



HONORABLE MARIA RIVERA
Mayor, City of Central Falls

REQUEST FOR PROPOSAL

BID# 2024-0007

**SIDEWALK, ROAD, AND DRAINAGE
CONSTRUCTION SERVICES**

**Submission deadline for responses:
1:00 p.m., April 11, 2024**

**Optional Pre-Bid meeting:
1:00 p.m., March 25, 2024
1280 High Street, Central Falls, RI 02863**



City of Central Falls Invitation to Bid

The City of Central Falls is requesting bids for the following goods and services:

Sidewalk, Road, and Drainage Construction Services

BID #2024-0007

Specifications and instructions to bidders are available on our website at www.centralfallsri.us or at the Office of the City Clerk/Purchasing Agent, 580 Broad St., Central Falls, Monday - Thursday between the hours of 8:30 A.M- 4:30 P.M. and Friday between the hours of 8:30 A.M. – 1:30 P.M.

It is the responsibility of the bidder to check the website for any addendums. It is the responsibility of the bidder to ensure compliance with all federal, state, and local laws and regulations.

The City of Central Falls reserves the right to accept or reject any and all bids/proposals, waive any informalities in the bids received, and award the bid to the lowest evaluated bid deemed most favorable to the interest of the City.

All bids shall be sealed in envelopes with the project name and number clearly marked in the lower left-hand corner of the envelope and must be received by 1:00 pm in the Office of the Purchasing Agent on April 11, 2024. NO BIDS WILL BE ACCEPTED AFTER 1:00 pm.

The City of Central Falls adheres to a policy of nondiscrimination and does not discriminate based on age, color, gender, national origin, race, religion, sexual orientation, or disability in accordance with applicable laws and regulations.

Alberto DeBurgo
Purchasing Agent/City Clerk

Dated: March 19, 2024

REQUEST FOR PROPOSALS:

BID # 2024-0007

The City of Central Falls is hereby soliciting sealed bids for the above-referenced Request for Proposal. You are hereby invited to submit a proposal for the Scope of Work described in this RFP in accordance with the procedures set forth herein.

1. Purpose

The City of Central Falls seeks qualified contractors to perform sidewalk, road, and drainage construction within the Public Right-of-Way or other City owned areas as funding opportunities and needs arise.

2. Due Date, Submitting Instructions, and Opening of Proposals

Proposals, including the signed “Bid Form” (Appendix A) and signed “Bidder Certification and Disclosure Form” (Appendix B) and all information described in Attachment B, “Content Required for Proposal”, are due and must be submitted to the City of Central Falls Purchasing Agent IN A SEALED ENVELOPE NO LATER THAN 1:00 pm on April 11, 2024. NO RESPONSES WILL BE ACCEPTED AFTER THAT TIME.

A Bid submitted on other than the attached Bid Form may be rejected.

a. Bidders shall submit:

- one hard copy of the complete proposal with original signatures on forms
- four (4) hard copies of the complete proposal
- a digital copy of the complete proposal on a USB flash drive

b. Sealed bids must be addressed to:

City of Central Falls Purchasing Agent
City Hall
580 Broad St.
Central Falls, RI 02863

c. The lower left corner of envelope must contain the following identification: SEALED
BID –Sidewalk, Road, and Drainage Construction RFP #2024-0007

d. Bids will be publicly opened and read in the City Hall Council Chambers at 2:00 pm on April 11, 2024, by the Central Falls Purchasing Board.

3. Questions, Interpretation, and Addenda

No interpretation on the meaning of this RFP will be made to any Respondent orally. All questions or requests for additional information regarding this RFP must be submitted in writing to the Central Falls Planning Department no later than 3:00 p.m. on Thursday, March 28, 2024, via email to emiller@centralfallsri.us. Questions received after that time will not be addressed.

All submitted questions and the written response to each, as well as any changes to or clarification of this RFP, will be available as an addendum posted to the City of Central Falls website (<https://www.centralfallsri.gov/rfps>) on or before 1:00 p.m. on Tuesday, April 2, 2024.

Potential proposers are responsible for checking the City's website to determine whether any addenda have been issued. Proposers must acknowledge receipt of all addenda on the proposal response form to be submitted with the proposal package.

4. RFP Bid Documents

In addition to these first three pages of the RFP, the RFP Bid Documents include:

- ATTACHMENT A – Scope of Work (page 3)
- ATTACHMENT B – Content Required for Proposal (pages 4-5)
- ATTACHMENT C – Evaluation of Proposals (pages 6)
- ATTACHMENT D – Instructions to Bidders (pages 7-14)

- APPENDIX A – Bid Form (pages 15-24)
- APPENDIX B – Bidder Certification and Disclosure Forms (pages 25-33)
- APPENDIX C – Federal Contract Provisions (beginning on page 34)

ATTACHMENT A

SCOPE OF WORK

Work may include, but is not limited to Citywide sidewalk and roadway improvements including, but not limited to full frontage sidewalk repairs, spot sidewalk repairs, utility patch restorations (road and sidewalk), full depth road restoration including granular and rigid base, minor milling/paving, drainage work, installation of drop inlets and catch basins, catch basin/manhole repairs, installation of granite curbing, installation of islands, installation of speed lumps/raised crosswalks, restoration of roadway striping, landscaping, traffic management, and all incidentals to complete work. Work shall be measured and paid for by the appropriate bid items. However, there is no guarantee that work will be awarded or performed using this contract.

Plans are not available at this time. A scope of work and all specifications and details needed to prepare an estimate for and complete the work will be provided. Once one or more contractors has been selected, the City will walk the referenced streets with the contractor(s) and specify the work to be completed.

This contract shall be effective immediately upon acceptance by the City of Central Falls Purchasing Department and will remain in effect for a period of **24 months**. Prices shall remain firm through the end of the contract.

ATTACHMENT B

CONTENT REQUIRED FOR PROPOSAL

Proposals must include:

- the Bidder Certification and Disclosure Forms (Appendix A)
- the Bid Form (Appendix B), and
- all information described in this Attachment B:
 - Background and Qualifications
 - Relevant Project Experience and References
 - Cost Proposal

The Proposer must present the following information to describe and demonstrate how they will meet the requirements of this RFP and carry out the responsibilities outlined in the Scope of Work.

a) Background and Qualifications. Each Proposer shall be skilled and regularly engaged in the general class or type of work called for under the contract for no less than three (3) years. The proposer must provide a company profile that includes the following information.

1. Company ownership. If incorporated, the state in which the company is incorporated and the date of incorporation.
2. Location of the company offices.
3. Number of employees both locally and nationally.
4. Location(s) from which employees will be assigned.
5. Name, address, and telephone number of the Proposer's point of contact for a contract resulting from this RFP.
6. Company background/history, the types of services provided, and why Proposer is qualified to provide the services described in this RFP.
7. Length of time Proposer has been providing the types of services described in this RFP. Please provide a brief description, including a description of experience working in multi-racial and multi-lingual communities and experience conducting remote meetings.
8. Resumes for key staff to be responsible for performance of any contract resulting from this RFP, and a brief description of the role(s) to be performed by each.
9. Plan for utilizing MBE and WBE firms in accordance with city, state and federal law and any relevant company background and/or history in MBE and WBE utilization on similar projects.

Proposer must include in their proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Proposer or in which the Proposer has been judged guilty or liable. Failure to comply with the terms of this provision will disqualify any proposal. The City of Central Falls reserves the right to reject any proposal based upon the Proposer's prior history with the City of Central Falls or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures.

b) Relevant Project Experience and References. It is the intention of the City of Central Falls to award a contract to a Proposer who furnishes satisfactory evidence that the Proposer has the requisite experience and ability to enable the Proposer to prosecute the work successfully and properly, and to complete it within the time specified in the contract. To this end, each Proposal shall be supported by a statement of the Proposer's relevant experience, which shall include:

1. A listing of all similar projects your firm has conducted during the past five years.
2. Descriptions of the work your firm has completed to deliver similar services for three (3) projects for a municipal or other governmental unit within the last five years, with particular interest in projects that serve as community centers, provide access to health and social service providers, and/or provide age-oriented programs (e.g., school-aged youth, seniors). Descriptions shall include the name of the entity for which the Proposer performed the work, the beginning and end dates of each project, and the contract amount.
3. A minimum of three (3) references from similar projects performed for any local government clients within the last five years. Information provided shall include:
 - a. Client/Business name
 - b. Project description
 - c. Project dates (starting and ending)
 - d. Client/Business project manager name and telephone number
4. A complete listing of all projects currently under contract and the estimated completion date for each project.

c) Description of Proposed Services and Project Approach. A description of the firm's proposed approach to completing this project, including a management plan and the complete range of services to be provided, that demonstrates a clear understanding of the project and the Scope of Work.

d) Cost Proposal. Cost proposals are to be provided on the Bid Form (Attachment B) and shall include:

1. Monthly lump sum for all services
2. Estimated total cost of services for the project. Include the basis for this estimate, including any assumptions made.
3. Hourly rates for each person/position who will contribute to the project, and an estimate of the amount of time each will spend on the project.
4. Unit prices for costs of materials, travel, etc.

ATTACHMENT C

EVALUATION OF PROPOSALS

Each Proposer shall be skilled and regularly engaged in the general class or type of work described in the Scope of Work for no less than three (3) years. It is the intention of the City of Central Falls to award a contract to a Proposer who furnishes satisfactory evidence that the Proposer has the requisite experience, ability, sufficient capital, facilities, and plant to enable the Proposer to prosecute the work successfully and properly, and to complete it within the time specified in the contract. To determine the degree of responsibility to be credited to the Proposer, the City of Central Falls will weigh any evidence that the Proposer has performed satisfactorily other contracts of like nature, magnitude and comparable difficulty and comparable rates of progress.

The City of Central Falls' Purchasing Board will select a Contractor based upon the recommendation submitted by the Planning Department. Following the notification of the contractor selected, it is expected a contract will be executed between the parties.

A firm's submission of a proposal indicates acceptance of the conditions contained in this Proposal Specification unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of Central Falls and the firm selected.

ATTACHMENT D

INSTRUCTIONS TO BIDDERS (FOR CONSTRUCTION/SERVICES)

1. **Submission of Bids**

- a. Envelopes containing bids must be sealed, addressed, and marked as indicated on the Invitation to Bid and must be marked with the name and address of bidder, date and bid due time, and name of bid, along with RFQ number.
- b. Bids will be open on April 11, 2024, at 2:00 pm in the Central Falls Council Chambers located on the second floor of the Central Falls City Hall, 580 Broad Street, Central Falls, RI 02863, and no bid received thereafter will be considered. The Purchasing Agent reserves the right to waive any informality in the bidding process.
- c. Any bidder may withdraw his/her bid by written request at any time prior to the advertised time for opening. Telephonic bids, amendments, or withdrawals will not be accepted.
- d. Negligence on the part of the bidder in preparing the bid confers no rights for the withdrawal of the bid after it has been opened.
- e. Proposals received prior to the time of opening will be securely kept unopened. No responsibility will attach to an officer or person for the premature opening of a proposal not properly addressed and identified.
- f. Any deviation from the Specifications must be noted in writing and attached as part of the bid proposal. The Bidder shall indicate the item or part with the deviation and indicate how the bid will deviate from Specifications.
- g. Proposals that are renumbered or re-sequenced may be cause for rejection if all information cannot be easily found and identified. Bidders wishing to reword or re-format the enclosed documents should do so in an addendum identifying the pages or sections to be changed.

2. **Prices**

Bidders shall state the proposed price in the manner as designated in the Bid Proposal Form. If there is a discrepancy between the unit prices and the extended totals, the unit prices shall govern. In the event, there is a discrepancy between the price written in words and written in figures, the prices written in words shall govern.

3. **Terms**

Cash discounts offered will be considered in determining awards. The discount period shall be computed from the date of delivery or from the correct invoice as received by Town Treasurer, whichever date is later. The date of delivery shall be construed to mean the date on which bid item is determined to meet the

specifications and is therefore acceptable. Discounts for a period less than thirty (30) days may not be considered. Payment terms are net 30.

4. Qualification of Bidders

The City may make such investigations as it deems necessary to determine the ability of the bidder to perform the work. The bidder shall furnish the town with all such information and data for the purpose as may be requested.

5. Addenda and Interpretations

No interpretation on the meaning of the Plans, Specifications or any other Contract Document will be made to any bidder orally. Every request for such interpretations must be in writing. All questions pertaining to the specifications or proposal procedure should be first directed to the Purchasing Agent. Where information from the Purchasing Agent differs from information from any other source, the information from the Purchasing Agent prevails. The City is not responsible for information obtained from any other source. It is the responsibility of the Bidder to check the website for any and all information regarding the request to bid.

6. Award and Contract

Unless otherwise specified, the City of Central Falls reserves the right to make award by item or items, or by total, as may be in the best interest of the City; accept a proposal based on considerations other than costs; and waive and modify any provisions of the request for proposal. A written award (or acceptance of Bid) mailed (or otherwise furnished) to the successful bidder followed by an authorized Contract shall, unless otherwise specified, be deemed to result in a binding contract without further action by either party. The Bidder is responsible for all costs and expenses to develop and submit a proposal in response to the solicitation.

7. Equal Employment Opportunity Policy Statement

For the purposes of this Policy, the term “vendor” shall mean any and all individuals, companies, corporations, and business entities that provide goods or services to the City of Central Falls pursuant to any and all relevant and appropriate Federal, State, and local purchasing rules, regulations, and procedures.

The City of Central Falls is committed to the general policy and principle of Equal Employment Opportunity in terms of retaining vendors to provide the City with goods and services necessary for routine and emergency operations. The City of Central Falls will not discriminate against vendors as entities, or individual employees thereof on any legally recognized basis included, but not limited to, race, age, color, religion, sex, marital status, national origin, physical or mental disability, Veteran’s status, pregnancy, sexual orientation, genetic conditions, predisposition to certain diseases, or ancestry, except where a bona fide occupational qualification exists.

8. **Small, Minority, and Women-Owned Businesses**

The City of Central Falls encourages the use of small, minority, and women-owned businesses whenever practical and possible. Businesses interested in receiving consideration by the city must be certified through the RI Minority Business Enterprise Compliance Office, One Capitol Hill, Providence, RI 02908.

9. **Standard Insurance and Indemnification Requirements (for Construction/Labor Services)**

General Conditions: Within ten (10) business days of the award or notice, or prior to the start of work, whichever comes first, the contractor will provide, pay for, and maintain in full force and affect the insurance outlined here for coverage's at not less than the prescribed minimum limits of liability. Such coverage is to remain in force during the life of the contract and for such additional time as may be required, and will cover the contractor's activities, those of any and all subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- A. **Certificates of Insurance:** The contractor will give the owner a certificate of insurance completed by a duly authorized representative of their insurer certifying that at least the minimum coverage's required here are in effect and specifying that the liability coverage's are written on an occurrence form and that the coverage's will not be canceled, non-renewed, or materially changed by endorsement or through issuance of other policy(ies) of insurance without thirty (30) days advance written notice to: City of Central Falls Purchasing Officer. Failure of the owner to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the owner to identify a deficiency from evidence provided will not be construed as a waiver of the contractor's obligation to maintain such insurance.
- B. **Insurer Qualification:** All insurance will be provided through companies authorized to do business in the State of Rhode Island and considered acceptable by the owner, with an A.M. Best Rating of A-/ VIII.
- C. **Additional Insured:** To the extent commercially available at no additional cost, the policy or policies providing insurance as required, with the exception of professional liability and workers' compensation, will defend and include the owner and owner's architects, directors, officers, representatives, agents, and employees as additional insureds on a primary basis for work performed under or incidental to this contract.
- D. **Retroactive Date and Extended Reporting Period:** If any insurance required here is to be issued or renewed on a claims-made form as opposed to the occurrence form, the retroactive date for coverage will be no later than the commencement date of the project and will state that in the event of cancellation or nonrenewal, the discovery period for insurance claims (tail coverage) will be at least 36 months.
- E. **Subcontractors' Insurance:** The contractor will cause each subcontractor employed by the contractor to purchase and maintain insurance of the types specified below. When requested by the owner, the contractor will furnish copies

of certificates of insurance evidencing coverage for each subcontractor.

- F. **Waiver of Subrogation:** The contractor will require all insurance policies in any way related to the work and secured and maintained by the contractor to include clauses stating each underwriter will waive all rights of recovery, under subrogation and otherwise, against owner, architect, and all tiers of contractors or consultants engaged by them. The contractor will require of subcontractors, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section.
- G. **Indemnification/Hold Harmless:** The contractor shall indemnify, defend, and hold harmless the owner and, if applicable, the engineer and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees of counsel selected by the owner, arising out of or resulting from the performance of the work and /or the supplying of materials, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not they are caused in part by a party indemnified hereunder.

Insurance Limits and Coverage:

- A. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverages of Insurance Services Office (ISO) policies, forms, and endorsements.
- B. If the contractor has self-insured retentions or deductibles under any of the following minimum required coverage's, the contractor must identify on the certificate of insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be the contractor's sole responsibility.
- C. Commercial General Liability: The contractor will maintain commercial general liability insurance covering all operations by or on behalf of the contractor on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance will have these minimum limits:

Minimum Limits: \$1,000,000 each occurrence
 \$2,000,000 each occurrence if blasting is required
 \$2,000,000 general aggregate with dedicated limits per project site
 \$2,000,000 products and completed operations aggregate
 \$1,000,000 personal and advertising injury

Should blasting be required, all necessary permits for the use of explosives shall be obtained by the contractor or insured from the Fire Marshall.

Special hazards shall be covered if needed by endorsement to the Commercial Liability policy/policies as follows:

- 1) Property damage liability arising out of the collapse of or structural injury to any building or structure due to excavation (including burrowing, filling or backfilling in connection therewith), tunneling, pile driving, cofferdam work or caisson work; or to moving, shoring, underpinning, razing or demolition of any building or structure, or removal or rebuilding of any structural support thereof.
- 2) Property damage liability for injury to or destruction of property arising, directly or indirectly, from blasting or explosions however caused, other than explosions of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment.
- 3) Property damage liability for injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, arising from and during the use of mechanical equipment for the purpose of excavating or drilling within project limits; injury to or destruction of property at any time resulting therefrom.

- D. Automobile Liability: The contractor will maintain business auto liability coverage for liability arising out of any auto, including owned, hired, and non-owned autos.

Minimum Limits: \$1,000,000 combined single limit each accident

- E. Workers' Compensation: The contractor will maintain workers' compensation and employer's liability.

Minimum Limits:

Workers' Compensation: statutory limit

Employer's Liability:

\$500,000 bodily injury for each accident

\$500,000 bodily injury by disease for each employee

\$500,000 bodily injury disease aggregate

- F. Umbrella/Excess Liability: The contractor will maintain coverage applying over the underlying Commercial General Liability, Automobile Liability, Pollution Liability (where applicable), and Employer Liability section of the Workers Compensation coverage. The City of Central Falls shall have the sole discretion in increasing or reducing the Umbrella/Excess Liability coverage requirements depending on the scope and/or size of the work to be performed by Contractor/Bidder.

Minimum Limits: \$5,000,000 per occurrence/\$5,000,000 annual aggregate

Coverage applies over the underlying Commercial General Liability, Automobile Liability, pollution liability (where applicable), and Employer Liability section of

the Workers Compensation Coverage.

- G. Professional Liability (for consultants, engineers, and other individuals/businesses providing professional services).

Each Claim/Wrongful Act:	\$1,000,000
Annual Aggregate	\$1,000,000

The City of Central Falls reserves the right to amend amounts of coverage required and type of coverages provided based on work or service to be performed.

10. Labor Regulations

The following paragraphs regarding nondiscrimination in employment shall be included and become part of these Specifications:

- a. The Contract for Work under this proposal will obligate the contractor and subcontractors not to discriminate in employment practices and conform with Executive Order No. 11246.
- b. Bidders must, if required, submit a compliance report concerning their employment practices and policies in order to maintain their eligibility to receive award of the Contract.
- c. Successful bidders must, if required, submit a list of all subcontractors who will perform Work on the Project, and written signed statements from authorized agents of labor pools with which they will or may deal with for employees on the Work, together with any information to the effect that such labor pools practices or policies are in conformity with Executive Order No. 11246; that they will affirmatively cooperate in or offer no hindrance to the recruitment, employment, and equal treatment of employment, and equal treatment of employees seeking employment and performing Work under this Contract; or a certification as to when such agents or labor pools have failed or refused to furnish them, prior to award of the Contract.

11. Wage Rates (for on-site construction labor services)

Attention of the bidders is particularly called to the requirements as to conditions of employment to be observed and minimum wage rates to be paid under the Contract. In conformity with the provisions of Chapter 13 of Title 37, General Laws, Rhode Island, 1956, as amended, the minimum wages for a day's work paid to craftsmen, teamsters and laborers shall be not less than the customary and prevailing rate of wages for a day's work in the locality where the work is undertaken. Such a schedule of wages has been established on a minimum hourly basis and is in file in the office of the State Department of Labor. See Appendix B.

12. Compliance with Instructions to Bidders

These Instructions to Bidders contain terms and conditions that will govern the

preparation and submission of a bid proposal and any contract awarded pursuant to this solicitation. Bidders must comply with each and every requirement of these Instructions to Bidders. Any failure to comply with any requirement may result in the determination of nonresponsive bid proposal and/or the rejection of the bid proposal.

13. **Priority of Terms and Conditions**

The terms and conditions in these Instructions to Bidders *supersede* any and all inconsistent or conflicting terms and conditions in any other provision of any other document in this solicitation or in the bid proposal and govern this solicitation, the bid proposal, and any contract awarded pursuant to this solicitation.

14. **Public Copy**

Bid proposals submitted in response to this solicitation are public records pursuant to the Rhode Island "Access to Public Records Act," R. I. Gen. Laws §§ 38-2-1 et seq. Each bid proposal must include a "public copy" to be available for public inspection upon the opening of bids. The public copy must be submitted in .pdf (portable document file) format on a *read-only CD-R* media disk or Flash Drive. The disk must include *all the documents* submitted in response to the solicitation concatenated or merged into one file.

The public copy disk must be separately enclosed in a protective cover clearly marked "Public Copy" and include the following information: (1) Solicitation Title; (2) name of bidder; (3) Solicitation Number; and (4) bid proposal submission deadline.

The .pdf file must be named in the following manner:

Solicitation Number Bid Proposal Submission Deadline_BidderName.pdf

Bidders may redact in the public copy any trade secrets or commercial or financial information which is of a privileged or confidential nature pursuant to the Access to Public Records Act. If a "hard" public copy is furnished at time of bid, the bidder may follow up with the disk copy before the end of the business Bid Due Date day. Bids may be opened publicly in City Hall shortly after Bid receipt.

15. **Binding Contract**

A binding negotiated contract between the City of Central Falls and the successful bidder will be formed by the issuance of the Central Falls Standard Agreement from the Purchasing Department, *and only by the issuance of a Purchase Order for billing purposes, and only to the extent of available funds.* The binding contract will incorporate and be subject to the terms and conditions of the solicitation, including the Invitation to Bid, the Instructions to Bidders, the Request for Quote, the Bidder Certification Form, the Agreement (if applicable to this solicitation), and the Purchase Order. The successful bidder shall

be authorized to commence work only upon the issuance of the Notice to Proceed or Contract and, in addition, an authorization from the department.

16. DISCLAIMER

- a. The City reserves the right to amend, cancel or withdraw the Request for Proposal at any time if it is deemed in the best interests of the City to do so. The City reserves the right to reject any, or any part of, or all proposals, to waive informalities and technicalities, and to accept that bid proposal which the City deems to be in the best interest of the City, whether or not it is the lowest dollar bid.
- b. The City is not responsible for any costs/expenses incurred by anyone submitting a proposal for this project. Costs/expenses are the sole responsibility of the parties submitting proposals.
- c. All proposals submitted, and information included therein or attached thereto shall become public records upon their delivery to the City. All documents created by the respondent during the completion of their contract requirements shall become the property of the City, including any databases and information systems that are created.
- d. The information contained in this RFQ and attachments, hereto, and any addendum that may be issued, are provided to assist prospective Bidders in the preparation of proposals. The information has been obtained from sources thought to be reliable, but the City and its elected officials, officers, employees, agents and contractors, are not liable for the accuracy of the information or its use by prospective Bidders.

APPENDIX A

BID FORM

“THIS FORM MUST BE COMPLETED, ATTACHED TO THE FRONT OF THE PROPOSAL, AND SUBMITTED AS INSTRUCTED”

RFP NUMBER: 2024 – 0007

RFP NAME: Sidewalk, Road, and Drainage Construction Services

Bid Submitted by (Name of Firm): _____

- *Monthly Lump Sum:* The Bidder stated below agrees to provide all labor, materials, equipment, supervision, and all activities required to provide the scope of work as defined in the above referenced Request for Proposal, for the Sum amount:

_____ (\$ _____) ***per month.***

NOTE: Bidders must include in their lump sum all costs

- *Estimated Total Cost:* The Bidder **estimates their total cost** to provide all labor, materials, equipment, supervision, and all activities required to provide a complete scope of work services as defined in the above referenced Request for Proposal for the duration of their work on the project to be:

_____ (\$ _____)

This estimate is based on the following (attach additional pages if needed):

- **UNIT PRICES**

The Bidder submits these predetermined firm Unit Prices as the basis for any change orders as approved in advance by the city. These Unit Prices include all costs, including but not limited to labor, materials, services, regulatory compliance, insurance, overhead, and profit. If a specific item or task is not noted in the description, the cost of that item must be included in an item listed below.

Note: some items identified may not be referenced in this scope but are listed for potential substitutions and/or for potential items to be used within the allowance budget.

Unit Prices submitted for each item will be maximum price allowed for that item. The City will use the submitted bids as the basis for selecting one or more bidders to include on a list of pre-approved contractors. Once quantities are specified for a particular job the selected bidder(s) will have an opportunity to adjust their prices downward and submit a project-specific proposal. This process will enable the City to have a pre-approved list of contractors so that work can be done in an expedited manner as additional funds become available.

BIDDER NAME: _____

[Please Type]

ITEM NO.	ITEM CODE	DESCRIPTION	UNIT	UNIT COST IN FIGURES
1	201.0401	REMOVE AND DISPOSE GRANITE CURB	LF	\$
2	201.0402	REMOVE AND DISPOSE CONCRETE CURB	LF	\$
3	201.0403	REMOVE AND DISPOSE SIDEWALKS	SY	\$
4	201.0407	REMOVE AND DISPOSE PAVEMENT AND RIGID BASE	SY	\$
5	201.0409	REMOVE AND DISPOSE FLEXIBLE PAVEMENT	SY	\$
6	201.0414	REMOVE AND DISPOSE PIPE - ALL SIZES	LF	\$
7	201.0610	REMOVE AND DISPOSE DIRECTIONAL, WARNING, REGULATORY, SERVICE, AND STREET SIGNS	EACH	\$
8	201.9901	REMOVE AND DISPOSE TREES >3" CALIPER	DIA-IN	\$
9	201.9902	GRIND TREE STUMP 18" BELOW GRADE	DIA-IN	\$
10	201.9903	CLEARING AND GRUBBING	SY	\$
11	201.9904	REMOVE AND SALVAGE GRANITE CURB, ALL TYPES	LF	\$
12	201.9905	REMOVE AND DISPOSE BRICKS, PAVERS AND COBBLES, ALL TYPES	SF	\$
13	201.9906	REMOVE AND SALVAGE MANHOLE FRAME AND COVER OR CATCH BASIN FRAME AND GRATE	EACH	\$
14	202.0100	EARTH EXCAVATION	CY	\$
15	202.0300	UNCLASSIFIED EXCAVATION	CY	\$
16	202.0700	COMMON BORROW	CY	\$
17	203.0650	CRUSHED STONE FILL UNDER STRUCTURES	CY	\$
18	206.0301	COMPOST FILTER SOCK	LF	\$
19	206.9901	CATCH BASIN INLET PROTECTION	EACH	\$

ITEM NO.	ITEM CODE	DESCRIPTION	UNIT	UNIT COST IN FIGURES
20	302.0100	GRAVEL BORROW SUBBASE COURSE	CY	\$
21	401.9901	CLASS 9.5 HMA FOR MISCELLANEOUS WORK	SY	\$
22	401.9902	PAVER PLACED CLASS 9.5 HMA <100 SY PAVING	TON	\$
23	401.9903	PAVER PLACED CLASS 9.5 HMA >100 SY PAVING	TON	\$
24	408.0300	CLEANING AND SEALING CRACKS IN BITUMINOUS CONCRETE PAVEMENT	LF	\$
25	501.9901	PORTLAND CEMENT CONCRETE BASE	SY	\$
26	701.0512	REINFORCED CONCRETE PIPE M 170 CLASS IV 12 INCH	LF	\$
27	701.5112	12 INCH SMOOTH INTERIOR CORRUGATED POLYPROPYLENE PIPE	LF	\$
28	702.0510	HEAVY-DUTY SQUARE FRAME AND ROUND COVER STANDARD 6.1.1	EACH	\$
29	702.0511	FRAME AND COVER STANDARD 6.1.0	EACH	\$
30	702.0517	FRAME AND GRATE, STANDARD 6.3.2	EACH	\$
31	702.0522	FRAME AND COVER STANDARD 6.2.1	EACH	\$
32	702.0605	PRECAST CATCH BASIN 4' DIAMETER STANDARD 4.4.0	EACH	\$
33	702.0610	PRECAST CATCH BASIN 5' DIAMETER STANDARD 4.4.0	EACH	\$
34	702.0615	PRECAST CATCH BASIN 6' DIAMETER STANDARD 4.4.0	EACH	\$
35	702.0712	PRECAST CONCRETE DROP INLET STANDARD 4.5.0	EACH	\$
36	702.0713	PRECAST CONCRETE DROP INLET WITH APRON STONE STANDARD 4.5.1	EACH	\$
37	702.0714	PRECAST CONCRETE DROP INLET WITH APRON STONE STANDARD 4.5.2	EACH	\$
38	704.0100	RECONSTRUCT CATCH BASIN/CORBEL CONES	EACH	\$
39	704.0200	RECONSTRUCT MANHOLE/CORBEL CONES	EACH	\$

ITEM NO.	ITEM CODE	DESCRIPTION	UNIT	UNIT COST IN FIGURES
40	704.0300	RECONSTRUCT CATCH BASIN/VERTICAL WALLS	VLF	\$
41	704.0400	RECONSTRUCT MANHOLE/VERTICAL WALLS	VLF	\$
42	707.0900	ADJUST MANHOLES TO GRADE	EACH	\$
43	707.0950	ADJUST TELEPHONE MANHOLE TO GRADE	EACH	\$
44	707.0955	ADJUST ELECTRICAL MANHOLE TO GRADE	EACH	\$
45	707.2000	ADJUST FRAME AND GRATE TO GRADE	EACH	\$
46	708.9040	CLEANING AND FLUSHING PIPE ALL SIZES	LF	\$
47	708.9041	CLEANING CATCH BASINS ALL TYPES AND SIZES	EACH	\$
48	708.9042	CLEANING MANHOLES ALL TYPES AND SIZES	EACH	\$
49	712.0100	FURNISH AND INSTALL WATER GATE BOX	EACH	\$
50	712.0200	FURNISH AND INSTALL GAS GATE BOX	EACH	\$
51	713.8269	ADJUST WATER GATE BOXES TO GRADE	EACH	\$
52	713.8300	ADJUST GAS GATE BOXES TO GRADE	EACH	\$
53	905.9901	4 INCH CEMENT CONCRETE SIDEWALK AND WHEELCHAIR RAMPS	SY	\$
54	905.9902	8 INCH CEMENT CONCRETE DRIVEWAY AND WHEELCHAIR RAMP	SY	\$
55	905.9903	FURNISH AND INSTALL BRICK OR CONCRETE PAVERS	SF	\$
56	905.9904	REMOVE, STOCKPILE AND RESET BRICKS, PAVERS, COBBLES (ALL TYPES)	SF	\$
57	905.9905	FURNISH AND INSTALL GRANITE BELGIAN BLOCK COBBLES	SF	\$
58	905.9906	INSTALL SALVAGED GRANITE BELGIAN BLOCK COBBLES	SF	\$
59	906.9901	FURNISH AND INSTALL GRANITE CURB STRAIGHT, CIRCULAR 7" WIDTH PROVIDENCE STANDARD	LF	\$

ITEM NO.	ITEM CODE	DESCRIPTION	UNIT	UNIT COST IN FIGURES
60	906.9902	FURNISH AND INSTALL GRANITE WHEELCHAIR RAMP TRANSITION CURB 7" WIDTH PROVIDENCE STANDARD	LF	\$
61	906.9903	FURNISH AND INSTALL GRANITE WHEELCHAIR RAMP STONE 7" WIDTH PROVIDENCE STANDARD	LF	\$
62	906.9904	FURNISH AND INSTALL GRANITE CURB RETURNS 7" WIDTH PROVIDENCE STANDARD	EACH	\$
63	906.9905	FURNISH AND INSTALL GRANITE INLET OR APRON STONE 7" WIDTH PROVIDENCE STANDARD	EACH	\$
64	906.9906	REMOVE, HANDLE, HAUL, TRIM, RESET CURBING/EDGING, STRAIGHT, CIRCULAR, TRANSITION, INLET, APRON, RETURNS, ALL TYPES	LF	\$
65	907.0100	WATER FOR DUST CONTROL	MGAL	\$
66	914.5010	FLAGPERSONS	MHRS	\$
67	914.5020	FLAGPERSONS - OVERTIME	MHRS	\$
68	919.0101	TEST PITS	EACH	\$
69	920.0055	PLACED STONE RIPRAP R-3, R-4, R-5 STANDARD 8.3.0	SY	\$
70	923.0105	DRUM BARRICADE STANDARD 26.2.0	BDAY	\$
71	932.0100	CUTTING AND MATCHING ASPHALT	LF	\$
72	935.9901	REMOVING BITUMINOUS PAVEMENT BY COLD PLANING < 100 SY	SY	\$
73	935.9902	REMOVING BITUMINOUS PAVEMENT BY COLD PLANING > 100 SY	SY	\$
74	942.0200	DETECTABLE WARNING PANEL STANDARD 48.1.0	SF	\$
75	L01.9901	LOAM BORROW 4 INCHES DEEP & TYPE 2 SEEDING	SY	\$
76	L01.9902	LOAM	CY	\$
77	L06.9901	DECIDUOUS TREES (2 1/2" CALIPER)	EACH	\$
78	L06.9902	FLOWERING TREES (2 1/2" CALIPER)	EACH	\$
79	L06.9903	GROUNDCOVER AND PERENNIALS (1 GALLON)	EACH	\$

ITEM NO.	ITEM CODE	DESCRIPTION	UNIT	UNIT COST IN FIGURES
80	L06.9904	PINE BARK MULCH FURNISH AND SPREAD 3" DEPTH	SY	\$
81	L06.9905	SHRUBS (5 GALLON)	EACH	\$
82	L08.0104	SHRUB OR VINE PRUNING	MHRS	\$
83	L08.0109	TREE TRIMMING	MHRS	\$
84	L10.0101	MECHANICAL TREE AND SHRUB ROOT PRUNING	LF	\$
85	T05.1030	ADJUST HANDHOLE TO GRADE	EACH	\$
86	T15.0100	DIRECTIONAL REGULATORY AND WARNING SIGNS	SF	\$
87	T20.0704	4 INCH WHITE WATERBORNE PAINT PAVEMENT MARKINGS	LF	\$
88	T20.0712	12 INCH WHITE WATERBORNE PAINT PAVEMENT MARKINGS	LF	\$
89	T20.0904	4 INCH YELLOW WATERBORNE PAINT PAVEMENT MARKINGS	LF	\$
90	T20.2404	4 INCH WHITE FINAL EPOXY RESIN PAVEMENT MARKINGS	LF	\$
91	T20.2406	6 INCH WHITE FINAL EPOXY RESIN PAVEMENT MARKINGS	LF	\$
92	T20.2408	8 INCH WHITE FINAL EPOXY RESIN PAVEMENT MARKINGS	LF	\$
93	T20.2412	12 INCH WHITE FINAL EPOXY RESIN PAVEMENT MARKINGS	LF	\$
94	T20.2424	24 INCH WHITE FINAL EPOXY RESIN PAVEMENT MARKINGS	LF	\$
95	T20.2804	4 INCH YELLOW FINAL EPOXY RESIN PAVEMENT MARKINGS	LF	\$
96	T20.2808	8 INCH YELLOW FINAL EPOXY RESIN PAVEMENT MARKINGS	LF	\$
97	T20.3401	FINAL EPOXY RESIN PAVEMENT MARKING SYMBOL - ARROW (STRAIGHT, LEFT, RIGHT OR COMBINED) STANDARD 20.1.0	EACH	\$
98	T20.3405	FINAL EPOXY RESIN PAVEMENT MARKING SYMBOL - YIELD LINE TRIANGLE (ALL SIZES)	EACH	\$
99	T20.3410	FINAL EPOXY RESIN PAVEMENT MARKING WORD ("ONLY", "STOP", "YIELD", "AHEAD", "XING", "SCHOOL", OR OTHER) STANDARD 20.1.0	EACH	\$

ITEM NO.	ITEM CODE	DESCRIPTION	UNIT	UNIT COST IN FIGURES
100	T20.3417	FINAL EPOXY RESIN PAVEMENT MARKING SYMBOL SET - SHARED LANE MARKING FOR BICYCLES	EACH	\$
101	T20.4506	REMOVE PAVEMENT MARKING LINE - LESS THAN OR EQUAL TO 6 INCHES WIDE	LF	\$
102	T20.4508	REMOVE PAVEMENT MARKING LINE - GREATER THAN 6 INCHES WIDE	LF	\$
103	T20.4511	REMOVE PAVEMENT MARKING SYMBOL - ARROW (STRAIGHT, LEFT, RIGHT OR COMBINED)	EACH	\$
104	T20.4520	REMOVE PAVEMENT MARKING WORD ("ONLY", "STOP", "YIELD", "AHEAD", "XING", "SCHOOL", OR OTHER)	EACH	\$

The below stated Bidder agrees to provide all labor, materials, equipment, supervision and all activities required to provide a complete scope of work as defined in this Request for Proposal, and to agree to all terms and conditions, all as shown or by reference, unless as excluded below:

EXCLUSIONS:

This Request for Proposal, together with all documents, specifications, drawings, and documents/attachments/Addendums, are included and constitute the entire proposal from the bidder. There are no terms, conditions, or provisions, either oral or written, between the parties hereto, other than those contained herein. The Request for Proposal supersedes all written representation, inducements, or understandings of any kind or nature between the parties hereto, relating to the project involved herein. Payment Terms are net 30 days for this scope of work.

The bid price above, excludes applicable sales and or use taxes; includes all insurance premiums; and includes all shipping/transportation costs, if applicable.

The submitted pricing for this scope of work shall remain firm for 90 days from the date of submission.

[Proposer to Sign On Next Page]

The signature below certifies that the undersigned is authorized to submit this proposal on behalf of the Respondent and to bind the Respondent to the provisions of its response. Further, the signature certifies that:

- The undersigned has reviewed all required documents submitted with the response form.
- The undersigned has not entered into any collusion with any person in respect to this proposal or any other proposal or the submitting of a response to this bid.
- If selected to perform the work, the undersigned will act in good faith to complete projects as part of this effort in an expeditious manner.

Company Representative

Company Name: _____

Address: _____

Telephone: _____

Email: _____

Signature of Proposer's Authorized Representative

Name & Title of Authorized Representative

Date of Signing

APPENDIX B

BIDDER CERTIFICATION AND DISCLOSURE FORMS

“THIS FORM MUST BE COMPLETED, ATTACHED TO THE PROPOSAL AFTER THE BID FORM, AND SUBMITTED AS INSTRUCTED”

ALL OFFERS ARE SUBJECT TO THE REQUIREMENTS, PROVISIONS AND PROCEDURES CONTAINED IN THIS CERTIFICATION FORM. Offerors are expected to read, sign, and comply with all requirements. Failure to do so may be grounds for disqualification of the offer contained herein.

Rules for Submitting Offers

This Certification Form must be attached in its entirety to the front of the offer and shall be considered an integral part of each offer made by a vendor to enter into a contract with the City of Central Falls. As such, submittal of the entire Bidder Certification Form, signed by a duly authorized representative of the offeror attesting that he/she (1) has read and agreed to comply with the requirements set forth herein and (2) to the accuracy of the information provided and the offer extended, is a mandatory part of any contract award.

To assure that offers are considered on time, each offer must be submitted with the specific Bid/RFP/RFQ number, date and time of the due date marked in the lower left-hand corner of the envelope. Each bid/offer must be submitted in an envelope.

A complete signed (in ink) offer package must be delivered to the City of Central Falls Purchasing Agent at the location indicated within the bid by April 11, 2024, at 1:00 pm in a sealed envelope.

Bids must be submitted on the bid solicitation form(s) provided, indicating brand and part numbers of items offered, as appropriate. If applicable, Bidders must submit detailed cuts and specs on items offered as equivalent to brands requested WITH THE OFFER. Bidders must be able to submit samples if requested.

Documents misdirected to other City locations, or which are not present in the City of Central Falls Purchasing Office by the due date and time for whatever cause will be deemed to be late and will not be considered. Postmarks shall not be considered proof of timely submission. The City of Central Falls reserves the right to reject any and all proposals, to waive any informality in the proposals received, and to accept the proposal deemed to be most favorable to the best interests of the City.

SOLICITATIONS. To assure maximum access opportunities for users, public bid/RFP solicitations shall be posted on the website for a minimum of seven days and no amendments shall be made within the last five days before the date an offer is due. Except when access to the website has been severely curtailed and it is determined by the Purchasing Agent that special circumstances preclude extending a solicitation due date, requests to mail or fax hard copies of solicitations will not be honored. When the result of an internet solicitation is unsuccessful, the City of Central Falls will cancel the original solicitation and re-solicit the original offer directly from vendors.

PRICING. Offers are irrevocable for ninety (90) days from the opening date (or such other extended period set forth in the solicitation), and may not be withdrawn, except with the express permission of the Purchasing Agent. All pricing will be firm and fixed unless otherwise indicated. (R.I. Sales Tax under the 1956 General Laws of the State of RI, 44-18-30 Para 1, as amended.) The City of Central Falls is exempt from Federal excise taxes and State Sales and Use Taxes. Such taxes shall not be included in the bid price.

DELIVERY and PRODUCT QUALITY. If applicable, all offers must define delivery dates for all items; if no delivery date is specified, it is assumed that immediate delivery from stock will be made. The contractor will be responsible for delivery of materials in first class condition. Rejected materials will be at the vendor's expense. **PRICES QUOTED ARE FOB DESTINATION.** No additional shipping, handling, or fuel surcharge costs will be honored by the Town/ School. Only inside delivery and set-up, where required, will be accepted. **TAILGATE DELIVERIES WILL BE REFUSED.** Deliveries must consist only of new merchandise or equipment (unless otherwise specified) and shall be made between 8:30 a.m. and 3:00 p.m., Monday through Friday. No delivery shall become due or acceptable without an authorized Purchase Order issued by the Purchasing Agent.

PREVAILING WAGE, OSHA SAFETY TRAINING and APPRENTICESHIP REQUIREMENTS. Bidders must comply with the provisions of the Rhode Island labor laws, including R.I. Gen. Laws §§ 37-13-1 et seq. and occupational safety laws, including R.I. Gen. Laws §§ 28-20-1 et seq. These laws mandate *for* public works construction projects the payment of prevailing wage rates, the implementation and maintenance of occupational safety standards, and for projects with a minimum value of \$1 Million, the employment of apprentices. The successful Bidder must submit certifications of compliance with these laws from each of its subcontractors prior to their commencement of any work. Prevailing wage rates, apprenticeship requirements, and other workforce and safety regulations are accessible at www.dlt.ri.gov.

BID SURETY. Where bid surety is required, for construction/labor services, bidder must furnish a bid bond or certified check for 5% of the bid total with the bid, or for such other amount as may be specified. Bids submitted without a required bid surety will not be considered. Contractor awarded a contract with a contract price in excess of fifty thousand dollars (\$50,000) for construction, buildings or public works is to file with the proper authority good and sufficient bond with surety furnished by any surety company authorized to do business in the State of Rhode Island and in accordance with Chapter 13 of the General Laws of Rhode Island entitled "Labor and Payment of Debts by Contractors".

SPECIFICATIONS. Unless specified "no substitute", product offerings equivalent in quality and performance will be considered (at the sole option of the Town/School) on the condition that the offer is accompanied by detailed product specifications. Offers which fail to include alternate specifications may be deemed nonresponsive.

VENDOR AUTHORIZATION TO PROCEED. When a purchase order, change order, contract/agreement or contract/agreement amendment is issued by the City of Central Falls, no claim for payment for services rendered or goods delivered contrary to or more than the contract

terms and scope shall be considered valid unless the vendor has obtained a written change order or contract amendment issued by the City PRIOR to delivery.

Any offer, whether in response to a solicitation for proposals or bids, or made without a solicitation, which is accepted in the form of an order OR pricing agreement made in writing by the City's Purchasing Department, shall be considered a binding contract.

GENERAL TERMS AND CONDITIONS OF CONTRACTS. This solicitation and any contract or purchase order arising from it are issued in accordance with the specific requirements described herein, and the State's Purchasing Laws and Regulations and other applicable State Laws. The General Terms and Conditions are incorporated into all the City of Central Falls contracts.

ARRA SUPPLEMENTAL TERMS AND CONDITIONS. Contracts and sub-awards funded in whole or in part by the American Recovery and Reinvestment Act of 2009. Pub.L.No. 111-5 and any amendments thereto, such contracts and sub-awards shall be subject to the Supplemental Terms and Conditions for Contracts and Sub-awards funded in whole or in part by the American Recovery and Reinvestment Act of 2009. Pub. L. No. 111-5 and any amendments thereto located on the Division of Purchases website at www.purchasing.ri.gov.

EQUAL EMPLOYMENT OPPORTUNITY. Compliance certificate and agreement procedures will apply to all awards for supplies or services valued at \$10,000 or more. Minority Business Enterprise policies and procedures, including subcontracting opportunities as described in Title 37 Chapter 14.1 of the Rhode Island General Laws also apply.

PERFORMANCE BONDS. Where indicated, the successful bidder must furnish a 100% performance bond and labor and payment bond for contracts subject to Title 37 Chapters 12 and 13 of the Rhode Island General Laws. All bonds must be furnished by a surety company authorized to conduct business in the State of Rhode Island. Performance bonds must be submitted within 21 calendar days of the notice of award.

DEFAULT and NON-COMPLIANCE Default and/or non-compliance with the requirements and any other aspects of the award may result in withholding of payment(s), contract termination, debarment, suspension, or any other remedy necessary that is in the best interest of the City of Central Falls.

COMPLIANCE Vendor must comply with all applicable federal, state and local laws, regulations and ordinances.

SPRINKLER IMPAIRMENT AND HOT WORK. The Contractor agrees to comply with the practices of the City/City's Insurance carrier for sprinkler impairment and hot work. Prior to performing any work, the Contractor shall obtain the necessary information for compliance from the Risk Management Office at the Department of Administration or the Risk Manager at the City of Central Falls.

PUBLIC COPY. Each bid proposal for a *public works project* must include a "public copy" to be available for public inspection upon the opening of bids. Bid Proposals that do not include a copy for public inspection will be deemed nonresponsive.

For further information on how to comply with this statutory requirement, see R.I. Gen. Laws §§ 37-2-18(b) and (j). Also see State of Rhode Island Procurement Regulation 220-RICR-30-00-5.11. These may be found at <https://ridop.ri.gov/about-us/procurement-statutes-and-regulations>

ALL CONTRACT AWARDS ARE SUBJECT TO THE FOLLOWING DISCLOSURES & CERTIFICATIONS:

Offerors must respond to every disclosure statement and submit with your proposal. A person authorized to enter into contracts must sign the offer and attest to the accuracy of all statements.

Indicate Yes (Y) or No (N):

___1 State whether your company, or any owner, stockholder, officer, director, member, partner, or principal thereof, or any subsidiary or affiliated company, has been subject to suspension or debarment by any federal, state, or municipal government agency, or the subject of criminal prosecution, or convicted of a criminal offense within the previous five (5) years. If so, then provide details below.

___2 State whether your company, or any owner, stockholder, officer, director, member, partner, or principal thereof, or any subsidiary or affiliated company, has had any contracts with a federal, state or municipal government agency terminated for any reason within the previous five (5) years. If so, then provide details below.

___3 State whether your company or any owner, stockholder, officer, director, member, partner, or principal thereof, or any subsidiary or affiliated company, has been fined more than \$5000 for violation(s) of Rhode Island environmental laws by the Rhode Island Department of Environmental Management within the previous five (5) years. If so, then provide details below.

___4 I/we certify that I/ we will immediately disclose, in writing, to the Purchasing Agent any potential conflict of interest which may occur during the course of the engagement authorized pursuant to this contract.

___5 I/we acknowledge that, in accordance with (1) Chapter §37-2-54(c) of the Rhode Island General Laws "no purchase or contract shall be binding on the state or any agency thereof unless approved by the Department of Administration or made under general regulations which the Purchasing Agent may prescribe," including change orders and other types of contracts and under State Purchasing Regulation 8.2.1.1.2 any alleged oral agreement or arrangements made by a bidder or contractor with any department or an employee of the City of Central Falls may be disregarded and shall not be binding on the City of Central Falls.

___6 I/we certify that I or my/our firm possesses all licenses required by Federal and State laws and regulations as they pertain to the requirements of the solicitation and offer made herein and shall maintain such required license(s) during the entire course of the contract resulting from the offer contained herein and, should my/our license lapse or be suspended, I/we shall immediately inform the City of Central Falls Purchasing Agent in writing of such circumstance.

___7 I/we certify that I/ we will maintain required insurance during the entire course of the contract resulting from the offer contained herein and, should my/our insurance lapse or be suspended, I/we shall immediately inform the City of Central Falls Purchasing Agent in writing of such circumstance.

___8 I/we certify that I/we understand that falsification of any information herein or failure to notify the City of Central Falls Purchasing Agent as certified herein may be grounds for suspension, debarment and/or prosecution for fraud.

___9 I/we acknowledge that the provisions and procedures set forth in this form apply to any contract arising from this offer.

___10 I/we acknowledge that I/we understand the State's Purchasing Laws (§37-2 of the General Laws of Rhode Island) and General Terms and Conditions available at the Rhode Island Division of Purchases Website (<https://ridop.ri.gov>) apply as the governing conditions for any contract or purchase order I/we may receive from the City of Central Falls including the offer contained herein.

___11 I/we certify that the bidder: (i) is not identified on the General Treasurer's list, created pursuant to R.I. Gen. laws § 37-2.5-3, as a person or entity engaging in investment activities in Iran described in § 37-2.5-2(b); and (ii) is not engaging in any such investment activities in Iran.

___12 If the product is subject to Department of Commerce Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR), please provide the Export Control Classification Number (ECCN) or the US Munitions List (USML) Category: _____

___13 I/we certify that the above information is correct and complete.

IF YOU HAVE ANSWERED "YES" TO QUESTIONS #1- 3 OR IF YOU ARE UNABLE TO CERTIFY YES TO QUESTIONS #4 -11 and 13 OF THE FOREGOING, PROVIDE DETAILS/EXPLANATION IN AN ATTACHED STATEMENT. INCOMPLETE CERTIFICATION FORMS SHALL BE GROUNDS FOR DISQUALIFICATION OF OFFER.

Signature below commits vendor to the attached offer and certifies (1) that the offer has taken into account all solicitation amendments, as specifically identified below, (2) that the above statements and information are accurate, and (3) that vendor understands and has complied with the requirements set forth herein.

The undersigned Respondent acknowledges reading the following Addendum(s):

RFP Number: 2024-0007

RFP Name: Sidewalk, Road, and Drainage Construction Services

Proposal Submitted by (Name of Firm): _____

Person authorized to enter into contracts on behalf of the proposer:

- Printed Name: _____
- Title: _____
- Telephone Number: _____
- Authorized Signature: _____

Date of Signature: _____

ANTI-KICKBACK ACKNOWLEDGMENT

ALL BIDDERS/OFFERORS MUST ATTEST TO THE FOLLOWING:

The vendor acknowledges, under the pains and penalties of perjury, that he/she has not been offered, paid, or solicited for any contribution or compensation, nor has he/she been granted a gift, gratuity, or other consideration, either directly or indirectly by any officer, employee or member of the governing body of the City of Central Falls who exercises any functions or responsibilities in connection with either the award or execution of the project to which this contract pertains.

Further, the vendor acknowledges, under the pains and penalties of perjury, that he/she has not offered, paid, or solicited by way of any contribution or compensation, nor has he/she granted a gift, gratuity or other consideration either directly or indirectly to any officer, employee, or member of the governing body of the City of Central Falls who exercises any functions or responsibilities in connection with either the award or execution of the project to which this project or contract pertains.

SIGNATURE OF OFFEROR

DATE

TITLE

COMPANY

Title of RFP:



CITY OF CENTRAL FALLS
PURCHASING DEPARTMENT

Certification of Bidder (Non-Discrimination/Hiring):

Upon behalf of _____ (Firm or Individual

Bidding), I, _____ (Name of Person Making

Certification), being its _____ (Title or "Self"), hereby certify that:

1. Bidder does not unlawfully discriminate on the basis of race, color, national origin, gender, sexual orientation and/or religion in its business and hiring practices.

2. All of Bidder's employees have been hired in compliance with all applicable federal, state and local laws, rules and regulations.

I affirm by signing below that I am duly authorized on behalf of Bidder, on this _____ day of _____ 20_____.

Signature of Representation

Printed Name



CITY OF CENTRAL FALLS
PURCHASING DEPARTMENT

Certificate Regarding Public Records:

Upon behalf of _____ (Firm or Individual Bidding),
I, _____ (Name of Person Making Certification),
being its _____ (Title or "Self"), hereby certify an
understanding that:

All bids submitted in response to Requests for Proposals (RFP's) and Requests for Qualification (RFQ's), documents contained within, and the details outlined on those documents become public record upon receipt by the City Clerk's office and opening at the corresponding Board of Contract and Supply (BOCS) meeting.

The Purchasing Department and the issuing department for this RFP/RFQ have made a conscious effort to request that sensitive/personal information be submitted directly to the issuing department and only at request if verification of specific details is critical the evaluation of a vendor's bid.

The requested supplemental information may be crucial to evaluating bids. Failure to provide such details may result in disqualification, or an inability to appropriately evaluate bids.

If sensitive information that has not been requested is enclosed or if a bidder opts to enclose the defined supplemental information prior to the issuing department's request in the bidding packet submitted to the City Clerk, the City of Central Falls has no obligation to redact those details and bears no liability associated with the information becoming public record.

The City of Central Falls observes a public and transparent bidding process. Information required in the bidding packet may not be submitted directly to the issuing department at the discretion of the bidder in order to protect other information, such as pricing terms, from becoming public. Bidders who make such an attempt will be disqualified.

I affirm by signing below that I am duly authorized on behalf of Bidder, on

This _____ day of _____ 20_____.

Signature of Representation

Printed Name

APPENDIX C

FEDERAL CONTRACT PROVISIONS

A variety of funding sources, including federal Community Development Block Grant (CDBG) funds, will be used to complete this project. The City and funders require that certain provisions be included in all contracts. This Appendix C is provided as a reference so that bidders can anticipate the provisions that will be required in the contract between the City and the General contractor. The provisions on the 60 pages that follow are not necessarily a complete listing of what will be required in the final contracts.

FEDERAL NON-CONSTRUCTION CONTRACT PROVISIONS

Breach of contract - *to be provided by recipient*

Termination - *to be provided by recipient*

Certification regarding Debarment

Equal Employment Opportunity Certification

Standard Patents Rights Clauses

Clean Water Clause

Clean Air Clause

Lobbying

STATE OF RHODE ISLAND

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

RI Office of Housing & Community Development

One Capitol Hill, 3rd Floor

Providence, RI 02908

Note: This document is to be used as a guide for contractors and subcontractors working on Community Development Block Grant projects in the State of Rhode Island. It is not verified to be all inclusive and the contractor is fully responsible for complying with all federal regulations applicable to the CDBG program.

REQUIRED CONTRACT PROVISIONS TO BE PROVIDED BY RECIPIENT

(To the best of our knowledge, federal templates are not currently available for items A and B, below. Grant recipients must develop/use their own contract language to meet the requirements specified below.)

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Certification Regarding Debarment and Suspension

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant		Date
Signature of Authorized Certifying Official		Title

**Equal Employment
Opportunity Certification**
Excerpt From 41 CFR §60-1.4(b)

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

Department of Veterans Affairs
OMB Control No. 2502-0029
(exp. 9/30/2016)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will 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 the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, 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 in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

Firm Name and Address	By
	Title

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Excerpt from HUD Regulations

200.410 Definition of term "applicant".

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

200.420 Equal Opportunity Clause to be included in contracts and subcontracts.

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

(2) The contractor will 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 race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference to the equal opportunity clause.

200.425 Modification in and exemptions from the regulations in this subpart.

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

(1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

(2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

(3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

(4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

(5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.

§401.14 Standard patent rights clauses.

(a) The following is the standard patent rights clause to be used as specified in §401.3(a).

Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) *Subject invention* means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of *contract* performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights

The *Contractor* may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *Contractor* retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by *Contractor*

(1) The *contractor* will disclose each subject invention to the *Federal Agency* within two months after the inventor discloses it in writing to *contractor* personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the

invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the *agency*, the *Contractor* will promptly notify the *agency* of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.

(2) The *Contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the *agency*, be granted.

(d) Conditions When the Government May Obtain Title

The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention—

(1) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the *agency* may only request title within 60 days after learning of the failure of the *contractor* to disclose or elect within the specified times.

(2) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(3) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to *Contractor* and Protection of the *Contractor* Right to File

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) The *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and *agency* licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such

other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and *agency* regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor* Action to Protect the Government's Interest

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the *contract*) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

The *Contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause.

As required by 35 U.S.C. 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the government without permission of the *contractor*.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The *contractor* agrees that with respect to any subject invention in which it has acquired title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

(1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for *Contracts* with Nonprofit Organizations

If the *contractor* is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;

(2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the

capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Secretary may review the *contractor's* licensing program and decisions regarding small business applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communication

(Complete According to Instructions at 401.5(b))

(b) When the Department of Energy (DOE) determines to use alternative provisions under §401.3(a)(4), the standard clause at §401.14(a), of this section, shall be used with the following modifications unless a substitute clause is drafted by DOE:

(1) The title of the clause shall be changed to read as follows: *Patent Rights to Nonprofit DOE Facility Operators*

(2) Add an "(A)" after "(1)" in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(B) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of DOE, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-inventor, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. DOE will process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (h)-(k) of this clause and such additional conditions, if any, deemed to be appropriate by the *Department of Energy*.

(C) At the time an invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the *Department of Energy*. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the determination of the Contracting Officer will be deemed conclusive unless the contractor files a claim under the Contract Disputes Act within 60 days after the Contracting Officer's determination. Pending resolution of the matter, the invention will be subject to subparagraph (c)(1)(B).

(3) Paragraph (k)(3) of the clause will be modified as prescribed at §401.5(g).

(c) As prescribed in §401.3, replace (b) of the basic clause with the following paragraphs (1) and (2):

(b) Allocation of principal rights. (1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, including (2) below, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant

the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

[52 FR 8554, Mar. 18, 1987, as amended at 69 FR 17301, Apr. 2, 2004]

Clean Water Requirements

33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq* . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to OHCD/HUD and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the State.

CLEAN AIR

42 U.S.C. 7401 *et seq*

40 CFR 15.61

49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq*. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to OHCD/HUD and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by OHCD/HUD.

Lobbying

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

FEDERAL CONSTRUCTION CONTRACT PROVISIONS

(Contracts over \$100,000)

**STATE OF RHODE ISLAND
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

RI Office of Housing & Community Development

One Capitol Hill, 3rd Floor

Providence, RI 02908

Note: This document is to be used as a guide for contractors and subcontractors working on Community Development Block Grant projects in the State of Rhode Island. It is not verified to be all inclusive and the contractor is fully responsible for complying with all federal regulations applicable to the CDBG program.

REQUIRED CONTRACT PROVISIONS TO BE PROVIDED BY RECIPIENT

(To the best of our knowledge, federal templates are not currently available for items A and B, below. Grant recipients must develop/use their own contract language to meet the requirements specified below.)

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Certification Regarding Debarment and Suspension

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant		Date
Signature of Authorized Certifying Official	Title	

**Equal Employment
Opportunity Certification**
Excerpt From 41 CFR §60-1.4(b)

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

Department of Veterans Affairs
OMB Control No. 2502-0029
(exp. 9/30/2016)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will 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 the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, 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 in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

Firm Name and Address	By
	Title

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Excerpt from HUD Regulations

200.410 Definition of term "applicant".

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

200.420 Equal Opportunity Clause to be included in contracts and subcontracts.

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

- (2) The contractor will 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 race, creed, color, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

- (5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

- (7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference to the equal opportunity clause.

200.425 Modification in and exemptions from the regulations in this subpart.

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

- (1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

- (2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

- (3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

- (4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

- (5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.

§401.14 Standard patent rights clauses.

(a) The following is the standard patent rights clause to be used as specified in §401.3(a).

Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) *Subject invention* means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of *contract* performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights

The *Contractor* may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *Contractor* retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by *Contractor*

(1) The *contractor* will disclose each subject invention to the *Federal Agency* within two months after the inventor discloses it in writing to *contractor* personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the

invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the *agency*, the *Contractor* will promptly notify the *agency* of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.

(2) The *Contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the *agency*, be granted.

(d) Conditions When the Government May Obtain Title

The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention—

(1) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the *agency* may only request title within 60 days after learning of the failure of the *contractor* to disclose or elect within the specified times.

(2) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(3) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to *Contractor* and Protection of the *Contractor* Right to File

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) The *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and *agency* licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such

other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and *agency* regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor* Action to Protect the Government's Interest

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the *contract*) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

The *Contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause.

As required by 35 U.S.C. 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the government without permission of the *contractor*.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The *contractor* agrees that with respect to any subject invention in which it has acquired title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

(1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for *Contracts* with Nonprofit Organizations

If the *contractor* is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;

(2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the

capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Secretary may review the *contractor's* licensing program and decisions regarding small business applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communication

(Complete According to Instructions at 401.5(b))

(b) When the Department of Energy (DOE) determines to use alternative provisions under §401.3(a)(4), the standard clause at §401.14(a), of this section, shall be used with the following modifications unless a substitute clause is drafted by DOE:

(1) The title of the clause shall be changed to read as follows: *Patent Rights to Nonprofit DOE Facility Operators*

(2) Add an "(A)" after "(1)" in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(B) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of DOE, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-inventor, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. DOE will process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (h)-(k) of this clause and such additional conditions, if any, deemed to be appropriate by the *Department of Energy*.

(C) At the time an invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the *Department of Energy*. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the determination of the Contracting Officer will be deemed conclusive unless the contractor files a claim under the Contract Disputes Act within 60 days after the Contracting Officer's determination. Pending resolution of the matter, the invention will be subject to subparagraph (c)(1)(B).

(3) Paragraph (k)(3) of the clause will be modified as prescribed at §401.5(g).

(c) As prescribed in §401.3, replace (b) of the basic clause with the following paragraphs (1) and (2):

(b) Allocation of principal rights. (1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, including (2) below, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant

the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

[52 FR 8554, Mar. 18, 1987, as amended at 69 FR 17301, Apr. 2, 2004]

Clean Water Requirements

33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq* . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to OHCD/HUD and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the State.

CLEAN AIR

42 U.S.C. 7401 *et seq*

40 CFR 15.61

49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq*. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to OHCD/HUD and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by OHCD/HUD.

Lobbying

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Title 37: Patents, Trademarks, and Copyrights

[PART 401—RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS](#)

§401.14 Standard patent rights clauses.

(a) The following is the standard patent rights clause to be used as specified in §401.3(a).

Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) *Subject invention* means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of *contract* performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights

The *Contractor* may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *Contractor* retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by *Contractor*

(1) The *contractor* will disclose each subject invention to the *Federal Agency* within two months after the inventor discloses it in writing to *contractor* personnel responsible for patent matters. The disclosure

to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the *Contractor* will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.

(2) The *Contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the agency, be granted.

(d) Conditions When the Government May Obtain Title

The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention—

(1) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the agency may only request title within 60 days after learning of the failure of the *contractor* to disclose or elect within the specified times.

(2) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(3) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to *Contractor* and Protection of the *Contractor* Right to File

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and

affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) The *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and *agency* licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and *agency* regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor* Action to Protect the Government's Interest

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the *contract*) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

The *Contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the government without permission of the *contractor*.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The *contractor* agrees that with respect to any subject invention in which it has acquired title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

- (1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for *Contracts* with Nonprofit Organizations

If the *contractor* is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;
- (2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
- (3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Secretary may review

the *contractor's* licensing program and decisions regarding small business applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communication

(Complete According to Instructions at 401.5(b))

(b) When the Department of Energy (DOE) determines to use alternative provisions under §401.3(a)(4), the standard clause at §401.14(a), of this section, shall be used with the following modifications unless a substitute clause is drafted by DOE:

(1) The title of the clause shall be changed to read as follows: *Patent Rights to Nonprofit DOE Facility Operators*

(2) Add an "(A)" after "(1)" in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(B) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of *DOE*, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-inventor, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. *DOE* will process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (h)-(k) of this clause and such additional conditions, if any, deemed to be appropriate by the *Department of Energy*.

(C) At the time an invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the *Department of Energy*. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the determination of the Contracting Officer will be deemed conclusive unless the contractor files a claim under the Contract Disputes Act within 60 days after the Contracting Officer's determination. Pending resolution of the matter, the invention will be subject to subparagraph (c)(1)(B).

(3) Paragraph (k)(3) of the clause will be modified as prescribed at §401.5(g).

(c) As prescribed in §401.3, replace (b) of the basic clause with the following paragraphs (1) and (2):

(b) Allocation of principal rights. (1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, including (2) below, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

[52 FR 8554, Mar. 18, 1987, as amended at 69 FR 17301, Apr. 2, 2004]

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.

Source: form HUD-5370-C

§ 135.38 Section 3 Clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).



ANNUAL SECTION 3 SUMMARY REPORTING REQUIREMENTS

FOR RECIPIENTS OF HUD COMMUNITY PLANNING & DEVELOPMENT FUNDING

*TECHNICAL ASSISTANCE ON FORM HUD-60002

Why HUD Enforces Section 3?

Each year the U.S. Department of Housing and Urban Development invests billions of federal dollars into distressed communities for projects designed to build and rehabilitate housing, improve roads, develop community centers, and otherwise assist families achieve the American Dream.

The Section 3 regulation recognizes that HUD funding typically results in projects/activities that generate new employment, training and contracting opportunities. These economic opportunities not only provide “bricks and mortar”, but can also positively impact the lives of local residents who live in the neighborhoods being redeveloped.

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] is HUD’s legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects.

Further, as a condition of receiving HUD Community Planning and Development assistance, recipients certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b). Accordingly, the Department has the legal responsibility to monitor recipients for compliance and can impose penalties upon those that fail to meet these obligations.

Applicability of Section 3 to Community Planning & Development Assistance

The requirements of Section 3 apply to recipients of HUD Community Planning and Development funding exceeding **\$200,000**.

Section 3 covered projects are those in which a *combined* (or aggregate) amount of covered funding exceeding \$200,000, is invested into activities involving **housing construction, demolition, rehabilitation, or other public construction—i.e., roads, sewers, community centers, etc.**

[Example: Section 3 applies to the combined investment of more than \$200,000 into multiple single-family housing rehabilitation projects during a program year].

Contractors or subcontractors that receive contracts in excess of **\$100,000** for Section 3 covered projects/activities are required to comply with the Section 3 regulations in the same manner as direct recipients.

If the recipient agency receives Section 3 covered funding and invests these funds into covered projects/activities, but no individual contract exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient.

Accordingly, the recipient must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by: 1) Awarding 10 percent of the total dollar amount of all covered construction contracts to Section 3 businesses; and 2) Offering 30 percent of new employment opportunities to Section 3 businesses.

Section 3 Covered Community Planning and Development funding

- Community Development Block Grants (CDBG)
- Home Investment Partnership Assistance
- Housing Opportunities for Persons with Aids (HOPWA)
- Economic Development Initiative (EDI)
- Brownfield Economic Development Initiative (BEDI)
- Emergency Shelter Grants
- Homeless Assistance
- University Partnership Grants
- Neighborhood Stimulus Program (NSP)
- Certain Grants Awarded Under HUD Notices of Funding Availability (NOFAs)

*NOTE: The requirements of Section 3 only apply to the portion(s) of covered funding that were used for project/activities involving housing construction, rehabilitation, demolition, or other public construction.

Section 3 applies to the **entire** covered project or activity regardless of whether the activity was fully or partially funded with covered assistance.

Section 3 Covered Recipient Agencies

“Recipient” refers to any entity that receives Section 3 covered financial assistance directly from HUD or from another recipient and includes, but is not limited to any of the following:

- States; Units of Local Government; Native American Tribes; or other Public Bodies
- Public or Private Nonprofit Organizations
- Private Agencies or Institutions
- Mortgagors; Developers; Limited Dividend Sponsors; Builders; Property Managers; Community Housing Development Organizations
- Successors, assignees or transferees of any such entity listed above
- Recipients do **NOT** include any ultimate beneficiary under the HUD program that Section 3 applies and does **NOT** refer to contractors.

Triggering the Requirements of Section 3

Section 3 is triggered when the normal completion of construction and rehabilitation projects creates the need for **new** employment, contracting, or training opportunities.

The Section 3 regulations should not be construed to mean that recipients are required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities.

If the expenditure of covered funding does not result in new employment, contracting, or training opportunities, the requirements of Section 3 have not been triggered. However, each agency must still submit Section 3 annual reports indicating this information.

Recipient Responsibilities Pursuant to Section 3

Each recipient (and their covered contractors, subcontractors, or subrecipients) are required to comply with the requirements of Section 3 for **new** employment, training, or contracting opportunities resulting from the expenditure of covered funding. This responsibility includes:

1. Implementing procedures to notify Section 3 residents and business concerns about training, employment, and contracting opportunities generated by Section 3 covered assistance;
2. Notifying potential contractors working on Section 3 covered projects of their responsibilities;
3. Incorporating the Section 3 Clause into all covered solicitations and contracts [see 24 CFR Part 135.38];
4. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns;
5. Assisting and actively cooperating with the Department in making contractors and subcontractors comply;
6. Refraining from entering into contracts with contractors that are in violation of Section 3 regulations;
7. Documenting actions taken to comply with Section 3; and
8. Submitting Section 3 Annual Summary Reports (form HUD-60002) in accordance with 24 CFR Part 135.90.

In addition to the responsibilities described above, **State and County agencies or consortia** that distribute covered funds to units of local government, nonprofit organizations, or other subrecipients, must attempt to reach the minimum numerical goals set forth at 24 CFR Part 135.30, regardless of the number of subrecipients that receive covered funding. State or County agencies must also do the following:

1. Inform subrecipients about the requirements of Section 3;
2. Assist subrecipients and their contractors with achieving compliance;
3. Monitor subrecipients' performance with respect to meeting the requirements of Section 3; and
4. Report to HUD on the cumulative Section 3 activities taking place within their jurisdiction on an annual basis.

Section 3 Residents and Business Concerns

Section 3 Residents Are:

1. Residents of Public and Indian Housing; or
2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

Section 3 Business Concerns Are One of the Following:

1. Businesses that are 51 percent or more owned by Section 3 residents;
2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above.

Recipients can use their discretion for determining the type of verification that is required by prospective Section 3 residents and business concerns. Some examples include: proof of residency in a public housing authority; proof of federal subsidies for housing, food stamps, or unemployment benefits; and payroll data or other relevant business information.

Section 3 Summary Reports (Form HUD-60002)

Annually, each direct recipient of Community Planning and Development funding is required to submit form HUD-60002 to HUD's Economic Opportunity Division in Washington, DC. , preferably online from the following website: www.hud.gov/section3.

Due Date: Form HUD-60002 is due at the same time as annual performance (e.g., CAPERS) reports

The Section 3 Summary Report shall follow the same program, fiscal, or calendar year as the annual performance report and should correspond to the covered projects and activities that were administered during the reporting period.

NOTE: Section 3 reports must be submitted by all agencies that receive Community Planning and Development funding in excess of \$200,000 whether the requirements were triggered or not.

Determining What Should Be Reported on Form HUD-60002

Section 3 Annual Summary Reports are intended to measure each recipient's efforts to comply with the statutory and regulatory requirements of Section 3 in its own operations **AND** those of its covered contractors, subcontractors, and subrecipients. Each submission of form HUD-60002 should indicate the following:

- The total dollar amount of HUD funding that was received by the recipient for covered projects/activities during the specified reporting period.
- The total number of new employees that were hired by the recipient and/or its covered contractors, subcontractors, and subrecipients, as a result of performing or completing covered project/activities.
- The number of new employees that were hired by the recipient (or its covered contractors, subcontractors, and subrecipients), as a result of covered projects/activities, that met the definition of a Section 3 resident.
- The total number of man hours worked on covered projects (optional).
- The aggregate number of hours worked by Section 3 residents on covered projects (optional).
- The total number of Section 3 residents that participated in training opportunities that were made available by the recipient agency, its contractors, subrecipients, or other local community resource agencies.
- The total dollar amount of construction and/or non-construction contracts (or subcontracts) that were awarded with covered funding.
- The dollar amount of the recipient's construction or non-construction contracts (or subcontracts) that were awarded to Section 3 business concerns.
- Detailed narrative descriptions of the specific actions that were taken by the recipient (or its covered contractors, subcontractors, subrecipients, or others) to comply with the requirements of Section 3 and/or meet the minimum numerical goals for employment and contracting opportunities.

Section 3 Reporting and Compliance Determinations

Absent evidence to the contrary, the Department considers recipients of covered funding to be in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 CFR Part 135.30. Specifically:

- a. 30 percent of the aggregate number of new hires shall be Section 3 residents;
- b. 10 percent of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
- c. 3 percent of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

Recipients that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the Department to make a compliance determination.

Recipients that submit Section 3 reports containing **all zeros**, without a sufficient explanation to justify their submission, are in **noncompliance** with the requirements of Section 3.

Failure to comply with the requirements of Section 3 may result in sanctions, including: debarment, suspension, or limited denial of participation in HUD programs pursuant to 24 CFR Part 24.

Recipients that are subject to annual A-133 Audits may also receive an audit finding for failure to submit form HUD-60002 to HUD.

Important Notes for Submitting Form HUD-60002

- Recipients must submit a separate form HUD-60002 for each type of covered funding (*e.g.*, separate reports must be submitted for CDBG and HOME funding).
- Use the online Section 3 Summary Reporting System at: www.hud.gov/section3 to ensure that form HUD- 60002 is received by the Economic Opportunity Division in HUD Headquarters in a timely manner.
- The “reporting period” option in the online Section 3 Summary Reporting System (box #7) lists quarters but the Section 3 reporting is an annual requirement. Accordingly, recipients should select **Quarter 4** to document the total amount of covered activities/projects that were completed during the entire reporting period.
- If the recipient (or its covered contractors, subcontractors and subrecipients) did not hire any new employees during the reporting period, and/or if no covered construction or non-construction contracts were awarded, the recipient must indicate this in Part III of form HUD-60002 and certify that this information is true and accurate by penalty of law.

Where Are Reports Submitted

Form HUD-60002 must be submitted to HUD's Economic Opportunity Division, in Washington, DC. Recipients are strongly encouraged to submit form HUD-60002 online at: www.hud.gov/section3.

Recipients can also download a hard copy of form HUD 60002 from the website listed above. Hard copies shall be submitted via fax or mail to:

U.S. Department of Housing and Urban Development
Attn: Economic Opportunity Division
451 Seventh Street, SW
Room 5235
Washington, DC 20410
202-708-1286 (fax)

Additional Section 3 Guidance and Technical Assistance

The Economic Opportunity Division is committed to providing recipient's guidance and technical assistance for compliance with the requirements of Section 3.

For additional information, please visit the Section 3 website at: www.hud.gov/section3. This webpage provides the following tools and information:

- Section 3 Statute—12 U.S.C. 1701u
- Section 3 Regulation—24 CFR Part 135
- Frequently Asked Questions
- Section 3 Model Programs
- Guidance on Section 3 and Economic Stimulus Funding
- Guidance on Section 3 and the Neighborhood Stimulus Program (NSP)
- Sample Section 3 Certification Forms (residents and business concerns)
- Link to HUD's Local Income Eligibility Calculator
- Link to Section 3 Annual Reporting System(form HUD-60002)
- Downloadable Forms
- Contact Information for Economic Opportunity Division staff
- Email inquiries on Section 3 can be sent to section3@hud.gov

**CERTIFICATION OF BIDDER REGARDING SECTION 3 AND SEGREGATED
FACILITIES**

Name of Prime Contractor

Project Name & Number

The undersigned hereby certifies that:

1. Section 3 provisions are included in the Contract.
2. A written Section 3 plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$100,000).
3. No segregated facilities will be maintained.

Name & Title of Signer (Print or Type):

Signature Date

SECTION 3 PLAN CERTIFICATION

_____ agrees to implement the following specific affirmative action
Name of Contractor
directed at increasing the utilization of lowest income residents and businesses with in the City/Town of _____

- A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and were advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the city /town the necessary number of lower income residents through: Local advertising media, sign placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D.* To insert this Section 3 plan in all bid documents, and to require all bidders and subcontractors to submit a Section 3 affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E.* To insure that subcontracts which are typically let on a negotiated rather than bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To insure that all appropriated project area business concerns are notified of pending subcontractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 Plan.

As officers and representatives of _____ we, the undersigned, have read and

(Name of Contractor)

fully agree to this Affirmative Action Plan, and become a party to the full implementation of this program.

Signature

Title

Date

Signature

Title

Date

Section 3 Summary Report
 Economic Opportunities for
 Low – and Very Low-Income Persons

U.S. Department of Housing
 and Urban Development
 Office of Fair Housing
 And Equal Opportunity

OMB Approval No: 2529-0043
 (exp. 11/30/2010)

HUD Field Office:

Section back of page for Public Reporting Burden statement

1. Recipient Name & Address: (street, city, state, zip)	2. Federal Identification: (grant no.)	3. Total Amount of Award:
	4. Contact Person	5. Phone: (Include area code)
	6. Length of Grant:	7. Reporting Period:
8. Date Report Submitted:	9. Program Code: (Use separate sheet for each program code)	10. Program Name:

Part I: Employment and Training (Columns B, C and F are mandatory fields. Include New Hires in E & F)**

A Job Category	B Number of New Hires	C Number of New Hires that are Sec. 3 Residents	D % of Aggregate Number of Staff Hours of New Hires that are Sec. 3 Residents	E % of Total Staff Hours for Section 3 Employees and Trainees	F Number of Section 3 Trainees
Professionals					
Technicians					
Office/Clerical					
Construction by Trade (List Trade					
Trade					
Trade					
Trade					
Trade					
Other (List)					
Total					

* Program Codes 1 = Flexible Subsidy 2 = Section 202/811	3 = Public/Indian Housing A = Development, B = Operation C = Modernization	4 = Homeless Assistance 5 = HOME 6 = HOME State Administered 7 = CDBG Entitlement	8 = CDBG State Administered 9 = Other CD Programs 10 = Other Housing Programs
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Part II: Contracts Awarded

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$
B. Total dollar amount of contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving contracts	

2. Non-Construction Contracts:

A. Total dollar amount all non-construction contracts awarded on the project/activity	\$
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving non-construction contracts	

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- Other; describe below.

Public reporting for this collection of information is estimated to average 2 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. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Form HUD-60002, **Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons.**

Instructions: This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to **recipients of housing and community development assistance in excess of \$200,000** expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of \$100,000** awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts, which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit one copy of this report to HUD Headquarters, Office of Fair Housing and Equal Opportunity. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

- HUD Field Office: Enter the Field Office name .
1. Recipient: Enter the name and address of the recipient submitting this report.
 2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
 3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
 - 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
 6. Reporting Period: Indicate the time period (months and year) this report covers.
 7. Date Report Submitted: Enter the appropriate date.

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name: Enter the name of HUD Program corresponding with the "Program Code" in number 8.

Part I: Employment and Training Opportunities

Column A: Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e. supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

Column B: (Mandatory Field) Enter the number of new hires for each category of workers identified in **Column A** in connection with this award. New hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column C: (Mandatory Field) Enter the number of Section 3 new hires for each category of workers identified in **Column A** in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column D: Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

Column E: Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

Column F: (Mandatory Field) Enter the number of Section 3 residents that were trained in connection with this award.

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Block 2: Non-Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Part III: Summary of Efforts – Self -explanatory

Submit one (1) copy of this report to the HUD Headquarters Office of Fair Housing and Equal Opportunity, at the same time the performance report is submitted to the program office. The Section 3 report is submitted by January 10. Include only contracts executed during the period specified in item 8. PHAs/IHAs are to report all contracts/subcontracts.

* The terms "low-income persons" and very low-income persons" have the same meanings given the terms in section 3 (b) (2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that

The Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 percent of the median family income area, as determined by the Secretary with adjustments or smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

CERTIFICATION OF BIDDER

FEDERAL LABOR STANDARDS PROVISIONS- DAVIS BACON ACT AND “RELATED ACTS”

This certification is required to insure that the Bidder understands that the Project or Program to which the construction work covered by any construction greater than \$2,000, is being assigned by the United States of America and that the various Federal Labor Standards Provisions, summarized in the form HUD-4010, “Federal Labor Standards Provisions” are included in any such contract, pursuant to the provisions applicable to such Federal assistance.

The Bidder certifies receipt of form HUD-4010, “Federal Labor Standards Provisions”, must be included and attached to each and every construction bid document and/or construction contract greater than \$2,000, that is subject to the Davis-Bacon Act and “Related Acts.”

Wage Determination – The Wage Determination applicable to this project is:

Determination Number:

Modification Number:

Date:

A hard copy of this Determination must be included within these bid specifications.

Wage Determination Posting – Contractors and sub-contractors shall post the prevailing wage rates for each craft and classification in a prominent and easily accessible place at the site of the work, or at such places as are used by them to pay workers.

The undersigned is required to ensure that all specifications and/or contracts include all applicable Federal wage rate determinations and the required labor standards provisions summarized by form **HUD-4010, “Federal Labor Standards Provisions.”**

Weekly Certified Payrolls – It is the responsibility of each contractor and sub-contractor to submit weekly certified payrolls for project work (<http://www.dol.gov/whd/forms/wh347.pdf>). **It is the responsibility of the undersigned (prime contractor) to review payrolls submitted by subcontractors to ensure that there are no discrepancies or underpayments.**

CERTIFICATION BY BIDDER

Name and Address of Bidder (Include ZIP Code):

Name and Title of Signer (Please print or type below:)

Signature

Date

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)



Rev. Dec. 2008

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

OMB No.: 1235-0008
Expires: 02/28/2018

NAME OF CONTRACTOR		OR SUBCONTRACTOR		ADDRESS																
PAYROLL NO.		FOR WEEK ENDING		PROJECT AND LOCATION								PROJECT OR CONTRACT NO.								
(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK	
				HOURS WORKED EACH DAY	FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS												
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Date _____

I, _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____ ; that during the payroll period commencing on the
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____, _____,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

— in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

— Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

Wage/Fringe Benefit Certification

(To be completed by contractor/subcontractors prior to contract award.)

GRANTEE: GRANT: PROJECT:

This is to certify that plans to use the following classifications of workers on the above referenced project:

Classification	From Applicable Wage Decision			Base Wage to be paid by Contractor	Fringe Benefits to be provided by Contractor		Total Package to be paid by Contractor
	Base Wage Due	Fringe Benefits Due	Total Package Due		Benefit	Hourly Amount	
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Certified by: Title: Date:

(Must be certified by Owner or Chief Financial Officer)

Attach
Applicable Davis Bacon
Wage Determination

HERE