this clause).
- (b) Mandatory submission of Contractor's EFT information.
 - (i) The Contractor is required to provide PHA with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this Contract to receive that information (hereafter: designated office) within 10 days after award of the Contract. If not otherwise specified in this Contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the Contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).
 - (ii) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office.

However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

- (c) Mechanisms for EFT payment. PHA may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.
- (d) Suspension of payment.
 - (i) PHA is not required to make any payment under this Contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this Contract. The prompt

payment terms of the Contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

- (ii) If the EFT information changes after submission of correct EFT information, PHA shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this Contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.
- (e) Liability for uncompleted or erroneous transfers.
- (i) If an uncompleted or erroneous transfer occurs because PHA used the Contractor's EFT information incorrectly, PHA remains responsible for (1) Making a correct payment; (2) Paying any prompt payment penalty due; and (3) Recovering any erroneously directed funds.
 - (ii) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and (1) If the funds are no longer under the control of the payment office, PHA is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or (2) If the funds remain under the control of the payment office, PHA shall not make payment and the provisions of paragraph (d) shall apply.
- (f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this Contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (g) EFT and assignment of claims. If the Contractor assigns the proceeds of this Contract as provided for in the assignment of claims terms of this Contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall

apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to PHA, is incorrect EFT information within the meaning of paragraph (d) of this clause.

- (h) Liability for change of EFT information by financial agent. PHA is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.
- (i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. PHA may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, PHA does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to PHA. If PHA makes payment by check in accordance with paragraph (a) of this clause, PHA shall mail the payment information to the remittance address in the Contract.
- (j) EFT information. The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.
 - (i) The contract number (or other procurement identification number).
 - (ii) The Contractor's name and remittance address, as stated in the Contract(s).
 - (iii) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.
 - (iv) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.
 - (v) The Contractor's account number and the type of account (checking, saving, or lockbox).

- (vi) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.
- (vii) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

4. Notices

- (a) Any notice to or demand upon the Contractor shall be considered given if delivered at the office of the Contractor as stated on the signature page of the Contract or at such place or other address as he may designate, in writing, to the Authority.
- (b) All papers required to be delivered to PHA, unless otherwise specified in writing to the Contractor, shall be sent to:

Attn: Contracting Officer
Philadelphia Housing Authority
12 South 23rd Street, 5th Floor
Philadelphia, PA 19104
- (c) All Contractor notices, demands, requests, instructions, approvals, claims, etc., must be made in writing to PHA. No oral communications will be considered binding under the terms of this Contract.

5. Option to Extend Term of Contract

PHA may extend the term of this Contract through exercise of option year(s), if any, by written notice to the Contractor.

6. Option to Extend Services

PHA may require continued performance of any services within the limits and at the rates specified in the Contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. This option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within ten (10) days prior to the expiration of the Contract.

7. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this Contract. Any contract modification shall be authorized in writing.
- (b) PHA may modify the Contract unilaterally (1) pursuant to a specific authorization stated in a Contract clause; or (2) for administrative matters which do not change the rights or responsibilities of the parties. All other Contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

8. Hold Harmless

The Contractor shall hold PHA harmless from and indemnify PHA against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents pursuant to the Contract and shall, at the request of PHA, defend any and all actions brought against PHA based upon any such claims or demands.

9. Suspension of Work

- (a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that the Contracting Officer determines appropriate for the convenience of PHA.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this Contract, or (2) by the Contracting Officer's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.
- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

10. Default

If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. In this event, PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

11. Contractor Claims

In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. The Contracting Officer shall review timely-filed claims and issue a determination in accordance with the "Disputes" clause in Terms and Conditions, Section I, Article 7.

12. Contractor Integrity

(a) Definitions

- (i)** Confidential Information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with PHA.
- (ii)** Consent means written permission signed by a duly authorized officer or employee of PHA, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, PHA shall be deemed to have consented by virtue of execution of this agreement.
- (iii)** Contractor means the individual or entity that has entered into this agreement with PHA, including directors, officers,

partners, managers, key employees, and owners of more than a five percent interest.

- (iv) Financial Interest means: (1) ownership of more than a five percent interest in any business; or (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - (v) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- (b) The Contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with PHA.
 - (c) The Contractor shall not disclose to others any confidential information gained by virtue of this agreement.
 - (d) The Contractor shall not, in connection with this or any other agreement with PHA, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of PHA.
 - (e) The Contractor shall not, in connection with this or any other agreement with PHA, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of PHA.
 - (f) Except with the consent of PHA, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
 - (g) Except with the consent of PHA, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
 - (h) The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify PHA in writing.
 - (i) The Contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.

- (j) The Contractor, upon the inquiry or request of PHA, HUD, the Inspector General of the Commonwealth or any agents or representatives of PHA, HUD or the Inspector General of the Commonwealth, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by PHA, HUD or the Inspector General of the Commonwealth to the Contractor's integrity or responsibility, as those terms are defined by federal and state statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.
- (k) For violation of any of the above provisions, PHA may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with PHA. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those PHA may have under law, statute, regulation, or otherwise.

13. Subcontracts

- (a) There shall be no subcontracting without the prior written consent of the Contracting Officer.
- (b) The PHA may, without claim for extra cost by the Contractor, disapprove any subcontractor for cause on the basis of its own determination or because the proposed subcontractor is suspended or debarred by the U.S. Government, the Commonwealth of Pennsylvania or PHA.
- (c) The Contractor shall cause provisions to be inserted in all subcontracts to bind subcontractors to the terms of this Contract (including Affirmative Action provisions) insofar as they are applicable to the work of the subcontractor.
- (d) Nothing contained in the Contract shall create any contractual relation between any subcontractor and PHA.

14. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to assure that, whenever possible, subcontracts are awarded to small and minority firms, women's business enterprises, and labor surplus area firms by:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Assuring that small and minority businesses and women's business enterprises are solicited whenever possible;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the Contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and state and local governmental small business agencies.

15. Contractor Conflicts

The Contractor, its employees, agents and subcontractors shall not, during the term of this Contract, undertake any employment or engagement or, except as required by law, perform any act or allow any omission, which may result in a conflict with any of their respective obligations under this Contract. A conflict includes, but is not limited to engagement by a third party to review, comment or critique PHA work in the same or similar areas as reflected in this Contract's scope of work. In the event Contractor, its agents, or subcontractors are called upon under a purported requirement of law to do or omit anything that may be in violation of the foregoing, the Contractor shall give the PHA Contracting Officer sufficient advance written notice thereof to allow the matter to be contested by PHA.

16. Permits and Licenses

If any permits, licenses or other approvals are necessary for the performance of this Contract, then the Contractor shall obtain all such permits, licenses or approvals, including use of patents, trademarks or copyrights, at no extra charge to PHA.

17. Rights in Data and Copyrights

- (a) Except as provided elsewhere in this clause, PHA shall have unlimited rights in data first produced in the performance of this Contract; form, fit, and function data delivered under this Contract; data delivered under this

Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Contract; and all other data delivered under this Contract unless provided otherwise for limited rights data or restricted computer software.

- (b) The Contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data of restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this Contract to the extent provided below.
- (c) For data first produced in the performance of this Contract, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this Contract. The Contractor grants the PHA and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the PHA.
- (d) The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this Contract any data not first produced in the performance of this Contract and which contains copyright notice, unless the Contractor identifies such data and grants the PHA a license of the same scope as identified in the preceding paragraph.
- (e) The PHA agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this Contract are improperly marked, the Contracting Officer may either return the data to the Contractor, or cancel or ignore the markings.
- (f) The Contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the Contractor's obligations under this Contract.
- (g) Notwithstanding any provisions to the contrary contained in any contractor's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this Contract, and irrespective of

whether any such agreement has been proposed prior to the award of this Contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the Contractor agrees that the PHA shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this Contract. The terms and conditions of this Contract, including any commercial lease of licensing agreement, shall be subject to the following procedures.

- (i) The restricted computer software delivered under this Contract may not be used, reproduced, or disclosed by PHA except as provided below or as expressly stated otherwise in this Contract.
- (ii) The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any PHA location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this Contract; and used or copies for use in or transferred to a replacement computer.

18. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save PHA harmless from loss on account thereof; except that PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified by PHA is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

19. Warranty & Product Documents

- (a) The Contractor shall submit product data and manufacturer's specifications as required by PHA. Manufacturer's written product and procedures requirements, when approved by PHA, become part of the Contract. PHA reserves the right to reject items not in compliance with the manufacturer's specifications.

- (b) The Contractor shall submit warranty and guaranty papers along with the manufacturer's data for each product. The adequacy of the documentation is subject to approval by PHA. The Contractor shall be a fully authorized and qualified seller, user or installer of the materials specified and/or approved. The Contractor shall submit proof of certification indicating he is acceptable to the manufacturer.
- (c) On-Site Delivery

If PHA requires Contractor to deliver goods to a PHA site, then the Contractor's representative shall sign in at the PHA manager's office on-site prior to commencing delivery.

20. Insurance

- (a) Before commencing work, the Contractor and each sub-contractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:
 - (i) Workers' Compensation, in accordance with State or Territorial Workers' Compensation laws and Employers Liability with limits of not less than \$500,000.
 - (ii) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$1,000,000.00 per occurrence/\$2,000,000 General Aggregate. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and should the policy be canceled on non-renewed, the extended reporting coverage will be purchased to extend coverage to an indefinite period of time, limited only by the exhaustion of the policy limits.
 - (iii) Automobile Liability coverage on owned, non-owned, and hired auto coverage for motor vehicles used on the site(s) or in connection therewith and with a combined single limit for bodily injury and property damage of not less than \$500,000.00 per occurrence.
- (b) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located and have an A.M. Best Rating of A VIII or better. If any such insurance is due to expire during the Contract period, the Contractor

(including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least thirty (30) days prior written notice has been given to the Contracting Officer. Such notice must be sent by Certified Mail, Return Receipt Requested, to the Contracting Officer's attention.

- (c) **Additional Insured Requirement:** Philadelphia Housing Authority is to be named an "additional insured" on all policies required hereunder except Workers' Compensation, Employer's Liability, and Professional Liability. An endorsement stating the above shall be provided to the PHA by the Contractor prior to the commencement of the work. The General Liability additional insured endorsement shall be provided on forms ISO: CG 20 10 (03 97) or ISO: CG 20 10 (10 01) AND ISO: CG 20 37 (10 01).
- (d) **Minimum Scope of Insurance:** Coverage should be at least as broad as:
 - (i) Insurance Services Office form number CG 00 01 (Ed.12/04) Broad Form covering Commercial General Liability or its equivalent.
 - (ii) Insurance Services Office form number CA 0001 (Ed. 03/06) covering Automobile Liability, Symbol "1" - "any auto".
 - (iii) Workers' Compensation Insurance as required by the Pennsylvania Workers' Compensation Act, with \$500,000.00 limit of liability for Employers Liability Insurance.
- (e) **Other Insurance Provisions:** The policies are to contain, or be endorsed to contain, the following provisions:
 - (i) **General Liability and Automobile Liability coverages**
 - (1) The PHA, its Board of Commissioners, officers, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed or should have been performed by or on behalf of the Contractor; products and completed operations of the Contractor; automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the PHA, its Board of Commissioners, officers, employees or volunteers.

- (2) The Contractor's insurance coverage shall be primary insurance as respects the PHA, its Board of Commissioners, officers, employees and volunteers. Any insurance or self-insurance maintained by PHA, its Board of Commissioners, officers, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the PHA, its Board of Commissioners, officers, employees or volunteers.
- (4) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit brought, except with respect to the limits of the insurer's liability.
- (5) In each instance, coverage should be provided on an "occurrence" basis, as opposed to a "claims-made" basis. Claims-made coverage will only be accepted in the event that it is verified that occurrence coverage is not available.
- (6) Also included in the Commercial General Liability coverage supplied by the Contractor will be the following:
 - Broad Form Blanket Contractual Liability
 - Personal Injury Liability
 - Broad Form Property Damage Liability
(including loss of use)
 - Aggregate per Project and/or Per Location wording
 - Fellow Employee Exclusion removed
 - Contractual Liability does not exclude personal injury
 - Independent Contractors
 - Products and Completed Operations Liability
 - Explosion Collapse and Underground Hazard Liability

- (ii) **Workers' Compensation and Employer's Liability Coverage:** The insurer shall agree to waive all rights of subrogation against the PHA, its Board of Commissioners, officers, employees and volunteers for losses arising from work performed by, for, or in behalf of the Contractor for the PHA.
- (iii) **All Coverages:** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the PHA Risk Management Department.
- (iv) **Professional Liability Insurance:** If the entity responding to this Request for Proposal will provide architectural, engineering, consulting, construction management, counseling, medical, legal, or accounting services, the Contractor shall maintain Professional Liability Insurance for negligent acts, errors and omissions and/or the performance or failure to perform medical services. The minimum limit of liability will be \$1,000,000.00 per claim, \$3,000,000.00 annual aggregate on an occurrence basis. If suitable coverage cannot be obtained on an occurrence basis, then the Contractor may purchase suitable coverage on a claims-made basis with the retroactive date being on or before the execution date of the Contract. Should such insurance be cancelled, or not renewed, the Contractor agrees to purchase extended reporting coverage which extends the discovery period indefinitely from the date of cancellation. The Contractor also agrees to continue the above coverage for a period of at least five (5) years from the date of completion of the Contract. This coverage shall not have a deductible maximum greater than \$10,000.00 per loss.
- (f) **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retentions must be declared to and approved by the PHA. At the option of the PHA, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the PHA, its Board of Commissioners, officers, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expense.
- (g) **Acceptability of Insurers:** Insurance is to be placed with insurers with a Best rating of no less than A:VIII.

- (h) **Verification of Coverage:** Contractor shall furnish the PHA with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificate shall include the Contract number and the Development name. These certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the PHA before work commences. The PHA reserves the right to require complete, certified copies of all required insurance policies, at any time.
- (i) **Subcontractors:** Coverage provided under the applicable Contractor's policies will include coverage for those liabilities incurred through the actions, omissions and activities of all subcontractors. Contractor will cause any subcontractors to carry insurance coverage identical to that of the Contractor as regards perils insured against, scope of coverage, and limits of liability.
- (j) **Bin ders:** Binders are not acceptable as adequate insurance coverage.

21. Compliance with Law

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in performing its obligations under the Contract.

22. Nondiscrimination/Sexual Harassment

- (a) In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any person who is qualified and available to perform the work to which the employment relates.
- (b) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.
- (c) The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

- (d) The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the Contract relates.
- (e) The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Contracting Officer for purposes of investigation to ascertain compliance with this clause.
- (f) The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment clause in every subcontract so that such provisions will be binding upon each subcontractor.
- (g) PHA may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this clause. In addition, PHA may proceed with debarment or suspension of the Contractor.

23. Americans with Disabilities Act

Contractor shall comply with federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C. F. R. § 35.101 et seq. The Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under this Contract. As a condition of accepting and executing this Contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by PHA through contracts with outside contractors.

24. Commonwealth of Pennsylvania Steel Products Procurement Act

- (a) This project is subject to the provisions of the Steel Products Procurement Act of 1978 (P.L. 6, No. 3) as amended by the Act of July 9, 1984 (P.L. 674, No. 144). All contractors, subcontractors, and material suppliers shall be required to comply with all provisions of this Act.
- (b) The Contractor shall be required to provide with each Application-Certificate of Payment form an executed copy of the Certification of Compliance with the Steel Products Procurement Act form and additional documentation, including but not limited to, invoices, bills of lading, mill certifications, or other acceptable evidence that the steel products represented on the payment application comply with one or more of the following categories:

- (i) That the steel utilized on this project was melted and manufactured in the United States; and/or
 - (ii) The product contains both foreign and United States steel, and at least seventy-five percent (75%) of the cost of all of the articles, materials, and supplies incorporated in the product have been mined, produced, or manufactured, as the case may be, in the United States; and/or
 - (iii) The steel product is not produced in the United States in sufficient quantities to meet the requirements of the Contract, and prior written approval to use foreign steel has been obtained from The Pennsylvania State University.
- (c) Any nonconforming steel products incorporated into the work shall be removed and replaced by the Contractor, at its own expense, with products meeting the requirements of the Act.
- (d) Willful violation of this Act can result in penalties, including (but not necessarily limited to) prohibition from submitting any bids, or performing any work, or supplying any materials to a public agency for a period five (5) years from the date of the determination that a violation has occurred.

25. Applicable Law

The Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

26. Provisions Required or Prohibited by Law

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though such provisions were included herein. Any clause in this Contract prohibited by law shall be deemed to be deleted from this Contract, and this Contract shall be read and enforced as though such provision were not included herein.

27. Related Entities

PHA reserves the right to procure supplies or services on behalf of its affiliated entities and subsidiaries including but not limited to several limited partnerships

("Related Entities"). Each Related Entity shall have the right to procure such supplies or services directly from Contractor pursuant to this Contract. PHA will generally advise the Contractor that the contract or task/delivery order is being issued on behalf of a Related Entity and provide any special instructions. However, failure of PHA to do so does not negate the Contractor's obligation to provide the supply or service ordered.

28. Order of Precedence

Conflicts in the contract documents shall be resolved in accordance with the following order of precedence:

- Addendum Number ____ dated _____, 20__.
- Addendum Number ____ dated _____, 20__.
- Services Contract;
- HUD Standard Terms & Conditions
- Statement of Work
- PHA Special Terms & Conditions
- PHA Standard Terms & Conditions
- Solicitation Number _____, _____ dated _____, 20__, and entitled _____.
- Contractor's proposal and Best and Final Offer (if requested) as accepted by the PHA.
- Affirmative Action requirements
- Instructions to Proposers
- Representations, Certifications, and other statements to Proposers

29. Certifications and Representations

In the event that Contractor's certifications and representations set forth in Section I shall at any time cease to be true and correct in all material respects, Contractor shall promptly notify PHA of same, setting forth the particulars and identifying the steps, if any, being taken by Contractor to render such representation or certification to be true and correct in all material respects.

30. Taxes

- (a) Contractor agrees to disclose to PHA all taxes paid pursuant to 72 Pennsylvania Statutes ("P.S.") § 7202 ("Sales Tax") paid by the Contractor in connection with the Contract, including in the Contractor's bid an itemization of Sales Tax expected to be paid in connection with this Contract.
- (b) Contractor agrees to cooperate fully with PHA in determining which items Contractor purchases pursuant to this Contract are those on which Contractor will pay Sales Tax.

- (c) Contractor will also cooperate fully with PHA in seeking guidance from the Pennsylvania Department of Revenue (“Department of Revenue”) in determining which items are subject to Sales Tax.
- (d) With respect to any item on which Contractor expects to pay Sales Tax, Contractor agrees to allow PHA the option of purchasing such item directly and to reduce the cost charged to PHA by the amount of Sales Tax Contractor would have paid had Contractor purchased such item.
- (e) Contractor assigns to PHA all of its right, title and interest in and to any and all refund of Sales Tax Contractor will pay in connection with this Contract and agrees to cooperate fully with PHA in assisting PHA to obtain a refund of any and all Sales Tax Contractor paid in connection with this Contract, including but not limited to:
 - (i) filing a petition for refund with the Department of Revenue at the request of PHA;
 - (ii) providing PHA with any receipts or other documentation reasonably requested by PHA in connection with PHA pursuing such refund; and
 - (iii) testifying at a hearing in connection with the pursuit of such refund.
- (f) In the event PHA exercises its right under Section E.30(e) to require Contractor to file a petition for refund of Sales Tax paid, PHA will, at its sole discretion:
 - (i) determine the manner in which to pursue, and whether to continue pursuing, such refund; and
 - (ii) select the representative to pursue such refund.

Further, PHA agrees to pay all fees and costs associated with pursuing such refund, but Contractor agrees that its payment under this Contract constitute full and complete consideration for any assistance Contractor may provide to PHA in pursuing such refund on PHA’s behalf. Not later than five days after receipt thereof, Contractor agrees to pay to PHA any amount of Sales Tax refund received by Contractor in connection with a refund of Sales Tax paid in connection with this Contract.
- (g) Contractor agrees to purchase, but not pay Sales Tax on, every item that qualifies as ‘building machinery and equipment’ (as defined in 72 P.S. § 7201(pp)) by providing Contractor’s vendor with a properly completed exemption certificate (REV-1220) within sixty days of the purchase of each

such item. Contractor further agrees that it shall include on line 7 of such exemption certificate the following statement: *Property or services qualify as 'building machinery and equipment' and will be transferred pursuant to a construction contract to a tax-exempt organization.* Further, if any purchase of items by Contractor includes both Sales Tax exempt 'building machinery and equipment' and otherwise taxable property, Contractor agrees to maintain records sufficient to permit the Department of Revenue to ascertain whether the items purchased were in fact 'building machinery and equipment.'

- (h) Contractor agrees to be solely responsible for any Sales Tax assessed on any item Contractor purchased pursuant to this Contract and further agrees to indemnify PHA for any Sales Tax PHA is subsequently assessed by the Department of Revenue with respect to any item Contractor purchased in connection with this Contract and on which Contractor did not pay Sales Tax.

31. Public Disclosure

After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, *et seq.* If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.

32. Minimum Wages

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

- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

33. 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. PHA 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.

34. 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:
 - 1) Name, address and Social Security Number;
 - 2) Correct work classification or classifications;
 - 3) Hourly rate or rates of monetary wages paid;
 - 4) Rate or rates of any fringe benefits provided;

- 5) Number of daily and weekly hours worked;
 - 6) Gross wages earned;
 - 7) Any deductions made; and
 - 8) 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 PHA 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.

35. 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:
- 1) 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;
 - 2) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
 - 3) 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.

36. Disputes concerning labor standards

(a) Disputes arising out of the labor standards provisions contained in this Section, 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 PHA, 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 PHA, or upon request of the Contractor or subcontractor(s).

- 1) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by PHA 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 PHA 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 PHA 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).
- 2) PHA 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.

- 3) 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 clause. 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 PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.

37. 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 thereof 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.

38. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section 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.

39. 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.

F. TERMS & CONDITIONS

SECTION III PHA SPECIAL TERMS & CONDITIONS

1. Term Of The Contract

No proposed form of contract is available in connection with this RFP because PHA intends to execute a Letter of Intent (LOI) and subsequently an Agreement of Sale with the successful Respondent.

2. Cost Proposals

Offerors [] are [X] are not required to propose prices for all line items in the Schedule.

The following selected clauses are applicable to the Contract:

3. [] Proposal Security

- (a) Failure to furnish proposal security in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the proposal.
- (b) The Offeror shall furnish a proposal guarantee in the form of a firm commitment, e.g., proposal bond supported by good and sufficient surety or sureties acceptable to PHA, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. PHA will return proposal guarantees, other than proposal bonds, (1) to unsuccessful Offerors as soon as practicable after the opening of proposals, and (2) to the successful Offeror upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the proposal as accepted.
- (c) The amount of the proposal guarantee shall be 20 percent of the proposal price or \$_____, whichever is less.
- (d) If the successful Offeror, upon acceptance of its proposal by PHA within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the Offeror, the Contracting Officer may terminate the Contract for default.
- (e) In the event the Contract is terminated for default, the Offeror is liable for any cost of acquiring the work that exceeds the amount of its proposal, and the proposal guarantee is available to offset the difference.

4. **Multiple Awards**

PHA reserves the right to make multiple awards under this solicitation. Although the scope of services will remain the same for each contract, the dollar amount of each contract may vary.

5. **Fixed Fee**

- (a) PHA shall pay the Contractor for performing this Contract the fixed fee specified in the Schedule.
- (b) Payment of the fixed fee shall be made as specified in the Schedule; provided that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect PHA's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

6. **Indefinite Quantity**

- (a) This is an indefinite-quantity contract with FIRM FIXED UNIT PRICING for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this Contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to PHA, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." PHA shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."
- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. PHA may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The Contract shall govern the Contractor's and PHA's rights and obligations with respect to that order to the same extent as if the order were completed during the Contract's effective period.

7. [] **Definite Quantity**

- (a) This is a definite-quantity, indefinite-delivery contract with FIRM FIXED UNIT PRICING for the supplies or services specified, and effective for the period stated, in the Schedule.
- (b) PHA shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.
- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. PHA may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this Contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The Contract shall govern the Contractor's and PHA's rights and obligations with respect to that order to the same extent as if the order were completed during the Contract's effective period.

8. [] **Requirements**

- (a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this Contract. Except as this Contract may otherwise provide, if PHA's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this Contract, the Contractor shall furnish to PHA all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. PHA may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (c) Except as this Contract otherwise provides, PHA shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by PHA activity or activities specified in the Schedule.

- (d) PHA is not required to purchase from the Contractor requirements in excess of any limit on total orders under this Contract.
- (e) If PHA urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this Contract, and if the Contractor will not accept an order providing for the accelerated delivery, PHA may acquire the urgently required goods or services from another source.
- (f) Any order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The Contract shall govern the Contractor's and PHA's rights and obligations with respect to that order to the same extent as if the order were completed during the Contract's effective period.

9. [] Ordering

- (a) Any supplies and services to be furnished under this Contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule during the term of the Contract. Such orders may be issued from the date of award through the remaining time and or available funds, in accordance with this Contract. The ordering activity for this Contract/task order is PHA's Procurement and or Contract Administration department.
- (b) All delivery orders or task orders are subject to the terms and conditions of this Contract. In the event of conflict between a delivery order or task order and this Contract, the Contract shall control.
- (c) If mailed, a delivery order or task order is considered "issued" when PHA deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic methods.
- (d) Contractor must resolve any discrepancies appearing on PHA's task/delivery order prior to delivery. Contractor must resolve issues regarding quantities, services, descriptions, items, etc. Failure to comply and resolve discrepancies shall remain the Contractor's sole responsibility.

10. [] Order Limitations

- (a) Minimum order. When PHA requires supplies or services covered by this Contract in an amount of less than \$____, the PHA is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the Contract.

- (b) Maximum order. The Contractor is not obligated to honor—
 - (i) Any order for a single item in excess of 100% of the total Contract value for the Contract period;
 - (ii) Any order for a combination of items in excess of 100% of the total Contract value for the Contract period; or
 - (iii) A series of orders from the same ordering office within seven (7) days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.
- (c) Notwithstanding paragraphs (b) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within five (5) days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons.

11. [] Prequalification

- (a) Contract award may only be made to pre-qualified offerors. Although not a condition to submitting an offer, it is strongly advised that a pre-qualification application be obtained, completed, and returned to PHA's Pre-Qualification Division prior to the submission of a proposal. Applications may be obtained from the Pre-Qualification Division, 3100 Penrose Ferry Road, Philadelphia, PA 19145; Tel: 215-684-5829.
- (b) Failure to complete the application within the required time limits may cause the offeror to be deemed non-responsive and ineligible for contract award. The following time limit applies to this solicitation:
 - [] Offerors will be given ten (10) working days after notification by the Pre-Qualification Division to supply the information necessary to complete the Pre-Qualification application.
 - [] Offerors will be given two (2) working days after notification by the Pre-Qualification Division to supply the information necessary to complete the Pre-Qualification application.

12. [] Liquidated Damages

- (a) If the Contractor fails to complete the work within the time specified in the Contract, or any extension, the contractor shall pay to the PHA as liquidated damages, the sum of \$_____ for each day of delay. To the extent that the Contractor's delay or nonperformance is excused under another clause of this Contract, liquidated damages shall not be due to

PHA. The Contractor remains liable for damages caused other than by delay.

- (b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs incurred by PHA to complete the work.

13. [] Warranty

The equipment provided under this Contract shall have a warranty of _____
(years/months).

**RATING FACTORS TO BE USED IN
SOLICITATION NUMBER P-004137**

All proposals received by the specified date shall be subject to evaluation by a review committee. Although the following criteria will be used in making the selection, no single one of the criteria will be the determining factor in the selection of proposers with whom the PHA may commence negotiation of agreement or in the final selection of a Contractor. The final selection will be made on the basis of which proposal best responds to all of the needs of PHA. Highest rated proposer(s) may be invited to make a presentation to the PHA review committee. Best and Final Offers may be requested of any offeror in the competitive range.

In evaluating the submitted proposals, the PHA will consider the following criteria:

Number	Criteria	Points
1	Financial Return to the PHA and/or commensurate benefit to the PHA	30
2	Track record and financial strength of the Development Team	25
3	Quality of Site Plan and Development Program	30
4	Long Term Employment Opportunities for PHA Residents (including Section 3 participation) and MBE/WBE participation on Development Team	15
Total Points		100

H. PROPOSAL FORM

I, We _____ agree to perform the services
(NAME OF FIRM)

requested in accordance with the Statement of Work for the following:

**Scenario 1 - Purchase In Accordance
with Development Plan As Outlined**

COST

OPTION A:

(1) East Parcel conveyed to Developer

\$ _____

(2) West Parcel conveyed to Developer

\$ _____

OPTION B:

(3) East and West Parcel conveyed to a single
Developer

\$ _____

**Scenario 2 – Purchase In Accordance
with Developer’s Proposed Plan**

(4) Conveyance of entire Site to Developer

\$ _____

References

Please provide the name, address and telephone number of three references for whom the offeror performed work substantially similar to that required by the solicitation.

1.

2.

3.

2. List all items, other than the required proposal form and certifications, included as part of the offeror's proposal:

3. Acknowledgement of Amendments

The offeror hereby acknowledges the receipt of and obligation to perform pursuant to the following addenda to this RFP:

Addendum No.	_____	dated	_____
Addendum No.	_____	dated	_____
Addendum No.	_____	dated	_____

Binding Contract

The offeror acknowledges and agrees that no contract shall exist until signed by both parties, except that Section F.3 (Proposal Security) shall be binding on the offeror in accordance with its terms prior to the execution of a contract. In addition, until an agreement is signed by both parties, PHA may rescind any recommendation of award and the offeror will be deemed to have waived any and all rights to obtain a contract with PHA or seek damages against PHA.

Name of Offeror: _____
Federal Tax Identification Number _____ (if applicable)
State of incorporation _____ (if applicable)
Philadelphia Business A/C Number _____ (if applicable)
Social Security Number _____ (if offeror is an individual)
Official Address: _____

Signature: _____
Print Name and Title: _____
Date: _____
Witness: _____

PLACE CORPORATE SEAL HERE

IF A CORPORATION

I. CERTIFICATIONS AND REPRESENTATIONS OF OFFERORS

1. Offeror's Certification Of Eligibility

- (a) By the submission of this proposal, the offeror certifies that to the best of its knowledge and belief:
 - (i) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, is ineligible to be awarded contracts by any agency of the United States Government, HUD, or the State in which this Contract is to be performed;
 - (ii) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, is ineligible to participate in HUD programs pursuant to 24 CFR Part 24;
 - (iii) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of any State Government or of the City of Philadelphia or the Philadelphia Housing Authority from doing business with such Department or Agency for the period beginning 5 years prior to the date of this certification;
 - (iv) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has experienced default or noncompliance under any contract for the U.S. Department of Housing and Urban Development, or any other governmental agency with which it has contracts for the period beginning 10 years prior to the date of this certification;
 - (v) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has unresolved findings raised as a result of HUD audits, management reviews or any other Governmental investigations concerning the offeror or any person or firm which has an interest in the offeror's firm under any of the offeror's contracts;
 - (vi) There has not been a suspension or termination of payments under any HUD contract in which the offeror has a legal or beneficial interest attributable to the offeror's fault or negligence;
 - (vii) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has defaulted on an obligation covered by a bond and have not been the subject of a claim under any fidelity bond.

- (viii) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has been found by HUD or the Commonwealth of Pennsylvania to be in noncompliance with any applicable civil rights laws.
 - (ix) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, is a Member of Congress or a Resident Commissioner or otherwise prohibited or limited by law from contracting with the Philadelphia Housing Authority.
 - (x) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm is an officer or employee or commissioner of the Philadelphia Housing Authority who is prohibited or limited by law from contracting with the PHA.
 - (xi) Neither the offeror, nor any person or firm which has an interest in the proposal or the offeror's firm, has been convicted of a felony and are not presently the subject of a complaint or indictment charging a felony. (A felony is any offense punishable by imprisonment for more than one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less.)
- (b) Statements above to which the offeror cannot certify (if any) have been deleted by striking through the words with a pen. The offeror has initialed each deletion (if any) and has attached a true and accurate signed statement (if applicable) to explain the facts and circumstances which qualify the offeror as a responsible offeror for participation in this project.
 - (c) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the offeror knowingly rendered an erroneous certification, the Contract may be terminated for default, and the offeror may be debarred or suspended from participation in HUD and PHA programs and other Federal contract programs.

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

The offeror represents and certifies as part of its 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.

Certifying Agency & Certification Number (if applicable):

- (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.

- (i) For the purpose of this definition, minority group members are:
(check the block applicable to you)

Black Americans Asian Pacific Americans
 Hispanic Americans Asian Indian Americans
 Native Americans Hasidic Jewish Americans

- (ii) Certifying Agency & Certification Number (if applicable):
-

3. 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 the possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

4. Contingent Fee Representation and Agreement

- (a) The offeror represents and certifies as part of its offer that, except for full-time bona fide employees working solely for the offeror, the offeror:
- (i) has, has not employed or retained any person or company to solicit or obtain this Contract; and
- (ii) 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 offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.
- (c) Any misrepresentation by the offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from Contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the Contract.

5. Certificate of Independent Price Determination

- (a) The offeror certifies that –
 - (i) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit a offer, or (iii) the methods or factors used to calculate the prices offered;
 - (ii) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
 - (iii) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory:
 - (i) Is the person in the offeror’s organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(i) through (a)(iii) above; or
 - (ii)
 - (1) 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)(i) through (a)(iii) above (insert full name of person(s) in the offeror’s organization

responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization):

- (2) 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)(i) through (a)(iii) above; and
 - (3) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(i) through (a)(iii) above.
- (c) If the offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.
- (d) The offeror further certifies that he/she has not been convicted or found liable for any act prohibited by state or federal law involving conspiracy or collusion with respect to proposing or bidding on any public contract within the last three years. Such act or conviction does not automatically disqualify an offeror, but may be grounds for administrative suspension or grounds for consideration by PHA as to whether PHA should decline to award a contract to such an offeror on the basis of a lack of responsibility. If offeror has been convicted of any act prohibited by State or Federal law involving collusion with respect to proposing or bidding on any public contract within the past three years, offeror should attach an explanation of the circumstances surrounding that conviction.
- (e) [check if following paragraph is applicable]

Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

- (i) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that

date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

- (ii) A fully executed "Non-collusive Affidavit" [] is, [] is not included with the bid. (See page I-12 for Affidavit form).

6. Certification And Disclosure Regarding Payments To Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

- (a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its proposal, hereby certifies to the best of his or her knowledge and belief as of _____, 20____, that:
 - (i) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;
 - (ii) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the proposer shall complete and submit, with its proposal, OMB standard form LLL, "Disclosure of Lobbying Activities;" and
 - (iii) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
 - (iv) Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

7. Certification Of Nonsegregated Facilities (applicable to contracts exceeding \$10,000)

- (a) The offeror's attention is called to the clause entitled "Equal Employment Opportunity" of Section I of the Terms and Conditions of the Contract.
- (b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.
- (c) By the submission of this proposal, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the Contract.
- (d) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will--
 - (i) Obtain identical certifications from the proposed subcontractors;
 - (ii) Retain the certifications in its files; and
 - (iii) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF
REQUIREMENT FOR CERTIFICATIONS OF
NONSEGREGATED FACILITIES.**

A Certification of Non-segregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract

or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

8. Clean Air And Water Certification (applicable to contracts exceeding \$100,000)

The offeror certifies that (check the block applicable):

- (a) Any facility to be used in the performance of this Contract [] is [] is not listed on the Environmental Protection Agency List of Violating Facilities:
- (b) The offeror will immediately notify the PHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the offeror proposes to use for the performance of the Contract is under consideration to be listed on the EPA List of Violating Facilities; and,
- (c) The offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

9. Drug-Free Workplace Certification

By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds \$10,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, other than a contract for the procurement of commercial items, it will - no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed -

- (a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (b) Establish an ongoing drug-free awareness program to inform such employees about:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;

- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Provide all employees engaged in the performance of the Contract with a copy of the statement required by subparagraph (a) of this provision;
- (d) Notify such employees in writing in the statement required by subparagraph (a) of this provision that, as a condition of continued employment on the Contract resulting from this solicitation, the employee will:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) calendar days after such conviction;
 - (iii) Notify the Contracting Officer in writing within ten (10) calendar days after receiving notice under Subdivision (d)(2) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and
 - (iv) Within thirty (30) calendar days after receiving notice under subdivision (d)(2) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (1) Take appropriate personnel action against such employee, up to and including termination; or
 - (2) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- (e) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (a) through (d) of this provision.
- (f) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

- (g) In addition to other remedies available to the PHA, the certifications required by this provision concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under title 18, United States Code, section 1001.

10. PHA Fraud Policy

The offeror certifies that he/she has read the following PHA Fraud Policy, will adhere to it, and is aware of the penalties for failure to comply:

- (a) For purposes of this policy, and in concurrence with the PHA Office of Inspector General's (OIG) mandate, "fraud" includes: fraudulent activity by any person employed by or contracting with the PHA; bribery and official corruption; theft of PHA funds, property or benefits; and serious breaches of integrity. Some examples of activities covered include: extortion/extortion attempts by PHA employees or officials; acceptance or solicitation of bribes; submission of fraudulent documents; employee collusion with contractors or vendors; material misstatements of facts in contracts or documents, relating to services performed or materials provided; bid rigging; and disclosure of confidential information.

- (b) Covered Parties

- (i) All PHA employees and officials.
- (ii) All contractors, subcontractors, vendors and consultants doing business with the PHA -

NOTE: Contractors are responsible for compliance with this Fraud Policy by their subcontractors.

- (iii) All owners of housing who receive subsidies from PHA.
- (iv) Any other individual or entity doing business with or seeking to do business with the PHA.

- (c) Responsibilities

- (i) All "covered" parties" must report any type of fraud when they become aware of such activity, and they must cooperate fully with the OIG in any ensuing investigation.
- (ii) "Fraud" must be reported to a representative of the PHA's OIG, 1101 Market Street, Suite 1320, Philadelphia, PA 19107, (215) 684-8300.

- (iii) Management officials will support the Fraud Policy and ensure compliance with this policy by persons they supervise, and/or individuals and business entities that they deal with.

(d) Penalties For Failure To Report Fraud

Penalties for failure to timely report fraud can include: loss of contract and/or debarment from future contracts by contractors, subcontractors, vendors, and any other individual or entity doing business with the PHA; and other action deemed appropriate by PHA officials.

(e) Confidentiality

All information reported to the OIG is confidential, and the identity of those reporting information to the OIG will be protected.

(f) Whistle Blower Protection

- (i) Anyone who provides information to the OIG may not be discharged, demoted or otherwise subject to any adverse action as a result of reporting wrongdoing. Any person who retaliates against someone for reporting wrongdoing may be subject to civil liabilities and penalties.
- (ii) PHA Management supports the position that “whistle blowers” will be protected and commended for their honesty and dedication to the PHA.

(g) Authorized Negotiators

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):

11. Offeror's Signature

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the information contained in the foregoing certifications and representations is true and correct.

Signature & Date

Typed or Printed Name

Title

NON-COLLUSIVE AFFIDAVIT
(required if Certification & Representation Clause 5(e) is selected)

State of _____

County of _____

_____, being first sworn, deposes and

says: That he/she is _____ (president, sole owner, partner,

etc.) of _____ (firm name) the party making the forgoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that no one conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of the affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, to secure any advantage against the Philadelphia Housing Authority or any person interested in the proposed contract: and that all statements in said proposal or bid are true.

By _____

Title _____
(Affix Corporate Seal if required)

Subscribed and sworn to before me
this _____ day of _____, 20__.

My commission expires _____

(Notary Seal Required)

**PHILADELPHIA HOUSING AUTHORITY
AFFIRMATIVE ACTION SECTION**

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PART I: GENERAL

1.1 POLICY

As a requirement for receiving federal funds, the U.S. Department of Housing and Urban Development ('HUD') requires that the Philadelphia Housing Authority (hereinafter 'Authority') implement an Affirmative Action Contract Compliance Program under Executive Order Nos. 11246, 12432, 12138, 11625, to promote the development of certified Minority Business Enterprises (hereinafter 'MBE'), and certified Women Business Enterprises (hereinafter 'WBE'). This program will also comply with the requirements of Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 d & e, as amended, and HUD Regulations 24 C.F.R. § 85.36(e).

The Authority by this policy affirms its commitment to maximize the utilization of certified MBEs/WBEs in Authority contracts and subcontracts. To this end, the Authority will provide such assistance as will be needed to achieve this goal.

The aim of this policy is to discover and deter any present discrimination by bidders who seek contracts with the Authority. MBE/WBE minimum participation goals (hereinafter 'MPGs') shall be used as a screening device to determine whether discrimination may have occurred. Minimum goals of MBE/WBE participation will be indicated for each contract in the bid documents, and will be based upon availability of certified MBEs/WBEs. The MPGs are a means of determining whether or not a contractor shall be presumed to have engaged in discrimination. If the information furnished is below the MPGs, the bid package shall be subject to further review, in accordance with criteria set forth in this policy, to determine whether or not there was actual discrimination.

1.2 APPLICABILITY

This program shall apply to all nonexempt contracts awarded by the Authority which are connected with federally funded or federally assisted programs. Exemptions are more fully described in Part VI of this program.

1.3 DEFINITIONS

- A. **AAO:** Affirmative Action Officer, Director of the Authority's Affirmative Action Department.
- B. **Authority:** Any department, division, unit or office of the Philadelphia Housing Authority, including the Board of Commissioners.

- C. **BIDS:** A quotation, proposal, solicitation or offer by a Bidder or a Proposer to provide labor, materials, equipment, supplies or services to the Authority.
- D. **BIDDER:** Any person or entity that submits a quotation, bid or proposal to provide Labor, materials, equipment, supplies or services to the Authority.
- E. **BIDDER/PROPOSER AFFIRMATIVE ACTION IMPLEMENTATION PLAN:** Schedule of Participation and Binding Commitments Form and other documents submitted by Bidder /Proposer to support their Affirmative Action Plan. These submissions become an enforceable provision of the awarded contract.
- F. **CERTIFIED:** Any business that has, after application to a recognized certifying agency, been determined to be owned, controlled and managed by minority(s), women, or disadvantaged person(s).
- G. **CERTIFYING AGENCY:** Federal, state, local governmental or quasi-governmental agencies or authorities authorized by law to certify MBE/WBE's qualifications in terms of ownership, management and control.
- H. **COMPLIANCE:** A contractor or subcontractor who performs under an Authority contract in accordance with this Affirmative Action Contract Compliance Program shall be determined to be in compliance.
- I. **CONTRACTS:** Any Authority contract which is covered by this Affirmative Action Contract Compliance Program, whether competitively bid or negotiated, including contracts in the following areas:
 - 1. **VENDING:** for Material, Equipment, Services, and Supplies.
 - 2. **CONSTRUCTION:** for all types of construction; and
 - 3. **PERSONAL AND PROFESSIONAL SERVICES.**
- J. **DEBARMENT:** Exclusion from Authority contracting or subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure or the inadequacy of performance.
- K. **DISCRIMINATION:** Any action or pattern of disparate treatment experienced in the solicitation for bids/proposals or in the award of a contract/subcontract because of: Race, Color, Sex, National Origin, Disability, or Religion.
- L. **EXEMPTION:** Any bid/proposal in which the minimum participation goal(s) have been excluded.

- M. JOINT VENTURE:** A contractual partnership between the prime contractor and a certified minority-owned business enterprise and/or a certified women-owned business enterprise, which must be executed prior to the submittal of the bid/proposal.
- N. MINIMUM PARTICIPATION GOAL (MPG):** The level of participation of certified MBE/WBEs set by the AAO. MPGs shall reflect the availability of certified MBE/WBEs in the subject area, and the level, which should be attained absent discrimination. MPGs are stated as a percentage. A Bidder/Proposer will not be rejected as not responsible solely because they fail to reach the MPGs.
- O. MINORITY BUSINESS ENTERPRISE (MBE):** A business enterprise certified as a Minority Owned Business that is owned, managed and controlled by one or more socially or economically disadvantaged person(s). Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such person(s) include, but are not limited to: Blacks/African-Americans, Puerto Ricans and other Hispanics, American Indians/Native Americans, Eskimos, Aleuts, Hasidic Jews, Asian Pacific Americans, and Asian Indians.
- P. OWNED, MANAGED AND CONTROLLED:** Possession of at least fifty-one percent (51%) of the ownership of the business. Management and control of the daily for profit business operation or nonprofit organization held by one or more persons who are classified as a member of a minority group or a woman, as defined herein.
- Q. PRIME CONTRACTOR/CONTRACTOR/BIDDER OR PROPOSER:** Any person or business entity that is a party or potential party to a contract with the Authority.
- R. RESPONSIBLE:** The Bidder's/Proposer's submissions of a written commitment to meet or exceed the MPG set forth in the bid, or in the absence of meeting or exceeding the MPG, a full and complete explanation therefore in accordance with this program.
- S. RESPONSIVENESS:** The Bidder's/Proposer's submission of (in addition to the submission of any other required documentation), documentary evidence of certified MBE/WBEs who have been contacted and who are to be used on the contract. Documentation must be submitted with the bid/proposal and failure to submit evidence of "Best Efforts" and binding commitments will result in rejection of the bid/proposal and a determination made of non-responsiveness.

- T. WOMEN BUSINESS ENTERPRISE: A business enterprise certified as a Woman Owned Business that is owned controlled and managed by a woman.**

1.4 CERTIFICATION – A LEGITIMATE MBE/WBE

- A. To ensure that only businesses which are owned, managed and controlled in both form and substance by MBE/WBEs are participating in the Authority's Affirmative Action Contract Compliance Program. MBE/WBE businesses, including joint ventures and nonprofit organizations, must be certified by a governmental entity authorized to certify such enterprises.**
- B. MBE/WBE certification shall not be determinative of a Bidder's or Contractor's financial or technical ability to perform specified work. The Authority reserves the right to evaluate the Bidder's/Proposer's, Contractor's or Subcontractor's ability to satisfy financial, technical or other criteria separate and apart from certification before or after bid opening.**
- C. The Authority recognizes that certified MBE/WBEs might be de-certified by the certifying governmental entity. Any business, which has been de-certified, shall not participate in the Authority's Affirmative Action Contract Compliance Program.**
- D. The Authority reserves the right, if there is cause, to refuse a certification provided by a certifying agency.**

1.5 SUBSTITUTION OF CERTIFIED MBE/WBEs

Commitments to certified MBE/WBE firms made at the time of bidding must be maintained throughout the term of the contract, unless a change in commitment is pre-approved by the Authority's AAO. If at any time after a bid/proposal is opened by the Authority, a Contractor is unable to meet the obligations of the Contractor's Affirmative Action implementation Plan, as indicated on the Schedule of Participation and Binding Commitments Form, such Contractor may be required to present for approval to the AAO a substitute implementation Plan.

1.6 GUIDELINES FOR JOINT VENTURING

Joint Venture partnership(s) with either a certified MBE or a certified WBE must meet the following criteria in order to receive credit towards the minimum participation goals (MPGs):

- A. The MBE/WBE partner(s) must be certified by a governmental entity authorized by law to certify such enterprises prior to bid/proposal submittals.**

- B. The MBE/WBE partner(s) must be substantially involved in all phrases of the contract including, but not limited to, the performance, with its own work force, a portion of the onsite work, and administrative responsibilities such as bidding, planning, staffing and daily management.**
- C. The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interests).**
- D. If the certified partner(s) is a MBE, its participation may be credited to the extent of the partner's ownership interest in the joint venture, however, it will still be required to meet the WBE goal or vice versa.**

1.7 CONTRACT LANGUAGE

Authority contracts subject to these procedures shall include language providing that compliance with MBE/WBE provisions have been met, and cooperation with the Authority on contractual matters is material to the Authority's contract. The successful Bidder's/Proposer's Affirmative Action Plan submissions will become an enforceable provision of the contract. Failure to comply with the Authority's Affirmative Action Contract Compliance Program or otherwise comply with the Bidder's/Proposer's submissions, may be grounds for a finding of contractor non-responsibility.

1.8 AMENDMENT

These procedures may be amended as may be necessary. Any amendment shall become effective upon the approval and adoption by the Philadelphia Housing Authority Board of Commissioners.

1.9 SEVERABILITY

The provisions of these procedures are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of these procedures, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of the procedures or their application to other persons.

PART II: RESPONSIBILITIES

2.1 AFFIRMATIVE ACTION OFFICER

The AAO reports directly to the General Manager of Contracts/Procurement for the Philadelphia Housing Authority. The AAO is authorized and shall perform functions, which include, but are not limited to:

- A. Establish or modify minimum participation goals (MPGs) for Authority contracts based upon the dictates of market availability of certified MBE/WBEs and/or applicable laws and regulations to perform various elements of the contract.
- B. The AAO will engage in the review of bid/proposal packages to ensure that the packages provide maximum opportunity for certified MBE/WBE participation and shall have the authority to recommend approval or disapproval of any bid package to ensure compliance with this program.
- C. Attend all Pre-bid and Pre-construction meetings.
- D. Monitor and audit contractor's performance including site and business office visits to ascertain whether the contractor has discriminated or has practices which have had a disparaging or discriminating effect, and to determine that the certified MBE/WBE is performing its function in accordance with authorized standard industry practices.
- E. Maintain participation records and prepare periodic reports that include, but are not limited to the following data:
 1. A summary of contracts awarded specifying the percentage of participation.
 2. A survey comparing past and current contract participation goals of certified businesses.
 3. Any relevant recommendation that may enhance efficiency and effectiveness of the Affirmative Action Contract Compliance Program.
- F. For Comprehensive Improvement Modernization Program (hereinafter "CIAP") funded contracts, prepare and report the Authority's MBE/WBE progress on HUD Form #2516 – Contract and Subcontract Activity Report for Public and Indian Housing Programs.
- G. Receive, document and evaluate complaints relative to violations of the Affirmative Action Contract Compliance Program.

H. Report findings of discrimination, in writing, to the Executive Director through the General Manager of Contracts/Procurement.

I. Interact with city, state, and federal agencies involved in the administration of certified MBE/WBE programs.

2.2 CONTRACTING OFFICER

A. SOLICITATION – The Authority’s Contracting Officer shall actively solicit certified MBE/WBEs to compete for contracting opportunities as Prime/General Contractors.

B. REPORTS – The Affirmative Action Officer shall gather information required to prepare various reports that detail:

1. The original total dollar amount of each contract awarded according to the categories of vending, construction, personal services and professional services, including the total dollar amount of each contract resulting from any contract amendment or change orders subsequent to award.
2. The original total dollar amount of each contract awarded to each certified MBE/WBE as a Prime/General Contractor, as well as the actual dollar amount of each contract including contract amendments or change order(s).

2.3 COORDINATION WITH CONTRACT CONTROL SPECIALISTS

A. The AAO shall coordinate with the Contract Control Specialist for information as may be required in the performance of the AAO function. Such information may include, but is not limited to:

1. Explanation of the elements of the work to be performed under a contract.
2. A reasonable estimate of costs, type(s) and quantity of supplies, materials and equipment required for performance under a contract.
3. A reasonable estimate of employees and their classifications required for performance under a contract.

B. The Authority’s Contracting Officer shall also do the following, with or without coordination with the AAO:

- 1. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by certified MBE/WBEs.**
- 2. Establish delivery schedules, where the requirement permits, which encourage participation by certified MBE/WBEs.**
- 3. Use the services and assistance of the Small Business Administration and Minority Business Development Agency of the Department Commerce.**

PART III: BIDDER/PROPOSER AFFIRMATIVE ACTION

IMPLEMENTATION PLAN

3.1 GENERAL REQUIREMENTS

Each Bidder's/Proposer's Affirmative Action implementation Plan shall include the following:

- A. The business name, address, contact person, telephone number, certification number, certifying agency(s), and Internal Revenue Service Employer's Identification Number (E.I.N.).**
- B. A description of the work that will be performed by each designated contractor/subcontractor.**
- C. The date of solicitation, contact person's name, whether contact was by phone or mail, and if a quote was received from the designated MBE/WBE.**
- D. Confirmation of commitment made as to the level of certified MBE/WBE participation described as a percentage of the total base contract proposal dollar amount and percentage of commitments.**
- E. If no commitment is made to meet or exceed the stated MPGs, the Bidder/Proposer must provide documentation that the following steps were taken:**
 - 1. Requested and attended a briefing and information meeting with the Authority staff designed to explain the Affirmative Action Contract Compliance Program pertaining to certified MBE/WBE participation.**
 - 2. Advertised in general circulation, media, trade association publications, and minority/women-focused media concerning subcontracting and supplier opportunities.**
 - 3. Participated in Authority sponsored conferences and seminars designed specifically for the promotion of the Authority's Affirmative Action Contract Compliance Program pertaining to certified MBE/WBE participation.**
 - 4. Notified certified MBE/WBEs and solicited their participation in the reference contract. The names, addresses, telephone numbers, and contact persons of the firms notified must be provided.**

5. **Provided complete information about plans, specifications, and requirements of the contract to interested certified MBE/WBEs.**
 6. **Made reasonable efforts to negotiate with certified MBE/WBEs for specific sub-bids. All such contacts must be fully documented. If a sub-bid of a certified MBE/WBE is rejected, the Bidder/Proposer must document and explain the reason for the rejection. Rejection based solely on the initial response from a certified MBE/WBE will not be sufficient to establish non-discrimination and "Best Efforts" toward compliance.**
- F. **Attest to the fact that the certified MBE/WBE will perform work, which is necessary and required for contractor to fulfill their obligation under the applicable contract and specification.**

**PART IV: CONSTRUCTION CONTRACT AFFIRMATIVE ACTION
IMPLEMENTATION PLAN**

4.1 MINIMUM PARTICIPATION GOALS

The AAO shall set MPGs for Specifications/Contracts/Request for Proposals.

(MODERNIZATION FUNDS)

The MPGs which have been set by the AAO as of the date of implementation of this program, are and shall be, until or unless they are revised, as follows:

<u>MBE</u> 20%	<u>WBE</u> 10%
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- A. A Bidder/Proposer will not be rejected as non-responsive solely because they fail to reach the MPGs. However, a contractor may be considered not responsive if the MPGs are not met and no acceptable justification is offered for a lack of compliance.
- B. When a firm/company contracts with an enterprise that is both a certified MBE and a certified WBE, credit toward the MPG will be received for one category only. Bidders/Proposers shall indicate in their plan which category is being credited.
- C. A certified MBE/WBE firm bidding as a prime/general contractor shall still be required to submit an Affirmative Action Implementation Plan. However, where the primary contract is awarded to either a certified MBE or a certified WBE the Authority shall count the entire dollar amount of the contract towards meeting the MPG.
- D. Certified MBE/WBE subcontractors shall perform at least seventy-five percent (75%) of the cost of the subcontract, not including cost of materials, with their own employees. This provision shall not apply to suppliers or distributors.

4.2 CONSTRUCTION CONTRACT BIDDER/PROPOSER RESPONSIVENESS

- A. Bidders/Proposers must submit information indicating certified MBE/WBE firms, which have been solicited, quotes that have received (solicited and unsolicited), and firms to which commitments have been made. Documentation of such solicitations, quotes, and commitments must be submitted concurrently with the bid/proposal. Failure to submit the required information is sufficient cause for rejection of the bid as non-responsive.
- B. Mailings to large numbers of certified MBE/WBEs which are intended to provide notice of a contractor's interest in bidding on a construction

contract will not be deemed solicitation, but will be treated as informational notification only.

- C. A Bidder/Proposer should only solicit certified MBE/WBE subcontractors, manufacturers or supplies whose work, materials or supplies are within the project scope and are related to project line items or portions thereof, and which the Bidder/Proposer reasonable believes it will choose to subcontract with or purchase from.
- D. Bidders/Proposers failing to meet the MPGs must submit concurrently with the bid submissions, the information required under Part III, Section E, of the Affirmative Action Contract Compliance Program.

4.3 CONSTRUCTION CONTRACT BIDDER/PROPOSER RESPONSIBILITY

The submittals of each Bidder/Proposer are subject to review to determine whether the Bidder/Proposer has discriminated in the selection of manufacturers, subcontractors or suppliers, or has taken affirmative steps in the utilization of certified MBE/WBEs to ensure compliance with this policy. If a Bidder/Proposer has met the MPGs, the Authority's Contracting Officer may presume that the Bidder has not discriminated in its selections. A Bidder/Proposer who fails to meet the MPGs shall satisfactorily provide the documentation set forth in Part III, Section E, of this program. The AAO shall perform a review of the submitted documentation to determine whether discrimination has occurred. If appropriate, the AAO may invoke the provisions of Part VII, Section 7.3 (Willful Non-Compliance) and recommend sanctions contained therein.

**PART V: VENDING AND PERSONAL/PROFESSIONAL
SERVICES CONTRACT AFFIRMATIVE ACTION
IMPLEMENTATION PLAN**

5.1 MINIMUM PARTICIPATION GOALS

The AAO shall set MPGs for Specifications/Contracts/Request for Proposals.

(MANAGEMENT FUNDS)

The MPGs which have been set by the AAO as of the date of implementation of this program, are and shall be until or unless they are revised, as follows:

<u>MBE</u>	<u>WBE</u>
10%	10%

- A. A Bidder/Proposer will not be rejected as non-responsive solely because they fail to reach the MPGs. However, a contractor may be considered non-responsive if the MPGs are not met, and they are not in compliance with Part III, Section E.
- B. When a firm/company contracts with an enterprise that is both a certified MBE and a certified WBE, credit toward the MPG will be received for one category only. Bidders/Proposers shall indicate in their Plan which category is being credited.
- C. A certified MBE/WBE firm bidding as a prime contractor shall still be required to submit an Affirmative Action Implementation Plan. However, where the primary contract is awarded to either a certified MBE or a certified WBE the Authority shall count the entire dollar amount of the contract towards meeting the MPG.

**5.2 VENDING AND PERSONAL/PROFESSIONAL SERVICES CONTRACT
AFFIRMATIVE ACTION BIDDER/PROPOSER RESPONSIVENESS**

- A. Bidders/Proposers must complete and submit with the bid/proposal, certified MBE/WBE Schedule of Participation and Binding Commitments Form. Failure to submit these forms with the bid/proposal may result in the bid being rejected as non-responsive.
- B. Mailings to large number of certified MBE/WBE's which are intended to provide notice of a contractor's interest in bidding on a vending and personal/professional service contract will not be deemed solicitation, but will be treated as informational notification only.
- C. A Bidder/Proposer should only solicit certified MBE/WBE subcontractors, vendors, manufacturers or suppliers whose services, materials or supplies are

within the scope of work bidden on, and which the Bidder/Proposer reasonably believes it will choose to subcontract with or purchase from.

- D. Bidders/Proposers failing to meet the MPGs must submit concurrently with the bid submissions the information required under Part III, Section E, of the Affirmative Action Contract Compliance Program.

5.3 VENDING AND PERSONAL/PROFESSIONAL SERVICE CONTRACT AFFIRMATIVE ACTION BIDDER/PROPOSER RESPONSIBILITY

The submittals of each Bidder/Proposer are subject to review to determine whether the Bidder/Proposer has discriminated in the selection of manufacturers, subcontractors or suppliers, or has taken affirmative steps in the utilization of certified MBE/WBEs to ensure compliance with this policy. If a Bidder/Proposer has met the MPGs, the Authority's Contracting Officer may presume that the Bidder/Proposer has not discriminated in its selections. A Bidder/Proposer who fails to meet the MPGs shall satisfactorily provide the documentation set forth in Part III, Section E, of this program. The AAO shall perform a review of the submitted documentation to determine whether discrimination has occurred. If appropriate, the AAO may invoke the provisions of Part VII, Section 7.3 (Willful Non-Compliance) and recommend sanctions contained therein.

PART VI: EXEMPTIONS

6.1 EXEMPTED CONTRACTS

The Authority recognizes that in certain limited circumstances, compliance with this Affirmative Action Contract Compliance Program will not be feasible, nor in the best interest of the Authority or its residents. With the approval of the Executive Director, Contracting Officer and the Affirmative Action Officer, the following contracts may be exempted:

- A. A vending contract, for equipment, materials, services and supplies where the total dollar amount of the contract is less than Ten Thousand Dollars (\$10,000.00).**
- B. A construction contract where the total dollar amount of the contract is less than Ten Thousand Dollars (\$10,000.00).**
- C. A professional or personal services contract where the total dollar amount of the contract is less than Ten Thousand Dollars (\$ 10,000.00).**
- D. Any public exigency or emergency contract where the nature of the emergency will not allow for a delay, which would occur from competitive solicitation.**

PART VII: COMPLIANCE REVIEW

7.1 STANDARDS FOR REASONABLE CAUSE: AFTER A CONTRACT HAS BEEN AWARDED

- A. The AAO may find that a Contractor is not in compliance with contract requirements for reasons, which include, but are not limited to:
1. Documentation of information furnished by the contractor, which does not demonstrate that, a certified MBE/WBE is performing the work actually contracted.
 2. Failure or refusal by a contractor to furnish information requested by the Authority.
 3. Discovery of information, which is contrary to compliance information previously submitted by the contractor.
 4. Contractor's failure, neglect or refusal to pay certified MBE/WBE subcontractor(s) for completed and approved work within seven (7) working days after payment by the Authority to the contractor.
 5. Other facts discovered by the Authority's AAO.
- B. Whenever the AAO determines it has reasonable cause to believe that a contractor is not in compliance or that the contractor has discriminated against certified WBE/MBEs, the AAO shall promptly prepare a written notice to be signed by the Contracting Officer and sent by certified mail to the contractor. The notice shall state the reasons for the AAO's belief that the contractor is not in compliance and/or has discriminated against certified MBE/WBEs. In response to said notice, the contractor shall be required to show cause within seven (7) working days why it should not be found:
1. In breach of contract, or
 2. To have discriminated against certified MBE/WBEs.
- C. Based upon information supplied by the contractor, if any, and other documentation and/or information, and with the approval of the General Manager of Contracts/Procurement, the AAO shall proceed expeditiously with an investigatory, evaluative review to clarify the allegations. In the event that the allegations are found to be valid by the AAO, said officer shall notify the Contracting Officer and Executive Director who shall send notification of such finding(s) to the contractor setting forth the appropriate remedial action.

7.2 GOOD FAITH NON-COMPLIANCE

- A. In cases where the AAO has cause to believe that a contractor, acting in good faith, has failed to comply with the provisions of the procedures, the AAO with the assistance and involvement of the Authority's Contracting Officer shall attempt to resolve the non-compliance through conciliation and persuasion.**
- B. In conciliation, the contractor must satisfy the Authority that they have made their "Best Efforts" to achieve the agreed upon participation goals by certified MBE/WBEs. "Best Efforts" on the part of the contractor include:**
 - 1. Entering a contractual relationship with the designated MBE/WBE in a timely manner, and fulfilling all contractual requirements.**
 - 2. Notifying both the certified MBE/WBEs subcontractor and the Authority's AAO of any problems in a timely manner.**
 - 3. Requesting assistance from the AAO in resolving any problems with certified MBE/WBEs.**
 - 4. Making every reasonable effort to assist the certified MBE/WBE in the performance of its contract with the Authority.**

7.3 WILLFUL NON-COMPLIANCE

- A. In cases where the AAO has cause to believe that any Bidder, Proposer, or Contractor has failed to comply with the provisions of these procedures, said officer shall be empowered to conduct an investigation subsequent to written direction of the General Manager of Contracting/Procurement.**
- B. After affording the Bidder, Proposer or Contractor notice and an opportunity to be heard, the AAO will be authorized to recommend sanctions for each violation of these procedures. Such sanctions may include, but are not limited to:**
 - 1. Declare the bid or proposal as non-responsible and the Bidder/Proposer ineligible to receive the award of the contract or any other future contracts.**
 - 2. Suspension from doing business with the Authority for a set period of time.**
 - 3. Debarment.**
 - 4. Withholding of payments under the contract.**
 - 5. Other relief the AAO deems necessary, proper, and in the best interest of the Authority.**

PART VIII: APPEALS

8.1 STANDARDS OF APPEAL: AFTER THE CONTRACT HAS BEEN AWARDED

A Bidder, Proposer, or Contractor may appeal a decision pursuant to any action taken under the provisions of Part VII: Compliance Review, by filing a written grievance with the AAO. An appeal by the Bidder, Proposer or Contractor under this section shall not stay the AAO's finding(s).

8.2 WRITTEN GRIEVANCE

- A.** The grievance shall set forth the reasons supporting it. The grievance shall be filed within ten (10) working days of the date that the finding, recommendation, proposal or other relief becomes effective. Failure to grieve in a timely manner shall be deemed a waiver of said right or breach of the conditions of this policy.
- B.** If a person requests a hearing at the time the grievance is filed, the AAO shall schedule a hearing within seven (7) working days of the date the grievance is filed, unless the person requesting a hearing agrees to a continuance provided it is not contrary to best interest of the Authority to permit the delay. The AAO shall notify in writing, the person filing the grievance, of the date, time and place of the hearing.
- C.** If a hearing is not requested, the AAO shall make a determination and notify the contractor within (7) working days.

8.3 HEARING

Five (5) working days prior to a scheduled hearing, the AAO shall issue and serve a written notice, together with a copy of the grievance as filed, to all persons named in the grievance. Such persons may be required to appear before a hearing panel at the date, time and place specific in the notice.

8.3.1 PANEL

- A.** The Executive Director shall designate a panel of three (3) or more individuals, one (1) of whom will be a member of the Affirmative Action Oversight Committee, to preside at such hearing, and to render a written decision on the grievance.
- B.** A party may request testimony from any person when it is determined that such testimony may assist in the resolution of the grievance. All proceedings will be transcribed and a record shall be maintained.
- C.** Any person or heads of departments named in the grievance may file a written answer to the grievance, and may appear at such hearing in person.
- D.** The panel shall not be bound by the strict rules of evidence prevailing in the courts of law or equity.

8.3.2 TESTIMONY

- A. The testimony taken at the hearing shall be under oath.**
- B. The parties have a right to request that the notes of testimony be transcribed.**
- C. Testimony shall be taken by the panel and the person filing the grievance and person (s) and heads of departments named in the grievance shall be given an opportunity to be heard.**

8.4 DECISION

- A. Within twenty (20) working days after the conclusion of the hearing, the panel shall render a written decision as to the validity of the grievance, as well as an appropriate recommendation.**
- B. A copy of the decision shall be sent by U.S. certified mail, returned receipt requested, to the grievant.**

8.5 EFFECT OF A PENDING DECISION

Pending a decision by the panel, the Philadelphia Housing Authority's Executive Director may stay any action pertaining to the grievance, if such stay is determined to be in the best interest of the Authority.

PART IX: AFFIRMATIVE ACTION OVERSIGHT COMMITTEE

The Philadelphia Housing Authority Board of Commissioners shall appoint an Affirmative Action Oversight Committee to monitor and evaluate the implementation and administration of the Affirmative Action Contract Compliance Program. The Oversight Committee shall have as its membership, at least one (1) member of the Board of Commissioners, Executive Director, General Counsel, and other individuals from the Authority's community at large. The Committee will prepare periodic reports for the Board and address related issues as requested by the Board of Commissioners.

**SCHEDULE OF PARTICIPATION
"CERTIFICATION OF BEST EFFORTS"**

Specification Number: _____

Name of Bidder: _____

MBE/WBE	Detailed Description of Work	M/WBE PARTICIPATION	
		DOLLAR AMOUNT \$	PERCENT
		MBE%	WBE%
<p>NAME:</p> <p>ADDRESS:</p> <p>PHONE NO:</p> <p>IRS ID#:</p> <p>CERT. NO.:</p> <p>CERT. AGCY:</p>	<p>Will any of this work be subcontracted by the M/WBE? (See Note #3)</p> <p>Will bidder assist M/WBE with any of this work? (See Note #4)</p>		
<p>NAME:</p> <p>ADDRESS:</p> <p>PHONE NO.:</p> <p>IRS ID#:</p> <p>CERT. NO.:</p> <p>CERT AGCY:</p>	<p>Will any of this work be subcontracted by the M/WBE? (See Note#3)</p> <p>Will bidder assist M/WBE with any of this work? (See Note #4)</p>		

DUPLICATE THIS FORM IF YOU ARE LISTING MORE THAN TWO (2) M/WBE SUBCONTRACTORS
PLEASE NOTE:

1. A binding commitment must have been achieved with the M/WBE for the detailed work and dollar amount stated on this form.
2. M/WBE listed above must be certified by a certifying agency in order to be credited towards the required minimum participation goals.
3. If the M/WBE intends to subcontract more than 10% of the work detailed on this form, such subcontractors, description of work, and dollar amount must be listed on a duplicate copy of this form.
4. If the bidder plans to supply the M/WBE with materials, personnel or equipment, such assistance must be listed on this form in the block marked "Detailed Description of work."
5. Any change to this schedule (the named M/WBE, description of work, or dollar amount) must be approved in advance by the Affirmative Action Officer (AAO).

**SCHEDULE OF BINDING COMMITMENTS WITH MINORITY AND WOMEN OWNED BUSINESSES
"CERTIFICATION OF BEST EFFORTS"**

Specification Number: _____ Name of Bidder: _____

NAME OF CERTIFIED MINORITY/WOMEN OWNED FIRMS* (INCLUDE CONTRACTING AGENT'S NAME)	TYPE OF CONTRACT WORK SPECIFY CONSTRUCTION, INSTALLATION, SUPPLY, ETC.	TOTAL DOLLAR AMOUNT OF PARTICIPATION	PERCENTAGE OF TOTAL PARTICIPATION	
			MINORITY OWNED BUSINESSES	WOMEN OWNED BUSINESSES

*Bidder's are hereby notified that all firms listed above will be contacted to verify their level of participation.

Signature: _____
 Name: _____
 Title: _____

DOCUMENTATION OF BEST EFFORTS

**Specification
Number:** _____

**Name
of Bidder:** _____

**CERTIFIED MINORITY/WOMEN OWNED BUSINESSES
UNAVAILABLE TO PARTICIPATE IN THE CONTRACT.**

List below the name of all certified minority/women owned businesses whose interest in the contract were solicited, but who were unavailable to work on this project or were unable to prepare a quote. State the reasons for the unavailability of certified minority/women owned businesses. In order to facilitate verification and avoid delays in contract awards, it is requested that each business listed below be identified on the "Affidavit of Unavailability of Certified Minority/Women Owned Businesses" (Page K-28).

**INFORMATION AND ASSISTANCE PROVIDED TO CERTIFIED
MINORITY/WOMEN OWNED BUSINESSES.**

Include names and addresses of all certified minority/women owned businesses that you provided with plans, specifications, and requirements of the contract. Detail all assistance you provided to interested certified minority/women owned businesses and all your efforts at negotiation for specific sub-bids, and include any advertisements soliciting their participation.

I do hereby attest that I have exerted best efforts, but have been unable to obtain the required minimum participation goals for the following reason: *

Company Name

Specification Number

Name (Signature)

Title

***You may attach supplemental pages and documentation if necessary.**

**AFFIDAVIT OF UNAVAILABILITY OF CERTIFIED
MINORITY/WOMEN OWNED BUSINESSES**

Specification
Number: _____

Name
of Bidder: _____

I, _____, do hereby attest that

I was offered an opportunity to bid on the contract for:

(Description of Contract)

by _____
(Name of Prime Bidder)

but was unavailable to participate/unable to prepare a quote (strike inappropriate phrase) for the following reasons:*

Name of Certified Minority/Women Owned Business

Address and Phone Number

Signature of Principal of Certified
Minority/Women Owned Business

Title

Certifying Agency and Number

*You may attach supplemental pages and documentation if necessary.

GUIDELINES FOR JOINT VENTURING

BETWEEN A PRIME CONTRACTOR AND A CERTIFIED MINORITY/WOMAN-OWNED BUSINESS ENTERPRISE

If a Prime Contractor has made arrangements to enter into a joint venture partnership with either a certified MBE or WBE, the following criteria must be met in order to receive credit towards the minimum participation goals (MPGs):

- A. The MBE/WBE partner(s) must be certified by a governmental entity authorized by law to certify such enterprises prior to bid/proposal submittals.
- B. The MBE/WBE partner(s) must be substantially involved in all phases of the contract including, but not limited to, the performance, with its own work force, a portion of the on-site work, and administrative responsibilities such as bidding, planning, staffing and daily management.
- C. The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interests).
- D. If the certified partner(s) is a MBE, its participation may be credited to the extent of the partner's ownership interest in the joint venture. However, it will still be required to meet the WBE goal or vice versa.

JOINT VENTURE QUESTIONNAIRE

If you intend to receive credit towards the minimum participation goals (MPGs) by entering into a joint venture partnership with a certified MBE/WBE, you must complete this questionnaire and submit it along with your bid/proposal.

1. NAME OF THE JOINT VENTURE _____

2. ADDRESS OF THE JOINT VENTURE _____

3. TELEPHONE NUMBER () _____

4. CONTACT PERSON & TITLE _____

5. IDENTIFY BELOW ALL OF THE FIRMS WHICH COMPRISE THE JOINT VENTURE PARTNERSHIP(S). IDENTIFY WHETHER THE FIRM IS A CERTIFIED MBE/WBE. INCLUDE CERTIFICATION NUMBER AND AGENCY WHERE APPLICABLE, AND INDICATE THE PERCENTAGE OF JOINT OWNERSHIP INTEREST.

NAME:

ADDRESS:

TELEPHONE NUMBER:

MBE _____ WBE _____

IRS ID#

CERTIFICATION NUMBER:

PERCENTAGE
OF OWNERSHIP _____

CERTIFYING AGENCY:

NAME:

ADDRESS:

TELEPHONE NUMBER:

MBE _____ WBE _____

IRS ID#

CERTIFICATION NUMBER:

PERCENTAGE
OF OWNERSHIP _____

CERTIFYING AGENCY:

NAME:

ADDRESS:

TELEPHONE NUMBER:

MBE _____ WBE _____

IRS ID#

CERTIFICATION NUMBER:

PERCENTAGE
OF OWNERSHIP _____

CERTIFYING AGENCY:

6. DESCRIBE, IN DETAIL, THE BUSINESS PURPOSE OF THE JOINT VENTURE PARTNERSHIP AND THE ROLE OF EACH FIRM IN THE JOINT VENTURE. INCLUDE INFORMATION REGARDING DAILY MANAGEMENT, BIDDING, PLANNING, ON-SITE WORK, AND STAFFING. ATTACH SUPPLEMENTAL PAGES IF NECESSARY.

7. ATTACH A COPY OF THE JOINT VENTURE AGREEMENT.

Any changes to the joint venture agreement attached hereto or to this questionnaire, including changes in any of the arrangements described herein, must be approved in advance by the Authority's Affirmative Action Officer.

Each undersigned does hereby attest that the foregoing statements are true and correct.

NAME OF FIRM

NAME OF FIRM

SIGNATURE OF FIRM'S
AUTHORIZED AGENT

SIGNATURE OF FIRM'S
AUTHORIZED AGENT

PRINTED NAME

PRINTED NAME

TITLE

TITLE

DATE

DATE

**PHILADELPHIA HOUSING AUTHORITY
SECTION THREE COMPLIANCE PROGRAM**

INTRODUCTION

The Philadelphia Housing Authority is pleased to present this program, which will assist all contractors and developers in complying with the requirements of Section 3 of the U.S. Housing and Urban Development (HUD) Act of 1968, as amended in 1992. This program will ensure that employment, training and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly those who are public housing residents, and to businesses which provide economic opportunities to low-and very low-income persons.

Numerical goals have been established for both hiring and contracting for recipients, contractors and subcontractors that when met, will demonstrate satisfactory efforts to comply with Section 3. There are also resident and business preferences that dictate the order in which Section 3 residents and business concerns are to be hired and awarded contracts.

The Authority by this program, affirms its commitment to maximize, to the greatest extent feasible, the creation of employment, training and contracting opportunities for low-and very low-income persons and to provide contractors and developers a step-by-step procedural guide on all matters related to this program. To this end, the Authority will provide such assistance as will be needed to achieve the program's goal.

Section 3 Compliance Program
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PART I
GENERAL PROVISIONS

1. Purpose.

A. The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) is to ensure that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low-income persons.

B. The purpose of these instructions is to establish the standards and procedures to be followed to ensure that the objectives of Section 3 are met by contractors and subcontractors.

2. Definitions.

The terms Department, HUD, Public Housing Agency (PHA), and Secretary are defined in 24 CFR Part 5.

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, that contains the terms and conditions under which HUD assists the PHA in providing decent, safe, and sanitary housing for low income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization and/or operation of a low income housing project under the 1937 Act, and the PHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for Section 3 covered assistance such as a public housing agency.

Apprenticeship program means a program whereby a person is employed and individually registered in a bona fide apprenticeship program. Also, registered with the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship Training, or with a State Apprenticeship Agency recognized by the Bureau.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Contract. See the definition of "Section 3 covered contract" in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

Employment opportunities generated by Section 3 covered assistance means all employment opportunities generated by the expenditure of Section 3 covered public housing assistance (i.e., operating assistance, development assistance, and modernization assistance, as described in Section 135.3 (a)(1)). With respect to Section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with Section 3 covered projects (as described in Sec. 135.3 (a)(2)), including management and administrative jobs connected with the Section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Housing development means low-income housing owned, developed, or operated by public housing agencies in accordance with HUD's public housing program regulations codified in 24 CFR Chapter IX.

HUD Youthbuild programs mean programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income person. See the definition of "Section 3 resident" in this section.

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood area means:

(1) For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(2) For HUD community development programs, see the definition, if provided, in the regulations for the applicable community development program, or the definition for this term in 24 CFR 570.204 (c)(1).

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Nonmetropolitan county means any county outside of a metropolitan area.

Other HUD programs means HUD programs, other than HUD public housing programs, that provide housing and community development assistance for "Section 3 covered projects", as defined in this section.

Pre-apprentice program means a program of basic skills and occupational skills approved by PHA and the Private Industry Council that leads to an apprenticeship program.

Public housing resident has the meaning given this term in 24 CFR Part 963.

Recipient means any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

Section 3 means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means a business concern, as defined in this section:

- (1) That is 51 percent or more owned by Section 3 residents; or
- (2) Whose permanent, full-time employees include persons, at least thirty (30) percent of whom are currently Section 3 residents, or within three (3) years of the date of first employment with the business concern were Section 3 residents; or
- (3) That provides evidence of a commitment to subcontract in excess of twenty-five (25) percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "Section 3 business concern".

Section 3 clause means the contract provisions set forth in Section 135.38.

Section 3 covered activity means any activity which is funded by Section 3 covered public housing assistance.

Section 3 covered assistance means

- (1) Public housing development assistance provided pursuant to Section 5 of the 1937 Act;
- (2) Public housing operating assistance provided pursuant to Section 9 of the 1937 Act;
- (3) Public housing modernization assistance provided pursuant to Section 14 of the 1937 Act;
- (4) Assistance provided under any HUD housing or community development programs that is expended for work arising in connection with:
 - (i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);
 - (ii) Housing construction; or
 - (iii) Other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. "Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). "Section 3 covered contracts" also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e.; the installation of the furnace) and thus is covered by Section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 resident means:

- (1) A public housing resident; or
- (2) An individual who resides in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended, and who is:

- (i) A low-income person, as this term is defined in Section 3 (b) (2) of the 1937 Act (42 U.S.C. 1437a (b) (2)). Section 3 (b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or

- (ii) A very low-income person, as this term is defined in Section 3 (b) (2) of the 1937 Act (42 U.S.C. 1437a (b) (2)). Section 3 (b) (2) of the 1937 Act (42 U.S.C. 1437a (b) (2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

- (3) A person seeking the training and employment preference provided by Section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Section 8 assistance means assistance provided under Section 8 of the 1937 Act (42 U.S.C. 1437f) pursuant to 24 CFR Part 882, subpart G.

Service area means the geographical area in which the persons benefiting from the Section 3 covered project reside. The service area shall not extend beyond the unit of general local government in which the Section 3 covered assistance is expended.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

Very low-income person. See the definition of "Section 3 resident" in this section.

Youthbuild programs. See the definition of "HUD Youthbuild programs" in this section.

3. Reporting.

PHA receives HUD financial assistance that is subject to Section 3 requirements and PHA submits an annual performance report, in accordance with the requirements which will be made available to the public.

4. Cooperation opportunities to establish, in Achieving Compliance.

A. The success of ensuring that Section 3 residents and Section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by HUD financial assistance depends upon the cooperation and assistance of PHA contractors and subcontractors. PHA shall cooperate fully and promptly in Section 3 compliance reviews, in investigations of allegations of noncompliance made under Section 135.76, and with the distribution and collection of data and information that may be required in connection with achieving the economic objectives of Section 3.

B. PHA shall refrain from entering into a contract with any contractor after notification to PHA by HUD that the contractor has been found in violation of the regulations. The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension or otherwise ineligible status.

5. Responsibility of the Philadelphia Housing Authority (PHA).

PHA has the responsibility to comply with Section 3 in its own operations, and ensure compliance in the operations of its contractors and subcontractors. This responsibility includes but may not be necessarily limited to:

A. Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 assistance and Section 3 business concerns and about contracting opportunities generated by Section 3 covered assistance;

B. Notifying potential contractors about Section 3 and incorporating the Section 3 clauses set forth in Section 135.38 in all solicitations and contracts.

C. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities, as appropriate, to reach the goals set forth in Section 135.30. PHA, at its own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in Section 135.30;

D. Assisting and actively cooperating with HUD in obtaining the compliance of contractors and subcontractors with Section 3 requirements, and refraining from entering into any contract with any contractor where PHA has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR Part 135.

E. Providing Other Economic Opportunities.

1. Other economic opportunities offer an effective means of empowering low-income persons, and PHA is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards.

2. Other economic opportunities to train and employ Section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies; hiring Section 3 residents in management and maintenance positions within housing developments; and hiring Section 3 residents in part-time positions.

3. Other business related economic opportunities.

(a) PHA or contractor may provide economic opportunities to stabilize or expand Section 3 business concerns, including micro-enterprises. Such opportunities include, but are not limited to the formation of Section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, and use of procedures under 24 CFR Part 963 regarding PHA contracts to PHA resident-owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-Section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

(b) A Section 3 joint venture means an association of business concerns, one of which qualifies as a Section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 business concern:

(i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

6. Compliance Reviews.

A. HUD shall periodically conduct Section 3 compliance reviews of PHA and its contractors to determine whether they are in compliance with the regulations.

B. A Section 3 compliance review shall consist of a comprehensive analysis and evaluation of PHA's or contractor's compliance with the requirements and obligations imposed by the regulations, including an analysis of the extent to which Section 3 residents have been hired and Section 3 business concerns have been awarded contracts as a result of the methods undertaken by PHA to achieve the employment, contracting and other economic objectives of Section 3.

C. Where the Section 3 compliance review reveals that PHA or contractor has not complied with Section 3, HUD shall notify PHA or contractor of its specific deficiencies in compliance with the regulations and shall advise PHA or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with PHA or contractor to ensure that action is being taken to correct the deficiencies.

D. A continuing failure or refusal by PHA or contractor to comply with the regulations may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify PHA of any continuing failure or refusal by the contractor to comply with the regulations for possible action under any procurement contract between PHA and the contractor. Debarment, suspension and limited denial of participation pursuant to HUD's regulations in 24 CFR Part 24, where appropriate, may be applied to PHA or the contractor.

E. Section 3 compliance reviews may be conducted before the award of contracts, and especially if PHA has reasonable grounds to believe contractor will be unable or unwilling to comply with the regulations.

F. Complaints alleging noncompliance with Section 3, as provided in section 135.76, may also be considered during any compliance review conducted to determine the PHA's conformance with regulations in this part.

7. Preference for Section 3 Residents.

A. PHA, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in paragraph (A) of this section.

Efforts shall be directed to provide training and employment opportunities to Section 3 residents in the following order of priority:

(i) Residents (selected from a qualified pool) of the PHA housing development or developments for which the Section 3 covered assistance is expended (category 1 residents);

(ii) Residents (selected from a qualified pool) of other housing developments managed by PHA that is expending the Section 3 covered housing assistance, including recipients of certificates or vouchers under the Section 8 housing assistance program. (category 2 residents);

(iii) Participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the Section 3 covered assistance is expended (category 3 residents);

(iv) Other Section 3 residents in the City of Philadelphia.

B. A Section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the contractor or subcontractor, if requested, that the person is a Section 3 resident. (Note: All PHA residents are Section 3 residents.)

8. Preference for Section 3 Business Concerns.

A. PHA, contractors and subcontractors shall direct their efforts to award Section 3 covered contracts, to the greatest extent feasible, to Section 3 business concerns, in the order of priority provided in paragraph A of this section.

Efforts shall be directed to award contracts to Section 3 business concerns in the following order or priority:

(i) Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses); or

(ii) Business concerns that are 51 percent or more owned by residents of other PHA housing developments or developments managed by PHA or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the Section 3 covered assistance is expended (category 3 businesses); or

(iv) Business concerns that are 51 percent or more owned by Section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent Section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs A (i) and A (ii) of this section.

B. A Section 3 business concern seeking a contract or a subcontractor shall submit evidence to the recipient, contractor, or subcontractor, if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract.

9. Section 3 Clauses.

If the contract is a covered Section 3 contract, then the following clauses (Section 3 clauses) are incorporated by reference in the contract:

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.

10. Applicability.

A. Section 3 applies to the following HUD assistance (Section 3 covered assistance):

(1) Public housing assistance. Section 3 applies to training, employment, contracting and other economic opportunities arising from the expenditure of the following public housing assistance:

(i) Development assistance provided pursuant to Section 5 of the U.S. Housing Act of 1937 (1937 Act);

(ii) Operating assistance provided pursuant to Section 9 of the 1937 Act;
and

(iii) Modernization assistance provided pursuant to section 14 of the 1937 Act;

(2) Thresholds :

There are no thresholds for Section 3 covered public housing assistance. The requirements apply to Section 3 covered assistance provided to recipients; notwithstanding the amount of the assistance provided to the recipient. The requirements apply to all contractors and subcontractors performing work in connection with projects and activities funded by public housing assistance covered by Section 3, regardless of the amount of the contract or subcontract.

11. Other Applicable Laws.

A. Neither Section 3 nor the requirements of part 135 supersede the general requirement of 24 CFR 85.36 (c) that all procurement transactions be conducted in a competitive manner. Consistent with 24 CFR 85.36(c)(2), Section 3 is a Federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

B. Federal labor standards provisions. Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a--276a-7) and implementing U.S. Department of Labor regulations in 29 CFR Part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR Part 5 or for work subject to HUD-determined prevailing wage rates, HUD policies and guidelines. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in "approved apprenticeship and training programs", as described in paragraph C of this section.

C. Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: a pre-apprentice/apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29 CFR Part 5; or a training program approved by HUD in accordance with HUD policies and guidelines, as applicable. To demonstrate compliance, all apprentices hired pursuant to this contract shall be graduates of a pre-apprentice/apprenticeship program approved by the Philadelphia Housing Authority.

D. Certain contractors covered by this part are subject to compliance with Executive Order 11246, as amended by Executive Order 12086, and the Department of Labor regulations issued pursuant thereto (41 CFR Chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

12. Numerical Goals.

A. General.

(1) PHA and covered contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns.

(2) The goals established in this section apply to the entire amount of Section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.

(3) If PHA does not engage in training, or hiring, but awards contracts to contractors that will engage in training, hiring, and subcontracting, PHA must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns.

(4) The numerical goals established in this section represent minimum numerical PHA targets.

B. The numerical goals set forth below apply to the training and employment of new hires. The numerical goals reflect the aggregate hires. Efforts to employ Section 3 residents, to the greatest extent feasible, should be made at all job levels.

(1) Contractors and subcontractors shall demonstrate compliance by employing Section 3 residents who are graduates of PHA's pre-apprentice/apprenticeship training program at 75 percent of the aggregate number of new hires.

(2) Numerical goals for other HUD programs covered by Section 3.

(i) Recipients of Section 3 covered housing assistance provided under other HUD programs, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in Section 135.3 (a)(3)) may demonstrate compliance with this part by committing to employ Section 3 residents at 10 percent of the aggregate number of new hires for each year over the duration of the Section 3 project;

(ii) Where a managing general partner or management agent is affiliated, in a given metropolitan area, with recipients of Section 3 covered housing assistance, for an aggregate of 500 or more units in any fiscal year, the managing partner or management agent may demonstrate compliance with this part by committing to employ Section 3 residents at 30% of the aggregate number of new hires beginning in 1997 and continuing thereafter.

C. Numerical goals set forth below apply to contracts awarded in connection with all Section 3 covered projects and Section 3 covered activities. PHA and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in Section 135.3 (a)(3)) may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

(1) At least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(2) At least three (3) percent of the total dollar amount of all other Section 3 covered contracts.

13. Filing and Processing Complaints.

A. The following individuals and business concerns may, personally or through an authorized representative, file with HUD a complaint alleging noncompliance with Section 3:

(1) Any Section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of Section 3 covered assistance with PHA or contractor, or by a representative who is not a Section 3 resident, but who represents one or more Section 3 residents;

(2) Any Section 3 business concern on behalf of itself, or as a representative of other Section 3 business concerns similarly situated, seeking contract opportunities generated from the expenditure of Section 3 covered assistance from PHA or contractor, or by an individual representative of Section 3 business concerns.

B. A complaint must be filed with U.S. Department of Housing and Urban Development, Washington, DC 20410.

C. Time of filing.

(1) A complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by HUD for good cause shown.

(2) Where a complaint alleges noncompliance with Section 3 and the regulations that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

(3) Where a complaint contains incomplete information, HUD shall request the needed information from the complainant. In the event this information is not furnished to HUD within sixty (60) days of the date of the request, the complaint may be closed.

D. Contents of complaint.

(1) Written complaints. Each complaint must be in writing, signed by the complainant, and include:

(i) The complainant's name and address;

(ii) The name and address of the respondent;

(iii) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(iv) A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

(2) Amendment of complaint. Complaints may be reasonably amended at any time. Such amendments may include, but are not limited to, amendments to cure technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

E. Resolution of complaint by PHA.

(1) Within ten (10) days of timely filing of a complaint that contains complete information (in accordance with paragraphs C and D of this section), HUD shall determine whether the complainant alleges an action or omission by PHA or PHA's contractor that if proven qualifies as noncompliance with Section 3. If a determination is made that there is an allegation of noncompliance with Section 3, the complaint shall be sent to PHA for resolution.

(2) If PHA believes that the complaint lacks merit, PHA shall notify HUD in writing of this recommendation with supporting reasons, within thirty (30) days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary of HUD.

(3) If HUD determines that there is merit to the complaint, PHA will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the 60-day period, the recipient must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both PHA and the complainant, and must summarize the terms of the resolution reached between the two parties.

(4) Any request for an extension of the 60-day period by PHA must be submitted in writing to the Assistant Secretary, and must include a statement explaining the need for the extension.

(5) If PHA is unable to resolve the complaint within the 60-day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling.

F. Informal resolution of complaint by Assistant Secretary.

(1) Dismissal of complaint. Upon receipt of the PHA's written recommendation that there is no merit to the complaint, or upon failure of PHA and complainant to reach resolution, the Assistant Secretary shall review the complaint to determine whether it presents a valid allegation of noncompliance with Section 3. The Assistant Secretary may conduct further investigation if deemed necessary. Where the complaint fails to present a valid allegation of noncompliance with Section 3, the Assistant Secretary will dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(2) Informal resolution. Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with Section 3, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on PHA and complainant. Any resolution imposed by the Assistant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the Section 3 covered assistance was provided.

(3) Effective date of informal resolution. The imposed resolution will become effective and binding at the expiration of fifteen (15) days following notification to PHA and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the fifteen (15) days. Any appeal shall be in writing to the Secretary and shall include the basis for appeal.

G. Sanctions may be imposed on PHA, if it fails to comply with the regulations. Sanctions which may be imposed on contractor/subcontractor, include debarment; suspension and limited denial of participation.

H. Investigations of complaint. The Assistant Secretary reserves the right to investigate a complaint directly when, in the Assistant Secretary's discretion, the investigation would further the purposes of Section 3 and this part.

I. Intimidatory or retaliatory acts are prohibited. PHA shall not intimidate, threaten, coerce, or discriminate against any person or business because the person or business has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

J. Nothing precludes a Section 3 resident or Section 3 business concerning from exercising the right, which may otherwise be available, to seek redress directly through judicial procedures.

General.

A. This section establishes procedures for handling complaints alleging noncompliance with the regulations and the procedures governing the Assistant Secretary's review of PHA's or contractor's compliance with the regulations.

B. Definitions. For purposes of this subpart:

(1) Complaint means an allegation of noncompliance with regulations in the form described in Section 135.76(d).

(2) Complainant means the party that files a complaint with the Assistant Secretary alleging that PHA or contractor has failed or refused to comply with the regulations.

(3) Noncompliance with Section 3 means failure by PHA or contractor to comply with the requirements of this part.

(4) Respondent means PHA or contractor against which a complaint of noncompliance has been filed.

Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that Section 3 residents and Section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by covered HUD financial assistance depends upon the cooperation and assistance of PHA and their contractors and subcontractors. PHA shall cooperate fully and promptly with the Assistant Secretary in Section 3 compliance reviews, in investigations of allegations of noncompliance made and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of Section 3.

(b) PHA shall refrain from entering into a contract with any contractor after notification by HUD that the contractor has been found in violation of the regulations. The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or otherwise ineligible status.

Section 3 Compliance Review Procedures.

(a) The Assistant Secretary shall periodically conduct Section 3 compliance reviews to determine whether PHA and/or contractor are in compliance with the regulations.

(b) A Section 3 compliance review shall consist of a comprehensive analysis and evaluation of the PHA's contractor's compliance with the requirements and obligations imposed by the regulations, including an analysis of the extent to which Section 3 residents have been hired and Section 3 business concerns have been awarded contracts.

(c) Where the Section 3 compliance review reveals that PHA or contractor has not complied with Section 3, the Assistant Secretary shall notify PHA or contractor of its specific deficiencies in compliance with the regulations and shall advise the PHA the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with PHA to ensure that action is being taken to correct the deficiencies.

(d) A continuing failure or refusal by the contractor to comply with the regulations may result in the application of sanctions. HUD will notify PHA of any continuing failure or refusal by the contractor to comply with the regulations for possible action under any procurement contract between PHA and the contractor. Debarment, suspension and limited denial of participation pursuant to HUD's regulations in 24 CFR Part 24, where appropriate, may be applied to the contractor.

(e) Compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that PHA or contractor will be unable or unwilling to comply with the regulations.

(f) Complaints alleging noncompliance with Section 3, as provided in Section 135.76, may also be considered during any compliance review conducted to determine the recipient's conformance with regulations.

14. Recordkeeping/Access to Records.

PHA and HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements, or that are maintained in accordance with the regulations governing the specific HUD program under which Section 3 covered assistance is provided or otherwise made available to the recipient or contractor.

15. Applicable Procurement Procedural Conditions.

A. All procurements shall be let under competitive conditions, except as needed herein.

B. PHA shall, when asking for formal bids/offers follow its detailed written procedures as found in its CPP-535 and its CPP-524.

C. PHA shall follow its Board of Commissioners approved procurement policy, except as augmented by HUD regulations, re: Section 3.

16. Procurement Procedures That Provide for Preference for Section 3 Business Concerns.

This Section provides specific procedures recommended by HUD that may be followed by recipients and contractors (collectively, referred to as the "contracting party") for implementing the Section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

A. Small Purchase Procedures

For any Section 3 covered contract for no more than \$10,000, the methods set forth in this Paragraph (A) or the more formal procedures set forth in paragraphs (B) and (C) of this section may be utilized.

(1) Solicitation

(i) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive source. At the time of solicitation, the parties must be informed of:

- the Section 3 covered contract to be awarded with sufficient specificity;
- the time within which quotations must be submitted; and
- the information that must be submitted with each quotation.

(ii) If the method described in paragraph A is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(2) Award

(i) Where the Section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(ii) Where the Section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for Section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous considering price and all other factors specified in the rating system.

B. Procurement by sealed bids (Invitations for Bids)

Procurements by sealed bids, for construction contracts which exceed \$10,000, will be awarded to the lowest responsible bidder, after advertisement for bids in accordance with Pennsylvania public contracting law. See 35 P.S. Section 1551. In the event of inconsistency in state contracting law and HUD regulations, state or local provisions will prevail. See 59 Fed. Reg. 33874 (June 30, 1994). An award shall be made to the business concern with the lowest responsive bid. If the responsive bid by a Section 3 business concern is not the lowest, then the contract shall be awarded to the responsible bidder with the lowest responsive bid.

C. Procurement under the competitive proposals method of procurement Request for Proposal (RFP)

(1) For contracts and subcontracts awarded under competitive proposals method of procurement (24 CFR 85.36 (d) (3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

(2) One of the evaluation factors shall address both the preference for Section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (Section 3 strategy), as disclosed in proposals submitted by all business concerns (Section 3 and non-Section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(3) The component of this evaluation factor designed to address the preference for Section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(4) With respect to the second component (the acceptability of the Section 3 strategy), the RFP shall require the disclosure of the contractor's Section 3 strategy to comply with the Section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable Section 3 strategy. The contract award shall be made to the responsible firm (either Section 3 or non-Section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

RESERVED

PART II

**EXAMPLE OF SECTION 3 EFFORTS TO OFFER ECONOMIC AND
TRAINING OPPORTUNITIES**

Examples of Efforts to Increase Employment Opportunities for Section 3 Residents

- (1) Sponsoring a HUD-certified pre-apprentice/apprenticeship, employment and training program for Section 3 residents.
- (2) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public housing residents and other Section 3 residents in the building trades.
- (3) Entering into "first source" hiring agreements with organizations representing Section 3 residents.
- (4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the PHA housing development or developments where category 1 or category 2 persons (as these terms are defined in Section 135.34) reside.
- (5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the PHA housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the Section 3 covered project.
- (6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the PHA housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods.
- (7) Sponsoring (scheduling, advertising, financing or providing in-kind services) job informational meetings to be conducted by an PHA housing development or developments where category 1 or category 2 persons reside or in the neighborhood.
- (8) Arranging assistance in conducting job interviews and completing job applications for residents of the PHA housing development or developments where category 1 or category 2 persons reside and in the neighborhood of service area in which a Section 3 project is located.

- (9) Arranging for a location in the PHA housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.
- (10) Conducting job interviews at the PHA housing developments or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the Section 3 covered project.
- (11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the PHA contractor's training and employment positions.
- (12) Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the PHA or contractor's training and employment positions.
- (13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
- (14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the Section 3 business concerns identified in Part 135), that will undertake, on behalf of the PHA, other recipient or contractor, the efforts to match eligible and qualified Section 3 residents with the training and employment positions that the PHA or contractor intends to fill.
- (15) For PHA to employ Section 3 residents directly on either a permanent or a temporary basis to perform work generated by Section 3 assistance.
- (16) Where there are more qualified Section 3 residents than there are positions to be filled, maintaining a file of eligible qualified Section 3 residents for future employment positions.

Examples of Efforts To Award Contracts To Section 3 Business Concerns

- (1) Utilizing procurement procedures for Section 3 business concerns.
- (2) In determining the responsibility of potential contractors, consider their record of Section 3 compliance as evidenced by past actions and their current plans for the pending contract.
- (3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids or proposals for contracts for work in connection with Section 3 covered assistance.
- (4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas of other prominent areas of the housing development or developments owned and managed by the PHA.
- (5) For PHA to contact resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.
- (6) Providing written notice to all known Section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the Section 3 business concerns to respond to the bid invitations or request for proposals.
- (7) Following up with Section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.
- (8) Coordinating pre-bid meetings at which Section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.
- (9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in language other than English where appropriate.

- (10) Advising Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- (11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.
- (12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by Section 3 business concerns.
- (13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.
- (14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
- (15) Developing a list of eligible Section 3 business concerns.
- (16) For PHA to participate in the "Contracting with Resident-Owned Business" program provided under 24 CFR Part 963.
- (17) Establishing or sponsoring programs designed to assist PHA in the creation and development of resident-owned businesses.
- (18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to Section 3 business.
- (19) Supporting business which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.
- (20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.
- (21) Actively supporting joint ventures with Section 3 business concerns.
- (22) Actively supporting business that promote the development or maintenance and assist Section 3 business concerns.

Contracting with Resident Owned Business

HUD issued a final rule (24CFR Part 963) which allows PHA to use an alternate method of procurement to allow contracting with businesses substantially owned by residents of public housing. The resident must own and control at least 51 percent of the enterprise. This rule affects all contracts for services, supplies, and construction. The alternate procurement process allows a housing authority to limit their solicitation process to resident owned businesses. The HUD Procurement Handbook, 7460.8-Rev. 1 , strongly encourages housing authorities to adopt a policy of contracting and providing employment opportunities with residents and resident owned businesses, including Resident Management Corporations, whenever possible,

The procurement process under 24 CFR 963 requires the Authority to undertake the following procurement process when limiting solicitation to resident owned businesses:

1. As with all procurement activity, the Authority must prepare an independent cost estimate for the goods or service it is requesting a bid or proposal.
2. The Authority will determine the appropriate method of procurement, i.e.. small purchase, sealed bidding, competitive proposals, or noncompetitive proposals.
3. The Authority will solicit a bid or a proposal, depending on the method of procurement, from one or more resident owned business.
4. The Authority must perform a cost/price analysis and determine if the bid/offer is reasonable and comparable to normal prices for supplies, goods, or services in the project area.
5. The Authority documents the procurement file and complies with all other procurement requirements contained in 24 CFR 85.36 and the Authority's procurement policy.

This method of procurement is limited to a cumulative total of \$1,000,000 per resident owned business. The Authority must request a certification from the resident owned business regarding previous contracts received under this alternate procurement process. Once a resident owned business has received over \$1,000,000 worth of contracts, they must then compete with all non-residents owned businesses through the normal competitive process.

Section 3 Outreach Effort

PHA has the responsibility to comply with Section 3 in its own operations, and ensure compliance in the operations of its contractors and subcontractors. In order for PHA to effectively link the economic opportunities that are to be made available to the low and very low income individuals it serves, PHA needs to establish an effective and ongoing outreach program.

An effective outreach involves a combination of efforts to reach as many eligible Section 3 residents as possible to inform them of the opportunities that are being generated by this Section 3 program.

Some of the resources available to assist in the outreach effort are:

1. Placing notices in local and community newspapers.
2. Articles in public housing resident newsletters.
3. Placing public service announcements on local television and radio stations.
4. Presentations for community organizations and public housing resident groups.
5. Periodic mailings to public housing residents.
6. Referrals from other local employment training programs.
7. Posting at community centers, unemployment offices, and government offices.
8. Notifications to other service providers serving low income individuals.
9. Data collected from community or resident surveys.
10. Notification to job placement agencies.

The outreach effort should explain the purpose of the Section 3 program, that is, to the greatest extent feasible, contractors are required to provide employment and training opportunities to low and very low income persons, a statement of eligibility and a phone number and a contact person for further information. PHA is responsible for administering the Section 3 program and monitoring contractor compliance and will need to perform the outreach effort in order to have eligible individuals to place with contracting firms desiring to comply with their obligations to the Section 3 regulations.

Sample of Resident Outreach

Dear Resident:

"Section 3" is the popular name of a HUD program that ensures that employment, job training and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, be directed to you.

Simply stated, "JOBS" is the name of the game, and the Philadelphia Housing Authority (PHA) is conducting an outreach effort to notify and connect you to contractors and programs that may have employment opportunities available.

If you wish to be considered for these possible future employment and training opportunities, please complete the attached survey and return it to: The Authority.

Should you have any questions regarding this Section 3 outreach effort, please contact Ms. Doe at (xxx) xxx-xxxx.

Sincerely,

SAMPLE OUTREACH – RECRUITMENT LETTER
EMPLOYMENT AND TRAINING POSITIONS

Date

Ms. Jane Doe
Doe Community Organization
123 Fourth Street
Philadelphia, PA 19147

Subject: Section 3 Recruiting – Employment and Training Positions

Dear Sir or Madam:

Because my firm is a contractor on a HUD financed project covered by Section 3 of the U.S. Housing and Urban Development Act of 1968, as amended, we are required to ensure that employment and other specified on the attached notice. Additionally, we are required to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance.

My firm is committed to complying with Section 3 and will take steps necessary to achieve the goals of the Act. Accordingly, this letter is to request your assistance in notifying and referring qualified Section 31 residents of the job openings listed on the attached Section 3 notice. Interested persons should contact:

Mr. John Doe
678 Ninth Street
Philadelphia, PA 19147

Thank you for your assistance in this matter. Should you need additional information, please call Mr. Doe at (215) 123-4567.

Sincerely,

1 A Section 3 resident means (1) a public housing resident; or (2) a low or very low income individual who resides in the metropolitan area in which the Section 3 covered assistance is expended.

SAMPLE SECTION 3 NOTICE FOR HUD FINANCED PUBLIC HOUSING PROJECTS

Purpose of Notice: To comply with Section 3 of the U. S. Housing and Urban Development Act of 1968, as amended.

Preference Requirements - Employment and Training

The Statute requires that any New Hires for this project be directed to qualified Section 3 Residents in the following order of priority:

1. Residents (selected from a qualified pool) of PHA developments for which the assistance is expended.
2. Residents (selected from a qualified pool) of other developments managed by the PHA.
3. Participants in Youthbuild programs. (see "Definitions")
4. Other low and very low income persons residing in the metropolitan area.

Positions Subject To Hire For This Project				
Position Title	Qualifications	Estimated Salary	Estimated Start Date	Estimated Completion Date
Contact Persons Name, Address and Phone Number:				
Prime Contractor's Name, Address and Phone Number:				
Recipient's Name, Address and Phone Number:				

SAMPLE OUTREACH LETTER – CONTRACTING OPPORTUNITIES

Date

Ms. Jane Doe
Doe Community Organization
123 Fourth Street
Philadelphia, PA 19147

Subject: Section 3 Recruitment – Contracting Opportunities

Dear Sir or Madam:

Because my firm is a contractor on a HUD financed project covered by Section 3 of the U.S. Housing and Urban Development Act of 1968, as amended, we are required to ensure that employment and other economic opportunities are directed to low and very low income persons in the order specified on the attached notice. Additionally, we are required to notify Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.

My firm is committed to complying with Section 3 and will take steps necessary to achieve the goals of the Act. Accordingly, this letter is to request your assistance in notifying and referring qualified Section 32 business concerns of the contracting opportunities listed on the attached Section 3 notice. Interested persons should contact:

Mr. John Doe
678 Ninth Street
Philadelphia, PA 19147

Thank you for your assistance in this matter. Should you need additional information, please call Mr. Doe at (215) 123-4567.

Sincerely,

2 A Section 3 business means a business concern (1) that is 51 percent or more owned by Section 3 residents; or (2) whose permanent, full-time employees include three years of the date of first employment with the business concern were Section 3 residents; or (3) that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in (1) and (2) of this paragraph.

SAMPLE – NOTICE OF CONTRACTING OPPORTUNITIES

Prime Recipient	Prime Contractor
Location of Work	Contact Person
Scope of Work	
Estimate Start Date	Estimated Completion Date
<p>Preference Requirements for Section 3 Business Concerns</p> <p>The Statute requires that in public housing programs, efforts shall be directed to award contracts to Section 3 business concerns in the following order of priority:</p> <ol style="list-style-type: none"> 1. Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees. 2. Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the housing authority expending the Section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees. 3. HUD Youthbuild programs being carried out in the metropolitan area in which Section 3 funds are expended. 4. Business concerns that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs 1 and 2 above. 	

PART III

FORMS AND INSTRUCTIONS FOR COMPLETION

EXISTING EMPLOYEE LIST WORKSHEET

INSTRUCTIONS FOR COMPLETION OF FORM - 1

- A. Project Name/Location: Self-explanatory
- B. Developer/Contractor/Applicant
- C. Date: Self-explanatory

Please complete FORM - 1 by providing a list of current employees anticipated to work on this project that are not new hires. Be advised, that anyone not listed on this submission is presumed to be a "NEW HIRE" on this project for the purpose of Section 3 requirements. NOTE: If you need additional space, please reproduce or copy FORM - 1 and attach to the original.

EXISTING EMPLOYEE LIST

FORM-1

A. PROJECT NAME AND LOCATION: _____

B. DEVELOPER/CONTRACTOR /APPLICANT: _____ C. DATE: _____

EMPLOYEE NAME/ADDRESS	SOCIAL SECURITY NUMBER	JOB CATEGORY/TRADE

HIRING PLAN WORKSHEET

Q1. Will anyone be hired as a result of this project? (Please circle your answers.)

Yes

No

If the response to Q1. was yes, please complete FORM - 2.

INSTRUCTIONS FOR COMPLETION OF FORM - 2

Please fill our FORM - 2 concerning all the positions anticipated as necessary to complete this project.

- (A) Job Category: Please specify the categories of construction trade jobs and additional other jobs not already listed but necessary on this project.
- (B) Total number of Expected HOURS spent on the job in each category: These numbers should reflect both existing and new employee time.
- (C) Total Number of Expected EMPLOYEES in each category of jobs: These numbers should include both existing employees and new hires.
- (D) Total Number of Expected NEW HIRES in each category: These numbers should reflect the total number of expected employees in each category, minus the number of existing employees in each category.
- (E) Total Number of Expected SECTION 3 NEW HIRES in each category: This number should reflect all the low and very low-income individuals the contractor intends to hire in order to comply with the numerical goals of Section 3.
- (F) Expected HIRE DATE (S) of new hires by category: This column should be completed to reflect the progression of work on a project, in other words, when new hires will be needed on the job by category.
- (G) TOTALS: Please provide totals for each of the columns indicated. The number in the "Total number of expected SECTION 3 NEW HIRES" column, to the greatest extent feasible.

For example, if the total number of NEW HIRES for a project is 20, then the total number of SECTION 3 NEW HIRES should be 6, based on 30 percent of the aggregate number of new hires for one year period beginning in FY 1997 and continuing thereafter.

HIRING PLAN

FORM-2

JOB CATEGORY (A)	Total #of Expected HOURS spent on the Job in each category (B)	Total # of Expected EMPLOYEES in each category (C)	Total # of Expected NEW HIRES in each category (D)	Total # of Expected SECTION 3 NEW HIRES in each category (E)	Expected HIRE DATE(S) of new hires by category (note: there could be more than one date in each category) (F)
Professionals:*					
Technicians:**					
Office/Clerical					
Construction Work by Trade					
Trade:					
Trade:					
Trade:					
Other:					
Other:					
Other:					
Other:					
Totals: (G)					

*Professionals are defined as people who have special knowledge of an occupation (i.e. supervisors, architects, surveyors, planners and computer programmers).

**Technicians are defined as people who work in direct support of engineers or scientists, utilizing theoretical knowledge of fundamental scientific, engineering, mathematical, or draft design principles.

TRAINING PLAN WORKSHEET

Q2. Will there be any training opportunities on this project?
(Please circle your answers.)

Yes No

If the response to Q2. was yes, please complete FORM - 3

INSTRUCTIONS FOR COMPLETION OF FORM - 3

- (A) Areas of Anticipated Training in Connection with this Project: please list.
- (B) Number of Expected Training Hours Available by Training Area category: please list.
- (C) Type of Training Available: self-explanatory
- (D) Opportunities Available by Training Area to Section 3 Residents: please respond with either a "yes" or "no" to indicate whether training will be available for low and very low-income individuals (Section 3 Residents) by training area category.
- (E) Comments: self-explanatory.

TRAINING PLAN

FORM-3

(A) Areas of Anticipated Training In Connection With This Project	(B) Number of Expected Training Hours by Training Areas	Type of Training: Classroom Training (CRT) On the Job Training (OJT) Both (Both) (C)	Opportunities Available to Section 3 Residents by Category (Y/N) (D)	Comments (E)

CONTRACTING PLAN WORKSHEET

Q3. Will there be any contracts or subcontracts let as a result of this project?
(Please circle your answers.)

Yes

No

If the response to Q3. was yes, please complete FORM - 4.

INSTRUCTIONS FOR COMPLETION OF FORM - 4

- (A) List Each Contract/Subcontract anticipated in connection with this project and Describe Briefly: self-explanatory.
- (B) Approximate Dollar Value of each contract/subcontract: self-explanatory.
- (C) Construction (C) or Non-Construction (NC) contract/subcontract: self-explanatory.
- (D) Section 3 Business Concern (Y/N): Indicate whether this contract/subcontract will be with a Section 3 business concern. Note: For all businesses that are identified as Section 3 business concerns on this contracting plan, a Section 3 business concern affidavit (form - 7) must be submitted for each.
- (E) Please provide the expected Ethnic/Racial Code of the contractor/subcontractor. See table on the bottom of the form.
- (F) Female Owned Business (Y/N): self-explanatory.

CONTRACTING PLAN

FORM-4

List Each and Describe Briefly (A)	Approximate Dollar Value (B)	Construction (C) or Non-Construction (NC) (C)	Section 3 Business Concern (Y/N) (D)	Ethnic Racial Code (E)	Female Owned Business (Y/N) (F)
1.	\$				
2.	\$				
3.	\$				
4.	\$				
5.	\$				
6.	\$				
7.	\$				

Ethnic/Racial Codes:

- 1. White American
- 2. African American
- 3. Native American
- 4. Hispanic American
- 5. Asian Pacific American
- 6. Hasidic Jew

**EFFORTS TO COMPLY WITH SECTION 3
HIRING AND CONTRACTING GOALS
NARRATIVE**

Please describe in a narrative the efforts you plan to make or have already made in order to comply with Section 3 Hiring and Contracting goals. Starting in Part II of this program is a list of voluntary efforts that can be undertaken to evidence compliance with Section 3; these are the appendices of the Section 3 regulations (24 C.F.R. 135).

**SUBCONTRACTOR ACTIVITY REPORT
WORKSHEET**

Q4. Are there any contracts or subcontracts let as a result of this project?
(Please circle your answers.)

Yes No

If the response to Q4. was yes, please complete FORM - 5.

INSTRUCTIONS FOR COMPLETION OF FORM - 5

- (A) **Contract Number:** List Contract Number of project.
- (B) **HUD Funding Source:** List HUD source of funds.
- (C) **Date:** List today's date.
- (D) **Contractor:** Write the name and address of your general contractor.
- (E) **Project Name and Location.**
- (F) **Actual Construction Start Date:** State the date the construction began.
- (G) **Name of Subcontractor:** List the names of the subcontractors separately.
State their address and their Tax I.D. number.
- (H) **Amount of Contract:** State dollar amount of the contract with each subcontractor.
- (I) **Ethnic/Racial Code:** Using the Ethnic/Racial Codes listed at the bottom of the page, please indicate the ethnic/racial composition of each subcontractor.
- (J) **Gender Code:** Using the Gender Codes listed at the bottom of the page, please indicate the gender of each subcontractor.
- (K) **Section 3 Business Concern:** For each subcontractor, indicate whether the subcontractor is a Section 3 Business Concern. Each Contractor or subcontractor identified and documented as a Section 3 business concern will provide evidence of a commitment to subcontract in excess of twenty-five (25) percent of the dollar award of all subcontracts to be awarded.
- (L) **Types of Services Provided:** For each subcontractor, indicate the type(s) of services provided by the subcontractors. (Including construction and supplies)
- (M) **Anticipated Start Date:** Indicate the anticipated start and completion date of each subcontract.

SUBCONTRACTOR ACTIVITY REPORT

FORM-5

Contract Number:		HUD Funding Source:	Date:			
(A)	(B)	(C)	(C)			
Contractor:		Address:				
(D)						
Project Name and Location:		Actual Construction Start Date:				
(E)	(F)					
Name of Subcontractor Complete Address and Tax I. D. Number	Amount of Contract	Ethnic/Racial Code	Gender Code	Section 3 Business Concern (Y/N)	Type (s) of Services Provided (Including Supplies)	Anticipated Start and Completion Date:
(G)	(H)	(I)	(J)	(K)	(L)	(M)
#:	\$					From:
#:	\$					To:
#:	\$					From:
#:	\$					To:
#:	\$					From:
#:	\$					To:
#:	\$					From:
#:	\$					To:

Ethnic/Racial Codes:

1. White American
2. African American
3. Native American
4. Hispanic American
5. Asian Pacific American
6. Hasidic Jews

PHA 105 (S3)

**SECTION 3 RESIDENT AFFIDAVIT
WORKSHEET**

Q5. Are any of your employees listed as Section 3 residents on your certified payroll? (Please circle your answers.)

Yes

No

If the response to Q5. was yes, please complete FORM - 6

INSTRUCTIONS FOR COMPLETION OF FORM - 6

1. Provide employee's current address.
2. Indicate whether the employee is a resident of public housing.
3. Indicate the total number of individuals in the employee's family.
4. By using the table, indicate the annual income for the employee 's family for the last year. If the family size is over 8, list the annual income for the family.
5. The form should be signed by the employee and notarized.

After the form is completed by an employee, his or her employer is responsible for collecting the form and delivering the form to PHA. The form for any employee must be delivered to PHA when the employee is first listed as a Section 3 resident on a Certified Payroll Form. Each person who fills out this form must be able to verify the information if requested.

SECTION 3 RESIDENT AFFIDAVIT

FORM-6

The undersigned being first duly sworn, on oath, represents, warrants, certifies, deposes and says, under penalty of law, as follows:

1. My current address is (give street address, city state and zip code)

2. I am am not a resident of public housing.
3. The total number of individuals in my family (including all family members currently living in my household including myself, or those related by blood, marriage, adoption or guardianship) is
4. Last year, the annual income from all sources for my family is listed on the table below for my family size:

FAMILY SIZE	INCOME FROM ALL SOURCES
1	\$
2	\$
3	\$
4	\$
5	\$
6	\$
7	\$
8	\$

If the total number of individuals in your family is over eight, please state the annual income for your family during the last year. \$ _____

5. I understand that the information above relating to the size and annual income of my family may require verification.

I agree to provide upon request documents verifying this information and I authorize my employer to release information required for the United States Department of Housing and Urban Development or the Philadelphia Housing Authority to verify my status as a "Section 3 Resident" under Section 3 of the Housing and Urban Development Act of 1968 (and the related regulations).

_____ Commonwealth of Penna.
Name (signature)

_____ County of _____
Name (printed)

Subscribed and sworn to before me this _____ day of _____

Date: _____ Notary Public
My Commission Expires: _____

Section 3 Business Concern Affidavit Worksheet

Q7-1. Will there be any contracts or subcontracts let us as a result of this project?
(Please circle your answers.)

	Yes	No
Q7-2.	Will any of the contracts described on the Contracting Plan (FORM-4) be with Section 3 business concerns?	
	Yes	No

If the responses to both Q7-1 and Q7-2 were yes, please have each of the businesses identified on the Contracting Plan (FORM-4) as Section 3 business concerns, complete FORM - 7. A separate FORM - 7 should be given to and completed by each Section 3 business concern.

INSTRUCTIONS FOR COMPLETION OF FORM-7

- I. 1. Provide the full legal name of the business.
 2. Provide the current address of the business.
 3. Indicate whether the business is a corporation, a partnership, a sole proprietorship or a joint venture.
 4. Provide the name of the project and all or the addresses involved in the entire project.
 5. Describe briefly the contract or subcontract that the business anticipates undertaking for the project. This should be the same information as in the first column on the Contracting Plan (FORM-4).
- II.1. Please indicate whether the business is a Section 3 business concern. A "Section 3 business concern" is a business concern that either:
- (a) is at least 51%-owned by Section 3 residents,
 - (b) has full-time, permanent employees, at least 30% of whom either (i) are currently Section 3 residents, or (ii) have been employed by the business for three years or less and were Section 3 residents at the time when the business first hired them, or
 - (c) has committed to subcontract in excess of 25% of the dollar award of all subcontracts to be let in connection with the project to businesses that qualify under (a) or (b) above.

A "business concern" is a business entity formed in accordance with state law and which is licensed under state, county or municipal law to engage in the type of business activity for which it was formed.

2. A "Section 3 business concern - with category preference is defined as a Section 3 business concern that either.
 - (a) is at least 51%-owned by section 3 residents, all of whom live in the project's service area, or
 - (b) has full-time, permanent employees, at least 30% of whom live in the project's service area and either (i) are currently Section 3 residents, or (ii) have been employed by the business for three years or less and were Section 3 residents at the time when the business first hired them (category 1 business); or
 - (c) is at least 51% owned by Section 3 residents who live in other PHA housing developments not in the project's service area, or whose full-time permanent employees, includes 30% of these Section 3 residents (category 2 business); or
 - (d) HUD Youth-build programs being carried out in the metropolitan area in which Section 3 covered assistance is expended (category 3 business); or
 - (e) has committed to subcontract in excess of 25% of the dollar award of all subcontracts to be let in connection with the project to businesses that qualify under (a) or (b) above. (category 4 business)
 4. Identify whether the business has been selected to carry out any HUD Youthbuild program.
- III. The title of the person signing the affidavit should be inserted. The affidavit must be signed, dated and notarized. The name of the person signing the affidavit must be typed or legibly printed below his/her signature.

SECTION 3 BUSINESS CONCERN AFFIDAVIT

FORM-7

The undersigned being first duly sworn, on oath, represents, warrants, certifies, deposes and says, under penalty of law, as follows:

I. BASIC INFORMATION

The following information is true and correct:

1. Name of Company: _____
2. Company Address: _____

3. Type of business (corporation, partnership, sole proprietorship, joint venture):

4. Project Name and address(es): _____

5. Name/type of contract: _____

II. TYPE OF SECTION 3 BUSINESS CONCERN

For purposes of this section, please refer to the attached instructions for the meanings of the terms "Section 3 Business Concern," and "Section 3 Business Concern with Category-Preference" and "HUD Youthbuild Program". (Please circle your answer.)

Is the Company a Section 3 Business Concern?

Yes No If "yes," please go on to question #2. If "no," please go directly to Part III below.

Is the Company a Section 3 Business Concern – With Category Preference?

Yes No If "yes," please go directly to Part III below. If "no," please go on to question #3.

Has the Company been selected to carry out any HUD Youthbuild Program?

Yes No Please go on to Part III.

III. VERIFICATION

The Company hereby agrees to provide, upon request, documents verifying the information provided above.

Under penalty of perjury, I certify that I am the _____
_____ (Title) of the Company, that I am authorized by the Company to execute this affidavit on its behalf, that I have personal knowledge of the certifications made in this affidavit and that the same are true.

Name (signature) _____

Name (printed) _____

Commonwealth of Pennsylvania

County of _____

Subscribed and sworn to before me this _____ day of _____, _____

Notary Public

My Commission Expires: _____

**SECTION 3 RESIDENTS TERMINATION FORM
WORKSHEET**

You may want to make copies of this form so that you are able to meet your weekly obligation.

Q8. Did you terminate any Section 3 residents this week?
(Please circle your answers.)

Yes

No

If the response to Q8. was yes, please complete FORM - 8

INSTRUCTIONS FOR COMPLETION OF FORM - 8

- (A) Contractor's Name/Address: List contractor's name and address of the project.
- (B) Contract Number: List contract number.
- (C) Report Period: State dates for the week of which this document is reporting.
- (D) Employee Name: Write the name(s) of the terminated Section 3 employee(s).
- (E) Social Security Number: State the employee(s) social security number.
- (F) Position Held: State the position held by the employee(s).
- (G) Start Date: State the start date of the employee(s).
- (H) Finish Date: State the finish date of the employee(s).
- (I) Signature: Original signature of an official of the company.
- (J) Title: Title of the official who signed document.
- (K) Date: Date the company official signed the document.

**EMPLOYEE TERMINATION TRACKING FORM
SECTION 3 RESIDENTS**

(A) Contractor's Name/Address of the project: _____
(B) Contract #: _____
(C) Report Period - From: _____ To: _____

FORM-8

EMPLOYEE NAME (D)	SOCIAL SECURITY NUMBER (E)	POSITION HELD (F)	START DATE (G)	FINISH DATE (H)

The undersigned company official does swear or affirm that the information on this form is true and correct to the best of his or her knowledge and there is no willful intent to mislead or commit fraud.

(I) Signature _____ (J) Title _____ (K) Date _____

Section 3 Resident and Business Concern Affidavit

I, _____, the Developer/Contractor, or the authorized representative of the developer/contractor, do hereby attest that I have examined the proofs of residency and income for each person signing a Section 3 resident affidavit as a low or very low-income person and or a resident of the Philadelphia Housing Authority. I also attest that based upon the proofs supplied and representations made by such person(s) for Section 3 status are accurate as required by Section 3 of the U.S. Housing and Urban Development Act of 1968, as amended.

In addition, and to the best of my knowledge, the proofs supplied and representations made by all contractors, subcontractors and Section 3 business concerns are accurate as such, as required by Section 3 of the U.S. Housing and Urban Development Act of 1968, as amended.

I fully understand that this affidavit is a substantive part of the contract and that intentional submission by the developer/contractor of false information shall be a material breach of the contract, and that the Philadelphia Housing Authority may exercise those rights provided to it under the contract by law.

Developer/Contractor	Signature	Date
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Contract number	Work Site	Position/Title
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Commonwealth of Pennsylvania

County of _____

Subscribed and sworn to before me this _____ day of _____, _____

Notary Public	My Commission Expires: _____
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