

# MURFREESBORO HOUSING AUTHORITY

## Request for Proposals (RFP)

The Murfreesboro Housing Authority, (MHA), of Murfreesboro, Tennessee is pleased to invite you to respond to a Request for Proposals for:

### Housing Quality Standards Inspection Services for The MHA's Rental Assistance Programs

Proposals will be received until 2:00 P.M. Central Standard Time on  
Thursday, January 12, 2023.

Proposals will not be accepted after the date and time stated above. An incomplete proposal or proposals that do not conform to the requirements specified herein will not be considered. Issuance of the RFP does not obligate the MHA to award a contract, nor is the MHA liable for any costs incurred by the proposer in the preparation and submittal of proposals for the subject work. The MHA retains the right to award all or parts of this contract to several bidders, to not select any bidders, and/or to resolicit proposals. The act of submitting a proposal is a declaration that the proposer has read the RFP and understands all the requirements and conditions.

#### I. Purpose:

The MHA is requesting proposals from firms or individuals to provide professional Housing Quality Standards (HQS) inspections for the MHA. The selected contractor will or can perform initial, annual and special HQS inspections on residential rental dwellings within Rutherford County and Maury County in connection with the following rental assistance programs administered by the MHA:

- The Housing Choice Voucher (HCV) Program
- Shelter Plus Care (S+C) Program
- Veterans Affairs Supportive Housing (VASH) Program
- Mainstream Voucher Program
- Emergency Housing Voucher (EHV) Program

MHA is seeking inspections services for a one-year term with an option to renew for two additional one-year terms.

Following are the key dates associated with this Request for Proposals:

Dates are subject to change

- |                                     |                   |
|-------------------------------------|-------------------|
| • Posting/Emailing of RFPs          | December 21, 2022 |
| • Deadline for submitting Proposals | January 12, 2023  |
| • Review of References              | January 17, 2023  |
| • Recommendation for contract       | January 25, 2023  |
| • Start date of the new contract    | February 1, 2023  |

**Contract Timeframe:** It is MHA's intention to execute a contract and begin services on or about February 1, 2023. The proposals of offerors that submit plans for service implementation must address the time frame specified.

**Project Background and Description:** The MHA administers rental assistance programs within the jurisdiction of Rutherford County and Maury County, TN. Rutherford and Maury County are located in the area known as Middle Tennessee. The U. S. Department of Housing and Urban Development (HUD) regulations require a Housing Quality Standards (HQS) inspection of each assisted rental dwelling before initial occupancy and at least biennially thereafter as long as the dwelling unit is subsidized. The MHA seeks proposals to having its HQS inspections conducted by an independent contractor.

## **II. Statement of Requirements – Services required of Successful Proposer:**

The selected contractor will be responsible to perform HQS Inspections on all residential dwellings, (apartments/single family homes) in connection with the rental assistance programs administered by MHA.

- The Housing Choice Voucher (HCV) Program - 734
- Shelter Plus Care (S+C) Program - 46
- Veterans Affairs Supportive Housing (VASH) Program – 141 (When fully leased)
- Mainstream Voucher Program - 39
- Emergency Housing Voucher (EHV) Program – 28

The selected contractor must be highly qualified, certified and insured to provide inspections for the Federal Housing Quality Standards. The selected firm shall furnish sufficient organization, personnel and management staff with the necessary skill and judgment to perform all the duties and responsibilities normally associated with the inspection function (including scheduling, notification, inspections, quality control, and reporting).

The following is a listing of the required Inspection Services:

### **Scheduling of Inspections:**

The firm will be responsible for scheduling all inspections in accordance with industry best practices and the agreed Standard Operating Procedures, hereafter referred to as "SOP" (See Other Duties). The firm will be responsible for the costs of scheduling the inspections (forms, telephone costs, stamps, etc.) and associated notifications.

### **Initial Inspections 1.**

1. The Firm will make contact by telephone with landlords or their designee within 48 hours of receipt of a Request for Tenancy Approval (RFTA) from MHA to schedule the initial inspection. If the Firm is unable to make contact with the landlord after two documented unsuccessful attempts by phone, the firm will contact MHA's HCV Director.

2. The Firm's first attempt to complete each Initial Inspection within 3 business days of receipt of scheduling information from MHA (excluding observed holidays).
3. Initial Inspections and associated Re-inspections must be scheduled by speaking to the landlord or their designee. No inspection or re-inspection may be scheduled by leaving messages on voice mail. No inspections or re-inspections will be scheduled with the tenant.
4. If the unit does not pass at the second scheduled attempt, the Firm will contact MHA. The Firm will complete all initial Re-inspections within 3 business days of notification by MHA that the unit is ready for re-inspection. The Firm will be responsible to return a completed HQS inspection form within 2 business days (excluding observed holidays) from completion of a "pass" inspection. This information will be attached chronologically by date.

**Notifications (Pertains to all inspection types)**

All notifications, regardless of type, must contain at a minimum the following information:

- a) Date notification was printed
- b) Name and complete mailing address of landlord/agent
- c) Name and complete mailing address of client
- d) Type of Inspection/Re-inspection
- e) Date of Inspection/Re-inspection
- f) Scheduling Timeframe of Inspection/Re-inspection
- g) If this is a "Deficiency Notification," provide a complete detailed listing of all deficiencies identified during the inspection.
- h) Name of inspector
- i) Contact telephone number

**Annual Inspections:**

1. Mail all notices by US 1st class mail no less than 21 days prior to the scheduled inspection date.
2. Complete all annual inspections no later than 320 days from the last passing inspection date, unless authorized by the MHA.

**Special Inspections:**

Includes inspections in response to complaints registered with the MHA concerning a covered unit's condition, quality control inspections, or any other inspection the MHA may deem appropriate to conduct.

1. The Firm will make contact by telephone with landlords or their designee within 48 hours of receipt of the Special Inspection Request from MHA to schedule the inspection. If the Firm is unable to make contact with the landlord after two documented unsuccessful attempts by phone, the firm will contact MHA.
2. The Firm will complete the first attempt to complete each Special Inspection within 3 business days of receipt of scheduling information from MHA (excluding observed holidays).
3. Special Inspections and associated Re-inspections must be scheduled by speaking to the landlord or their designee. No inspection or re-inspection may be

scheduled by leaving messages on voice mail. No inspections or re-inspections will be scheduled with the tenant.

4. If the unit does not pass at the second scheduled attempt, the Firm will contact MHA. The Firm will complete all initial Re-inspections within 3 business days of notification by MHA that the unit is ready for re-inspection.

### **Re-inspections**

1. Complete all Initial Re-inspections within 3 business days (excluding observed holidays) of notification by the landlord or their designee that the unit is ready for Re-inspection.
2. Complete all non-emergency annual re-inspections within 30 days from the last passing date from the previous year, unless authorized by the MHA.
3. Complete re-inspections of all life threatening "Fail" items within 24 hours of first inspection.

### **All Inspections**

1. All physical inspections will be conducted in accordance with HUD Housing Quality Standards regulations at 24 CFR 982.401; the Lead Safe Housing Regulations at 24 CFR Part 35, Subparts A, B, M, and R; and recorded using the Housing Quality Standards (HQS) Inspection Form.
2. Schedule inspections and prepare and issue all inspection appointment notification letters in accordance with the HQS Procedures Manual.
3. Schedule all inspections, regardless of type, with an inspection appointment window time of no more than 3 hours. No inspection shall be performed outside of the scheduled appointment window. Any inspection attempt outside the designated 3-hour time frame will be done at contractor's own risk.
4. Assess who is responsible for damages (tenant responsibility or landlord responsibility) for every failed item listed on all deficiency reports or correspondences.
5. Send all notifications and related follow-up correspondence, to both landlord and tenant by US Postal Service class mail, including pass or fail notifications, reschedule notifications and no-show notifications. Forward similar copies electronically to the email addresses, if provided, of both landlord and tenant. Include re-inspection dates and times in all inspection results correspondence.
6. Complete one attempt for each no-show inspection prior to issuance of abatement notification to the owner.
7. Complete one attempt for each non-emergency "fail" inspection prior to issuance of abatement notification to the owner.
8. Forward a copy of all abatement notifications issued to the MHA.
9. Submit Inspection Performance Summary Reports on a monthly basis in format agreed to by the MHA. Please provide copies of the reporting that you would suggest.
10. Perform daily electronic "back-up" of all inspection data from the beginning of contract performance period to "present" to prevent loss of data.

11. Develop and implement a quality control program that exceeds the minimum standards required under 24 CFR 985.2, 24 CFR 985.3 (e) and (f) for all inspections conducted on a monthly basis.
12. Provide all required reporting in a mutually agreed upon format.

**On-site Maintenance:**

The firm will perform, at no additional cost to the MHA, the following "on-site" maintenance at inspected units using the firm's supplies: a) Repair/Replace Damaged or Missing Outlet Cover(s) (2 per unit max) b) Repair/Replace Damaged or Missing Light Switch Cover(s) (2 per unit max) c) Repair/Replace Missing Smoke Alarm Battery(s) (9 volt)

1. Perform maintenance only when such would eliminate the need to perform a 24-hour emergency re-inspection or 30-day re-inspection at the unit.
2. Perform maintenance in units with conventional 8 ft. ceiling height only.
3. Perform no maintenance if other items exist that would require re-inspection of the unit within 24 hours or 30 days.
4. Track and report monthly to the MHA the number of inspections reduced by this on-site maintenance program.

**Other Duties:**

1. Develop and submit to the MHA for approval, within 14 days of contract execution, Standard Operating Procedures (SOP) for inspection processes described herein, including all forms and form letters to be used. SOP must demonstrate to the MHA's satisfaction the contractor's ability to provide all services as requested.
2. Attend quarterly meetings with the MHA to ensure contract compliance.

**Assigned Personnel:**

The MHA reserves the right to request a change in the firm representative responsible for performing work if at the MHA's discretion, the assigned representative is not adequately meeting the needs of the MHA.

**BACKGROUND CHECK REQUIREMENT:**

The award of this proposal is subject to the employees of the Contractor, as identified by the Contractor, including employees of subcontractors, if any, who shall provide direct services under the terms and conditions of this contract successfully passing a background check. For purposes of conducting the background check, the employer must provide to the MHA the full name, social security number, and date of birth for eligible employees. The term "successful background check" shall be the sole determination of the MHA and shall be predicated upon the specific conditions inherent in providing the services set forth in the proposal. Employees identified through the background check process as not meeting the requirements of the MHA may, at the discretion of the MHA, be

replaced by the Contractor with another employee who shall also be subject to the background provisions of this clause.

### **III. Fee Proposal**

The cost for services will be submitted on a per inspection basis by type of inspection performed (e.g. Initial, Annual, No Show, and Re-inspection). A cost should be provided for the initial contract term, and additional costs for two additional option years.

### **IV. Qualifications:**

1. All Inspectors:
  - a. All HQS inspectors are required to have Housing Quality Standards Certifications
  - b. Valid TN Driver's License
  - c. Use of an automobile during work hours
  - d. The ability to work effectively with MHA staff
  - e. Ability to communicate professionally and courteously with landlords and assisted households
  - f. Wear an identification badge at all times while on the premises and visible before entering a dwelling/unit.
  - g. Ability to take photos of issues observed in/around units that are caused for concern to be relayed to MHA staff
2. **Debarment or other Disqualifications:**

Proposers must disclose any debarment or other disqualification as a vendor for any federal, state, or local entities. Proposer must describe the nature of the debarment/disqualification, including where and how to find further detailed information.
3. **References:**

Proposing firms should also submit a list of no less than three (3) referenced agencies where inspections have been performed. References information should include:

  - a. Name of Housing Authority or other agency
  - b. Contact person
  - c. Phone number (email optional)
  - d. HQS Inspections; number of units, date of inspection contract.
4. **Preparation Cost:**

All cost incurred in the preparation and presentation of a Proposal shall be completely absorbed by the respondent. All supporting documentation submitted with Proposals will become the property of the MHA. Any material submitted that is to be considered confidential should be clearly marked as such.

Proposal will be reviewed and ranked using the following selection criteria:

- Cost
- References
- Understanding of HQS protocols and requirements including experience with annual and biennial inspections
- Use and cost-effective approaches that may be implemented to help contain and/or reduce annual cost to the MHA.
- Capabilities to meet required inspection schedule including a contingency plan in the event of an absence on the part of the assigned inspector/s.

**Contract Termination:**

The MHA reserves the right to terminate the contract for services if in the judgement of the Authority, the firm is not performing services satisfactorily under the terms agreed upon.

**Proposal Submittal Checklist:**

- Proposers must submit (1) signed original proposal and (2) copies of the proposal in an enclosed sealed envelope or package clearly marked: **HQS Services for MHA's Rental Assistance Program** and submitted to:  
**Murfreesboro Housing Authority**  
**415 N. Maple Street,**  
**Murfreesboro, TN 37130**
- No electronic or facsimile proposal will be accepted. Any late proposals will be returned unopened. Proposals received after the deadline will not be considered. MHA is under no obligation to return proposals.
- Fee Proposal
- Provide copies of staff resumes for proposed inspectors
- (3) Professional references
- Provide evidence of insurance - Contractors are required to maintain at all times during the performance of this contract the following insurance coverage:
  1. Commercial general liability, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations with combined limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
  2. Worker's Compensation insurance in accordance with Tennessee Labor Code, and with Employer's liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
  3. Business automobile liability insurance covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this contract, with a combined single limit of not less than \$1,000,000 per occurrence.

Such coverage is required to name the Murfreesboro Housing Authority co-insured, if contract is awarded.

**Attachments:**

- **Instructions to Offeror Non-Construction form HUD-5369-B**
- **General Conditions for Non-Construction Contracts**
- **MHA's Section 3 Section Policy**



# Instructions to Offerors Non-Construction



## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The HA may

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

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

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

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

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

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

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

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

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

[Describe bid or proposal preparation instructions here.]

# General Conditions for Non-Construction Contracts

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

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

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

#### 1. Definitions

The following definitions are applicable to this contract:

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

#### 2. Changes

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

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

#### 3. Termination for Convenience and Default

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

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

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

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

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

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

**6. Energy Efficiency**

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

**7. Disputes**

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

**8. Contract Termination; Debarment**

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

**9. Assignment of Contract**

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

**10. Certificate and Release**

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

**11. Organizational Conflicts of Interest**

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

**12. Inspection and Acceptance**

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

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

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

### 13. Interest of Members of Congress

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

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

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

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

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

## 16. Equal Employment Opportunity

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

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

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

## 17. Dissemination or Disclosure of Information

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

## 18. Contractor's Status

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

## 19. Other Contractors

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

## 20. Liens

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

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

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

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

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

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

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



**MURFREESBORO HOUSING AUTHORITY**  
Murfreesboro, Tennessee

**SECTION 3 PLAN**

<b>Adopted by PHA Board of Commissioners</b>	
<b>Resolution No.:</b>	<u>2021-018</u>
<b>Date of Adoption:</b>	<u>7/8/2021</u>
<b>Effective Date of Implementation:</b>	<u>7/8/2021</u>

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## SECTION 3 PLAN

### BACKGROUND

Section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

Section 3 recognizes that HUD funds are often one of the largest sources of Federal funds expended in low- and very low-income communities and, where such funds are spent on activities such as construction and rehabilitation of housing and other public facilities, the expenditure results in economic opportunities.

By directing HUD-funded economic opportunities to residents and businesses in the community where the funds are expended, the expenditure can have the dual benefit of creating new or rehabilitated housing and other facilities while providing opportunities for employment and training for the residents of these communities.

### PHA SECTION 3 PLAN OBJECTIVES

The Murfreesboro Housing Authority (hereinafter referred to as PHA) has developed a Section 3 Plan (Plan) to identify the goals, objectives, and actions that the PHA will implement to ensure the awarding of contracts to contractors, vendors, and suppliers, create employment and business opportunities for residents of the PHA and other qualified low- and very low-income persons residing in within the metropolitan area (or non-metropolitan county) in which the assistance is expended. The PHA's efforts to promote Section 3 objectives will be consistent with existing Federal, state, and local laws and regulations.

The PHA requires all contractors, vendors, and suppliers to provide equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability, age, familial status, marital status, actual or perceived sexual orientation, gender identity, or economic status and to take affirmative action to ensure that both existing employees and applicants are given fair and equal treatment.

The PHA has incorporated Section 3 requirements in its existing Procurement Policy and includes a copy of this Plan in all procurements generated for use with HUD funding. This Plan contains goal requirements for awarding contracts to Section 3 business concerns.

This Plan shall result in a reasonable level of recruitment, employment, and utilization of PHA residents and other eligible persons and business by PHA contractors working on contracts partially or wholly funded by Federal monies. The PHA shall examine and consider a contractor's, vendor's, or supplier's potential for success by providing employment and business opportunities to the PHA's residents prior to acting on any proposed contract award.

All contractors, vendors, suppliers seeking Section 3 preference must, before submitting bids/proposals to the PHA, be required to complete certifications, as appropriate, as acknowledgement of the Section 3 contracting and employment provisions required. Such certifications shall be adequately supported with appropriate documentation as referenced in this Plan.

## **APPLICABILITY**

Section 3 requirements apply to the public housing financial assistance and Section 3 projects as follows:

- **Public Housing Financial Assistance:**
  - Development assistance provided pursuant to Section 5 of the U.S. Housing Act of 1937;
  - Operations and management assistance provided pursuant Section 9(e) of the U.S. Housing Act of 1937 (Operating Fund);
  - Development, modernization, and management assistance provided pursuant Section 9(d) of the U.S. Housing Act of 1937 (Capital Fund); and
  - The entirety of mixed-finance development project regardless of whether the project is fully or partially assisted with public housing financial assistance.
- **Housing and Community Development Section 3 Projects:**
  - Housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000.
  - The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, the Lead-Based Paint Poisoning Prevention Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992.
  - The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.
  - The requirements apply to an entire Section 3 project regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.
- **Other HUD Assistance and Other Federal Assistance**

Recipients that are not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

**NOTICE OF FUNDING AVAILABILITY (NOFA)**

All NOFAs issued by HUD that announce the availability of funding that covers public housing financial assistance and Section 3 projects will include notice that Section 3 is applicable to funding and may include as appropriate for specific NOFAs points or bonus points for Section 3 Plans.

- Where Section 3 is applicable, the inclusion of specific requirements in the regulation regarding the NOFA does not change the PHA's obligation to have a compliant Section 3 implementation strategy.
- Similarly, where Section 3 is not applicable, the regulatory language would not apply.

**CHANGES IN LAWS AND REGULATIONS**

All issues not addressed in this Section 3 Plan related to the Section 3 program are governed by the Code of Federal Regulations, HUD handbooks and guidebooks, Federal Registers, memos, notices, guidelines, and other applicable law.

In the event an applicable HUD law or regulation is modified or eliminated, the revised law or regulation shall, to the extent inconsistent with this Section 3 Plan, automatically supersede this Section 3 Plan.

## **REQUIREMENTS**

The PHA has established employment, training, and contracting requirements consistent with existing Federal, state, and local laws and regulations to meet and comply with Section 3 requirements.

### **A. Employment and Training**

The PHA and its contractors or subcontractors will make their best efforts to provide employment and training opportunities to Section 3 workers in the following order of priority:

1. To residents of public housing projects for which the public housing financial assistance is expended;
2. To residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;
3. To participants in YouthBuild programs; and
4. To low- and very low-income persons residing within the metropolitan area (or non-metropolitan county) in which the assistance is expended.

### **B. Contracting**

1. The PHA and its contractors or subcontractors will make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the following order of priority:
  - a. To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;
  - b. To Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section-8 assisted housing managed by the PHA that is providing the assistance;
  - c. To YouthBuild programs; and
  - d. To Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or non-metropolitan county) in which the assistance is provided.
2. An executed "Section 3 Program Certification" form must be included with every bid or proposal. Bids or proposal without an executed Section 3 Program Certification form will be considered non-compliant with the Request for Bids or Request for Proposals.
3. Within 15 calendar days of award of a contract by the PHA, the contractor shall publish a "Notice of Commitment" in a paper of daily distribution in the metropolitan or non-metropolitan county where the PHA is located listing potential training, employment, and contracting opportunities for low- and very low-income persons. The Notice of Commitment must also be posted on the public bulletin board of the PHA and at each construction job site.

## **ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS**

For public housing financial assistance, the Section 3 statute requires PHAs to prioritize their efforts to direct employment and economic opportunities, training, and contracting efforts to specific groups of low- and very low-income individuals.

All employees of the PHA will complete an Employee Certification Form to be used by the PHA to determine its current Section 3 and Targeted Section 3 workers.

All applicants for employment with the PHA must complete an Applicant Certification form.

### **A. Section 3 Worker**

1. Any worker who currently fits or when hired within the past five (5) years fits at least one of the following categories, as documented:
  - a. The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
  - b. The work is employed by a Section 3 business concern.
  - c. The worker is a YouthBuild participant.
2. The status of a Section 3 worker will not be negatively affected by a prior arrest or conviction.
3. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

### **B. Targeted Section 3 Workers**

A Targeted Section 3 worker for public housing financial assistance is a Section 3 worker who is:

1. Employed by a Section 3 business concern, or
2. Currently fits or when hired will fit at least one (1) of the following categories, as documented within the past five (5) years:
  - a. A resident of public housing or Section 8-based assisted housing,
  - b. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance, or
  - c. A YouthBuild participant.

### **C. Safe Harbor**

The primary objective is to reflect and monitor the PHA's ability to direct job opportunities that are generated by HUD financial assistance to Section 3 and Targeted Section 3 workers.

The PHA will certify compliance with the statutory priorities and meet or exceed the outcome benchmarks annually within 60 days of its fiscal year end.

1. Establishment of Benchmarks

HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the Federal Register. The PHA will make every reasonable effort to comply with HUD established benchmarks as they may increase or decrease over time.

2. As allowed by HUD, the PHA will exclude professional services, which would be defined as non-construction services that require an advanced degree or professional licensing, from the total number of labor hours as such hours are excluded from the total number of labor hours to be reported. Professional services to be excluded includes but are not limited to.
- Contracts for legal services
  - Financial consulting
  - Accounting services
  - Environmental assessment
  - Architectural services
  - Civil engineering services

3. Section 3 benchmarks consist of the following 2 ratios:

a. Section 3 Workers:

Twenty-five percent (25%) or more of the total number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's fiscal year.

**Example**

Assume the PHA employs 20 full-time staff including all senior/executive/salaried staff

$$20 \times 2,080 \text{ (40h/p/w} \times 52 \text{ weeks)} = 41,600 \text{ hours worked annually}$$

25% of the total work hours to be worked by Section 3 workers

$$41,600 \times 25\% = 10,400$$

Divide 10,400 hours by 2,080

$$10,400 \div 2,080 = 5$$

The PHA must have 5 Section 3 workers



**b. Targeted Section 3 Workers:**

Five percent (5%) or more of the total number of labor hours worked by Targeted Section 3 workers divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's fiscal year.

**Example**

Assume the PHA employs 20 full-time staff including all senior/executive/salaried staff  
 $20 \times 2,080$  (40 h/p/w x 52 weeks) =  
41,600 hours worked annually

5% of the total work hours to be worked by Targeted Section 3 workers  
 $41,600 \times 5\% = 2,080$

Divide 2,080 hours by 2,080  
 $2,080 \div 2,080 = 1$ .  
The PHA must have 1 Targeted Section 3 workers

Qualitative efforts may include but are not limited to the following:

1. Engaging in outreach efforts to generate job applicants who are Targeted Section 3 workers.
2. Providing direct on-the-job training or apprenticeship opportunities.
3. Providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
4. Providing or connecting Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
5. Holding one or more job fairs.
6. Providing or referring Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
7. Providing indirect training such as arranging for, contracting for, or paying tuition for, off-site training technical assistance to help Section 3 workers.
8. Providing assistance with applying for/or attending community college, a four-year educational institution, or vocational/technical training.
9. Assisting Section 3 workers to obtain financial literacy training and/or coaching.
10. Engaging in outreach efforts to identify and secure bids from Section 3 business concerns.
11. Providing technical assistance to help Section 3 business concerns understand and bid on contracts.
12. Dividing contracts into smaller jobs to facilitate participation by Section 3 business concerns.
13. Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
14. Promoting use of business registries designed to create opportunities for disadvantaged and small businesses.
15. Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

### **C. RAD Conversions**

HUD has defined Targeted Section 3 workers to include residents of public housing and Section 8 housing, which means that the PHA must report on hiring of these types of HUD-assisted tenants, which includes tenants of RAD-converted Section 8 properties.

### **D. Reporting Frequency**

Unless otherwise provided, the PHA will report annually to HUD the labor hours, and where required, qualitative reporting, in a manner consistent with Section 3 reporting requirements.

1. Reporting is on an annual basis for ongoing endeavors such as PHA operations or multi-year infrastructure or disaster recovery efforts.
2. Discrete projects such as development of a singular multifamily apartment building, the reporting is on a project basis, and reported to HUD in the PHA's annual report corresponding to the year of the project's completion.

#### **E. Separate Reporting by Funding Source**

1. The PHA will be required to report by each separate funding source.
2. The Final Rule provided separate definitions for the types of funding and separate subparts relating to:
  - a. Public housing financial assistance, which covers:
    - 1) development assistance provided pursuant to Section 5 of the United States Housing Act of 1937 (the 1937 Act),
    - 2) operations and management assistance provided pursuant to Section 9(e) of the 1937 Act (Operating Fund), and
    - 3) development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act (Capital Fund).
  - b. Section 3 projects, which means housing rehabilitation, housing construction and other public construction projects assisted with HUD housing and community development assistance when the amount of the assistance to the project exceeds \$200,000, or \$100,000 where the assistance is from HUD's Lead Hazard Control and Healthy Homes programs.
3. Small PHAs with less than 250 public housing units will report qualitative efforts to meet Section 3 benchmarks.

## CONTRACT PROVISIONS

1. Required language
  - a. The PHA will include language in any agreement or contract to apply Section 3 to contractors.
  - b. The PHA will also require contractors to include language in any contract or agreement to apply Section 3 to subcontractors.
  - c. The PHA will also require all contractors and subcontractors to meet the requirements of employment, training, and contracting requirements, regardless of whether Section 3 language is included in contracts.
  - d. All unit and collective bargaining agreements must meet the requirements of employment, training, and contracting requirements.
  - e. The PHA will customize the contract language depending upon the contract. Such customization will include:
    - 1) The required percentage of hours to be worked by Section 3 and Targeted Section 3 workers;
    - 2) Documentation and document retention requirements, reporting requirements; and
    - 3) Penalties for non-compliance with Section 3 requirements.
2. RAD Conversions
  - a. Section 8 Project-Based Voucher (PBV) or Section 8 Project-Based Rental Assistance (PBRA) contracts are not covered by the statute.
  - b. HUD has administratively applied Section 3 during the RAD-related construction period even though not required by the RAD statute or the Section 3 statute. See RAD Notice Revision 4 and RAD program documents.

## **FUNDING SOURCES, RECORDKEEPING, AND COMPLIANCE**

### **A. Multiple Funding Sources**

If a housing rehabilitation, housing construction or other public construction project is subject to Section 3 public housing financial assistance or a Section 3 project, the PHA must follow the additional provisions for the public housing financial assistance. For such a project, the following applies:

1. The PHA receiving housing financial assistance will report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients.
2. The PHA will report the following information:
  - a. The total number of labor hours worked on the project;
  - b. The total number of labor hours worked by Section 3 workers on the project; and
  - c. The total number of labor hours worked by Targeted Section 3 workers on the project.

### **B. Recordkeeping**

The PHA shall make available to HUD access to all records, reports, and other documents or items that are maintained to demonstrate compliance with the requirements of Section 3 or that are maintained in accordance with the regulations governing the public housing financial assistance provided or otherwise made available to the PHA, subrecipient, contractor, or subcontractor.

1. The PHA will maintain documentation, and ensure that a subrecipient, contractor, or subcontractor that employs the worker to maintain documentation, to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period, as follows:
  - a. For a worker to qualify as a Section 3 worker, one of the following must be maintained:
    - 1) A worker's self-certification that their income is below the income limit from the prior calendar year;
    - 2) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
    - 3) Certification from the PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
    - 4) An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or

- 5) An employer's certification that the worker is employed by a Section 3 business concern.
- b. For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:
  - 1) A worker's self-certification of participation in public housing or Section 8-assisted housing programs;
  - 2) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
  - 3) An employer's certification that the worker is employed by a Section 3 business concern; or
  - 4) A worker's certification that the worker is a YouthBuild participant.
2. The PHA will maintain the documentation for the time period required for record retention in accordance with applicable program regulations or, in the absence of applicable program regulations, for at least three (3) years following audit of completed contracts in accordance with 2 CFR part 200.
3. The PHA will report on Section 3 workers and Targeted Section 3 workers for five (5) years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.
4. The PHA will maintain details of all qualitative efforts to meet Section 3 benchmarks including, but not limited to:
  - a. Memorandums of Agreement with reciprocating agencies;
  - b. Meeting agendas and sign in sheets for meetings with program participants and low- and very low-income residents of the metropolitan or non-metropolitan area;
  - c. Meeting agendas and sign in sheets for meetings with Section 3 business concerns;
  - d. Copies of all contracting and employment announcements including dates of publication, display, or distribution;
  - e. Minutes of pre-bid conferences where Section 3 requirements are discussed;
  - f. Documentation of outreach efforts to identify Section 3 businesses;
  - g. Section 3 employment questionnaires completed by applicants and program participants;
  - h. Section 3 employment questionnaires completed by current PHA employees between November 30, 2020 and end of first fiscal year in which reporting is required under the Final Section 3 Rule; and
  - i. Notices of training and employment readiness opportunities provided to low- and very low-income residents, public housing residents, and Section 8 program participants.

**C. Compliance**

The PHA will maintain adequate records demonstrating compliance with the Section 3 requirements consistent with other recordkeeping requirement in 2 CFR part 200.

**1. Complaints**

Complaints alleging failure of compliance with Section 3 requirements may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office.

**2. Monitoring**

- a. HUD will monitor the PHA's compliance with the requirements of Section 3.
- b. The applicable HUD program office will determine appropriate methods by which to oversee Section 3 compliance.
- c. HUD may impose appropriate remedies and sanctions in accordance with the laws and regulations for the program under which the violation was found.

## **DEFINITIONS**

### **Business Concern**

Means a business concern that meets at least one of the following criteria, documented within the last six-month period:

- It is at least 51% owned by low- or very low-income persons
- Over 75% of the labor hours performed for the business are performed by low- or very low-income persons
- It is a business at least 25% owned by current public housing resident or residents who currently live in Section 8-assisted housing

### **Contractor**

Any entity entering into a contract with:

- A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or
- A subrecipient for work in connection with a Section 3 project.

### **Labor Hours**

The number of paid hours worked by persons on Section 3 projects or by persons employed with funds that include public housing financial assistance.

### **Low-Income Person**

An individual whose annual income does not exceed 80% of the median income for the area as determined by HUD.

### **Material Supply Contracts**

Contracts for the purchase of products and material, including, but not limited to lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

### **Professional Services**

Non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

### **Public Housing Financial Assistance**

- Development assistance provided pursuant to Section 5 of the U.S. Housing Act of 1937;
- Operations and management assistance provided pursuant Section 9(e) of the U.S. Housing Act of 1937 (Operating Fund);
- Development, modernization, and management assistance provided pursuant Section 9(d) of the U.S. Housing Act of 1937 (Capital Fund); and



- The entirety of mixed-finance development project regardless of whether the project is fully or partially assisted with public housing financial assistance.

**Public Housing Project**

Low-income housing, and all necessary appurtenances thereto, assisted under the 1937 Act, other than assistance under 42 U.S.C. 1437f of the 1937 Act (section 8). The term "public housing" includes dwelling units in a mixed-finance project that are assisted by a public housing agency with public housing capital assistance or Operating Fund assistance. When used in reference to public housing, the term "project" means housing developed, acquired, or assisted by a PHA under the 1937 Act, and the improvement of any such housing.

**Recipient**

Any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.

Section 3 means 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, to the greatest extent feasible, employment, training, and business opportunities created by HUD financial assistance be directed to low and very low-income persons.

**Section 3 Business Concern**

A business concern meeting at least one of the following criteria, documented within the last six-month period:

- It is at least 51 percent owned and controlled by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
- It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract and demonstrating their ability to meet contract requirements.

Section 3 business concerns will be given the opportunity to complete a "Section 3 Business Concern Certification" form that will be made available to potential bidders and proposers and utilized by the PHA.

**Section 3 Projects**

- Housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000.
- The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, the Lead-Based Paint Poisoning Prevention Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992.
- The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

**Section 3 Worker**

Any worker who currently fits or when hired within the past five (5) years fit at least one of the following categories, as documented:

- The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant.

**Section 8-Assisted Housing**

Refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

**Service Area or the Neighborhood of the Project**

An area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

**Small PHA**

A public housing authority that manages or operates fewer than 250 public housing units.

**Subcontractor**

Any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

**Subrecipient**

An entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

**Targeted Section 3 Worker**

A Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

- A worker employed by a Section 3 business concern; or
- A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five (5) years:
  - A resident of public housing or Section 8-assisted housing;
  - A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or
  - A YouthBuild participant.

**Very Low-Income Person**

An individual whose annual income does not exceed 50% of the median income for the area as determined by HUD.

**Youthbuild Programs**

Refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).