



# REQUEST FOR PROPOSAL

**HACA-20-P-0236**

DEVELOPER/OWNER

HOUSING CHOICE VOUCHER PROGRAM

PROJECT BASED VOUCHERS

Date Issued: December 23, 2020

Please deliver completed bid packets to:

[https://ha.internationaleprocurement.com/requests.html?company\\_id=10217](https://ha.internationaleprocurement.com/requests.html?company_id=10217)

**DUE DATE:** February 12, 2021 at 5:00 PM/CST

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# **GENERAL INFORMATION**

## **BACKGROUND**

The Housing Authority of the City of Austin (HACA), a municipal public housing authority, is a public entity that was formed in 1937 to provide federally subsidized housing and housing assistance to low-income families in Austin, Texas. HACA, headed by a President and CEO, is governed by a five-person Board of Commissioners, and subject to the requirements of Title 24 of the Code of Federal Regulations, HACA's Procurement Policy, as well as other applicable federal, state and municipal laws and codes. Though brought into existence by a resolution of the City of Austin, HACA is a separate entity from the city.

A high-performing public housing authority that assists more than 20,000 Austin residents daily, HACA is the largest provider of affordable housing for extremely low income families, persons with disabilities and seniors in the Austin area. HACA manages a Housing Choice Voucher program that provides rental vouchers for more than 5,900 units of housing in Austin's private rental market. Housing Choice vouchers are provided through HACA's regular voucher program and a variety of programs for special populations including homeless individuals and families, disabled individuals, veterans, and emancipating foster youth. HACA also implements a number of family self-sufficiency, workforce and youth educational success programs to help move families toward self-sufficiency and break the cycle of poverty.

## **INTRODUCTION**

HUD regulations allow communities, such as Austin, that are participating in the Housing Choice Voucher Program to allocate up to 20% of their tenant-based vouchers for Project-Based Voucher (PBV) assistance. Under the PBV program, subject to Federal requirements and in accordance with locally developed guidelines, rental subsidies are attached to specific rental units. When the tenants of units assisted under the PBV program, move, the rental subsidies remain with the units while the PBV Housing Assistance Payments ("HAP") contract is in force.

The intent of this solicitation is to solicit proposals for eligible properties from eligible property owners for PBV assistance. HACA will enter into PBV HAP Contracts with selected property owners for designated rental units for an initial term of up to twenty (20) years subject to funding availability. Rental assistance subsidies will be provided while eligible families occupy the rental housing units and the units meet other program standards. HACA's published subsidy standards will determine the appropriate unit size for the family size and composition.

Property owners who are qualified and are interested in providing rental units under the PBV Program as described herein are encouraged to submit a proposal to HACA.

# PROJECT DETAILS

## 1. Eligibility Requirements

HACA will accept proposals for newly constructed, rehabilitated, or existing housing

HACA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of HACA selection, the unit substantially complies with Housing Quality Standards.

A housing unit is considered newly constructed or rehabilitated units if developed in accordance with the PBV requirements found at 24 CFR Part 983 Subpart D, that will execute an Agreement to enter into a Housing Assistance Payment Contract (AHAP) and start construction within 24 months of the award announcement.

To be eligible for project-based Section 8 rental assistance from HACA, the following criteria must be met:

- Projects must be permanent housing. Emergency, temporary or transitional housing are not eligible for project-based rental assistance.
- If it involves rehabilitation or an existing rental property, the project must meet HUD HQS before a Housing Assistance Contract is executed.
- The units must be either independent units or non-independent living units that are Single Room Occupancy (SRO) units as defined by HUD (24 CFR §982.4).
- Tenants must have a lease with a minimum term of one year.
- The rents that are charged must meet the HACA rent reasonableness test.
- Tenants must meet HACA eligibility criteria.
- Tenants must be at least 18 years old or have been legally emancipated.
- Tenants must be homeless individuals or families using the “*Housing First*” approach (see Scope of Work A.5 for definition of Housing First).
- HUD prohibits the use of project-based Section 8 Housing Choice Vouchers for the following activities: shared housing; medical, mental or similar public/private institutions; nursing homes or facilities providing continuous care; psychiatric, medical or nursing facilities; board and care or Intermediate Care Facilities; manufactured housing; or coop housing.

## 2. Environmental Review

Projects receiving Project-Based Section 8 Housing Choice Vouchers will require an environmental review under HUD’s environmental review rules at 24 C.F.R. Part 58. A PHA, an owner, or its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities until an environmental review is completed.

## 3. Fair Housing and Equal Opportunity

The applicant shall comply with applicable Federal and State laws, executive orders and regulations pertaining to fair housing and equal housing opportunity, including without limitation, Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d et seq., 24 CFR Part 1), The Fair Housing Act, as amended (42 U.S.C. § 3601 et seq., 24 CFR Part 100-115), Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259), and Age Discrimination Act of 1975, as

amended (42 U.S.C. § 6101 et seq., 24 CFR Part 146). Applicants are cautioned to be aware of the potential applicability of provisions of the Americans with Disabilities Act, federal Fair Housing legislation and Section 504 of the Rehabilitation Act of 1973 to any housing proposed for funding. Procedures for selection of residents, conditions of residency, and rules regarding termination may fall within the scope of this legislation. Providers must make reasonable accommodations of rules, policies, and procedures and may be required to allow reasonable structural modifications of buildings to be made, if necessary, to allow an individual with disabilities equal access to housing.

#### **4. Right to Cancel**

HACA reserves the right to reject or cease processing any requests for PBV assistance prior to the execution of an AHAP or HAP contract.

#### **5. PBV Requirements.**

All projects must be selected developed, and operated in accordance with the PBV program requirements found at 24 CFR part 983, Notice PIH 2017-21 or any successor - Notices, and PBV policies described in HACA's Housing Choice Voucher Administrative Plan, Chapter 17.

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## PUBLIC INFORMATION ACT

Information Submitted to HACA is public information and is available upon request under the Texas Public Information Act, Chapter 552 of the Government Code (the Public Information Act). A vendor submitting any information it considers confidential (such as trade secrets or commercial or financial information) which it desires not to be disclosed, must clearly identify all such information in its proposal. If vendor's designated confidential information is requested from HACA, HACA shall notify the vendor of the request so that the vendor shall have the opportunity, under the Public Information Act, to present its arguments to the Texas Attorney General, who shall make the final determination whether the information is excerpted from disclosure. HACA will deem information not clearly identified as confidential as being non-confidential and available for release under the Public Information Act unless some other exception applies.

### SCOPE OF WORK

The Scope of Work is described in Exhibit 1.

### RFP SUBMISSION INSTRUCTIONS & TERMS

#### SUBMISSION FORMAT

Questions regarding this Request for Proposal must be submitted online at [https://ha.internationaleprocurement.com/requests.html?company\\_id=10217](https://ha.internationaleprocurement.com/requests.html?company_id=10217) by January 22, 2021 at 5:00pm CST. HACA will respond in writing by posting answers to questions by January 29, 2021 at [https://ha.internationaleprocurement.com/requests.html?company\\_id=10217](https://ha.internationaleprocurement.com/requests.html?company_id=10217)

Please submit your RFP response in the following format:

1. One PDF version via [https://ha.internationaleprocurement.com/requests.html?company\\_id=10217](https://ha.internationaleprocurement.com/requests.html?company_id=10217)
2. The **Request for Proposal(s) should be clearly identified with HACA-20-P-0236**

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### DEADLINE TO SUBMIT

February 12, 2021 at 5:00PM/CST.

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## TERMS & CONDITIONS

### 1. Release of Information

Information submitted in response to this RFP will not be released by HACA during the evaluation process or prior to a contract award;

### 2. Proprietary Information

Please be aware that we have been advised by legal counsel that all materials submitted in response to a federally-funded solicitation must be made available to the public once a selection has been made. Hence, potential Respondents are forewarned that any proprietary information contained in their response will, upon request, be available to the public after contract award;

### 3. Term of Contract

The Respondent shall provide appropriate state and local certifications/licensing, payment and performance bonds and meet lender/investor insurance requirements.

### 4. HACA Reserves the Right to:

- a. Request an oral interview with, and additional information from, firms prior to final selection
- b. Consider information about a firm in addition to the information submitted in the response or interview and reject any and all responses and waive any irregularities

### 5. Non Discrimination/Conflict of Interest

- a. The Respondent warrants adhering to all civil rights, equal opportunity, and fair housing regulations
- b. The Respondent warrants that they presently have no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services under this contract

### 6. Expense Associated with Submission

All expenses involved with the preparation and submission to HACA shall be borne by the Respondent

### 7. Options

HACA may, at its sole and absolute discretion, reject any and all, or parts of any and all, proposals; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP or in the proposal received as a result of this RFP. Also, the determination or the criteria and process whereby proposals are evaluated, the decision as to who shall receive a contract award, or whether or not an award shall ever be made as a result of this RFP, shall be at the sole and absolute discretion of HACA.

## REQUIRED INFORMATION AND FORMAT

### 1. COVER LETTER

This letter should identify the key players and highlight the firm's qualifications.

### 2. COMPANY PROFILE

Company history, number of years in business, financial statements for the last Fiscal Year and the interim Year-to-Date.

### 3. PROJECT TEAM

Provide resumes of proposed project personnel, indicating the number of years they have been employed by the firm.

### 4. PROJECT EXPERIENCE AND REFERENCES

Provide a description of multifamily or affordable housing facilities completed or in progress. This description should demonstrate your firm's experience to perform affordable housing development, rehabilitation and previous experience or commitment to serve homeless individuals or families or other homeless or special needs populations.

### 5. APPLICATION

Complete Exhibit 2 - Application for Project Based Voucher Assistance

The Housing Authority of the City of Austin (HACA) requires that a separate proposal be submitted for each project for which Project Based Voucher (PBV) assistance is requested. A completed Application for Project Based Voucher Assistance must be included in each proposal.

### 6. PROJECT READINESS

Include a project timeline indicating major milestones including when project units will be ready for occupancy. Please indicate if the project meets one of the following:

- Existing housing that will be ready for occupancy within 60 days of the award announcement.
- Newly constructed or rehabilitated units that will execute an Agreement to Enter into Housing Assistance Payments (AHAP) and start construction within 24 months of the award announcement.
- For newly constructed or rehabilitated units, the applicant must provide a project timeline including these major milestones: (1) execution of Agreement to Enter into a Housing Assistance Payments contract (AHAP); (2) construction start date; and (3) execution of PBV HAP contract.

*Failure to address the Project Readiness scored factor, including major milestones, where applicable, will result in the application being removed from the competition.*

## 7. SUPPORT SERVICES

Include the following:

- a. A description of any specific supportive services available from the VA and other local social service providers to support the residents of the project. The description must include the type of service, the name of the provider, the length of time the services will be available to each resident, and how the services will be monitored.
- b. Project statement regarding accessibility to:
  - Transit, including a statement of options for the immediate area, such as rail, bus, ride share, etc.;
  - Employment opportunities; and
  - Neighborhood amenities such as grocery stores, banks, libraries, parks, etc.

## 8. HOUSING FIRST

Include the following:

- a. A description of your experience with developing and managing supportive housing for individuals or families, homeless, elderly, and/or disabled families including number of projects, location, and the level of services provided or coordinated that meet the requirements of *Housing First*.
- b. Please describe your existing relationships with community service providers.
- c. Please provide a certification that the project will comply with requirements of the *Housing First* model.
- d. A description of your experience with developing and managing supportive housing for individuals or families, homeless, elderly, and/or disabled families including number of projects, location, and the level of services provided or coordinated that meet the requirements of *Housing First*.
- e. Please describe your existing relationships with community service providers.
- f. Please provide a certification that the project will comply with requirements of the *Housing First* model.

*Failure to address the Housing First scored factor is considered a non-curable deficiency and will result in the application being removed from the competition.*

## 9. LEGAL FACTORS

- a. List of outstanding lawsuits including claims, both settled and unsettled for the past five (5) years:
- b. Self-certification that they have no active Federal, State or Public Agency disqualification.

## **SCORING CRITERIA AND SELECTION PROCESS**

1. The Scoring Criteria is defined in Exhibit 3.
2. Selection Process

HACA will appoint a review committee to conduct a threshold review to first determine that:

- a. The submittal is complete and in the required format.
- b. There is no active federal, state or public agency disqualification which would bar a Respondent from entering a contract.

The review committee will evaluate the proposals that pass the threshold review and assign points based upon the Respondents' demonstrated competence, experience, and knowledge. At the discretion of the review committee, one or more Respondents may be invited for an interview. It is solely HACA's decision as to who will be interviewed and who will be awarded a contract;

### **Exhibits**

Exhibit 1 - Scope of Work

Exhibit 2 - Application

Exhibit 3 - Scoring Criteria

Exhibit 4 - HACA Housing Choice Voucher Administrative Plan, Chapter 17 PBVs

**EXHIBIT 1**  
**SCOPE OF WORK**  
**REQUEST FOR PROPOSAL**  
**PROJECT BASED VOUCHERS**

A. HUD – PBV

A.1 The project-based voucher (PBV) program allows PHAs that already administer a tenant based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its voucher program budget authority and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

A.2 All PBV proposals must submit separate applications for each project and may request no more than 50 PBVs for a single project. Proposals may be submitted for both existing and new construction/rehab housing types. Each proposal will be scored separately

A.3 All PBV proposals must include a signed statement from the project owner that the project will comply with a Housing First approach. Housing First is an approach where homeless persons, usually chronically homeless or especially vulnerable homeless individuals and families, are provided immediate access to housing and then offered the supportive services that may be needed to foster long-term stability and prevent a return to homelessness. This approach removes unnecessary barriers and assumes that supportive services are more effective in addressing needs when the individual or family is housed and the daily stress of being homeless is addressed. Key components of this model include a simple application process, a harm reduction approach, and no conditions of tenancy beyond those included in the lease.

*Housing First*, specifically does not require sobriety or testing for substance abuse to obtain or sustain tenancy and thus must not be required in the lease. In serving these populations, projects cannot discriminate against families with children. More information on Housing First is available at: <https://www.hudexchange.info/resources/documents/Housing-First-PermanentSupportive-Housing-Brief.pdf>.

B. ELIGIBILITY CRITERIA

B.1 Under PBV regulations, Project-Based Vouchers can be attached to HACA-owned units, including units owned by any HACA subsidiaries; however, all proposals submitted for HACA-owned units must be approved by HUD, or an independent entity approved by HUD.

B.2 HACA will only evaluate proposals if the proposed housing units are eligible for PBV assistance. Certain types of housing units and/or developments are not eligible for PBV assistance including:

- Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;
- Nursing homes or facilities providing continuous psychiatric, medical, nursing service, board and care, or intermediate care. However, HACA may approve assistance for a dwelling unit in an assisted living facility that provides home health care service such as nursing and therapy for residents of the housing;

- Units owned or controlled by an educational institution or its affiliate and designed for occupancy by the students of the institution;
- Manufactured homes;
- Shared Housing, cooperative housing, transitional housing;
- Owner-occupied housing units; and
- Units occupied by an ineligible family at the time of proposal submission or prior to execution of the HAP Contract.

B.3 High rise elevator projects for families with children will only be considered based upon HUD approval of the site. There must be no practical alternative for family housing in the community in order for this type of housing to be approved.

B.4 There is a prohibition of assistance for units in subsidized housing in accordance with HUD regulations including, but not limited to:

- Public housing units;
- Units subsidized with any other form of Section 8 assistance;
- Units subsidized with any governmental subsidy that covers all or part of the operating costs of the housing;
- Units subsidized with rental assistance under Section 236, Section 521 or Section 101;
- Units subsidized with Section 202 including supportive housing for the elderly;
- Units subsidized under Section 811;
- Units subsidized with any form of tenant-based rental assistance as defined at 24CFR 982.1(b)(2) (e.g., tenant-based rental assistance under the HOME Program); and
- Units with any other duplicative federal, state or local housing subsidy as determined by HUD or HACA.

B.5 In addition to the aforementioned provisions in Section A relative to proposals that request more than twenty five percent of units in the project for project based vouchers, the following provisions apply.

B.6 The number of PBV assisted units in the project cannot generally exceed twenty-five percent (25%) of the total number of dwelling units in the project, except as provided by regulation. Notwithstanding this provision, exceptions to the 25% cap include:

- The units are in a single-family building (one to four units);
- The units are excepted units in a multifamily project because they are specifically made available for elderly and/or disabled families; or
- The families receive supportive services (also known as qualifying families).

B.7 The types of services that HACA will deem eligible to qualify a project to meet HUD's definition of families receiving supportive services include, but are not limited to:

- Job readiness / Job training: Includes preparation and counseling, job development and placement, and follow-up assistance after placement;
- Education: Includes education for the completion of GED, post-secondary education, or computer training classes for children and adults;
- Household Training: Includes homemaking, parenting skills, financial literacy and stability programs;

- Self-Sufficiency Services and Resources: Includes participating in self-sufficiency program to assist the family to achieve economic independence and self-sufficiency;
- Substance Abuse Treatment: Includes counseling, treatment for substance abuse and participation in ongoing support groups.

B.8 It is not necessary that the services be provided at or by the project, if they are approved services. Units where the family is receiving qualified supportive services are exempt from the 25% cap. HACA will require owners of such projects to submit an Annual Progress Report to ensure compliance with the supportive service exemption on the number of units per building (24 CFR 983.56 (b)(ii)(C)). Failure to submit Annual Progress Reports may result in abatement of the HAP payment.

### C. SITE AND NEIGHBORHOOD STANDARDS

C.1 HACA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract for units on the site, unless the PHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the HACA administrative plan.

In addition, prior to selecting a proposal, HACA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

C.2 In determining whether a proposed PBV site (whether for existing housing, new construction or rehabilitation) qualifies to be selected, HACA will consider the following:

It is HACA's goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal, HACA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

HACA will grant exceptions to the 20 percent standard where HACA determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;
- A census tract in which the location of the proposed PBV development is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;
- A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;
- A census tract where there has been an overall decline in the poverty rate within the past five years; or

- A census tract where there are meaningful opportunities for educational and economic advancement.

C.3 Existing and rehabilitated housing site and neighborhood standards – A site for existing or rehabilitated PBV housing must meet the following site and neighborhood standards:

- The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed, and there must be adequate utilities and available streets to service the site;
- The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low income persons;
- The site must be accessible to social, recreational, educational, commercial and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents; and
- The site must be located such that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

C.4 New construction site and neighborhood standards - A site for newly constructed PBV housing must meet the following site and neighborhood standards:

The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;

- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless the PHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area;
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

## D. NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION UNITS

D.1 When newly constructed housing sites or units proposed for rehabilitation are selected for PBV assistance, the owner must agree to develop the contract units to comply with HQS. HACA is particularly interested in units that meet or exceed established energy efficiency or LEED standards and will award additional points to projects that show innovations in this particular area. With respect to Permanent Supportive Housing (PSH) projects, HACA is also interested in ensuring that the project design is responsive to the unique needs of the target population.

D.2 The owner and the owner's contractors and subcontractors must comply with all applicable state and federal labor relations laws and regulations, federal equal employment opportunity requirements and HUD's implementing regulations.

D.3 For projects of four or more units, HACA will determine whether any work items necessary to meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988 will be completed.

D.4 Units for which new construction has started, but has not been completed are not eligible for consideration under this solicitation.

D.5 Activities under the PBV program are subject to HUD environmental regulations and may be subject to review under the National Environmental Policy Act by local authorities.

D.6 All proposed properties must meet eligibility requirements under 983.51, 983.53, 983.54 (Owner Selection, Eligible and Ineligible Properties and HACA-owned units), and 983.57 (Site Selection Standards).

## E. AGREEMENT TO ENTER INTO A HOUSING ASSISTANCE PAYMENTS CONTRACT

E.1 All selected proposals for new construction or substantial rehabilitation require the owner/project sponsor to enter into an Agreement to Enter into a Housing Assistance Payments ("AHAP") contract with HACA prior to any construction. AHAP contracts cannot be executed until the following actions are completed and approved by HUD, where applicable:

In accordance with 24 CFR 4.13, a subsidy layering review ("SLR") has been performed for any project that has any other government assistance from federal, state or local agencies, including tax concessions and tax credits. The SLR must be performed by HUD, or an agency designated by HUD.

An environmental review (ER) performed by the "responsible entity" (RE) designated by the city/town or state, or, a certification by the RE that a review is not required. Note that existing housing is also subject to the environmental review requirement.

E.2 Before an Agreement is executed for new construction or substantial rehabilitation units, the owner must submit the design architect's certification that the proposed new construction reflected in the working drawings and specifications comply with housing quality standards, local codes and ordinances, and zoning requirements.

E.3 Before executing an Agreement with any selected owner, HACA will:

- Establish rents in accordance with §983.301. For any HACA owned unit, an independent entity will determine a recommendation for initial rents which then will be submitted to the HUD field office for final approval;
- Obtain SLR contract rent reviews from HUD or a HUD designated agency, if applicable;
- Obtain environmental clearance in accordance with §983.58; and
- Submit a certification to the HUD field office stating that the unit or units were selected in accordance with the HACA's approved unit selection policy.

## F. HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT EXECUTION

F.1 HACA may enter into an initial HAP Contract for a maximum initial term of twenty (20) years contingent upon annual appropriations. The initial term may be extended at HACA's option to up to the maximum term allowed by regulation. The HACA will pay the difference between the tenant rent (30% of adjusted income) and the approved rent for the unit directly to the owner on a monthly basis. The Section 8 project based contract rent must be consistent with HUD regulations found at 24CFR 983, subpart G, Rent to Owner, and shall be approved by the HACA.

F.2 The owner will not disqualify the family referred by HACA for any reason beyond the eligibility requirements for admission to the PBV program in cooperation with the Housing First approach. Key components to this model include a simple application process, a harm reduction approach, and no conditions of tenancy beyond those included in the lease.

F.3 The owner shall enter into a lease with the tenant, which must include the HUD PBV Tenancy Addendum. The terms of the HUD-required PBV Tenancy Addendum shall prevail over all other provisions of the lease. The initial term of the lease must be for one year. During the course of the tenant's lease, the owner may not terminate the lease without good cause. "Good cause" does not include a business or economic reason or desire to use the unit for an individual, family or non-residential rental purpose. Upon expiration of the lease the owner may: renew the lease; refuse to renew the lease for good cause; or refuse to renew the lease without good cause, in which case the PHA will provide the family with a tenant-based voucher, and the unit will be removed from the PBV HAP Contract.

F.4 The amount of the rent to owner is determined in accordance with HUD regulations.

F.5 Current Fair Market Rents and Utility Allowances for determining maximum rents are included in Attachments.

F.6 The total rent to the owner for PBV assisted units consists of the tenant rent (the portion of the rent to owner paid by the family) and the rental assistance paid by HACA in accordance with the contract with the owner. HACA determines the tenant rent in accordance with HUD requirements.

## G. FAMILY ELIGIBILITY AND SELECTION

G.1 HACA will follow its Administrative Plan regarding family eligibility and selection. Prospective tenants for PBV projects selected by HACA pursuant to this solicitation will be drawn first from the City of Austin’s database of chronically homeless individuals.

G.2 All applicants indicating interest in the PBV units will be referred by the Coordinated Assessment system and screened for Section 8 Project Based Voucher (PBV) eligibility. If the HACA referrals do not provide the owner with a suitable tenant for the unit within 30 days, the owner may refer a PBV eligible individual or family from the owner’s waiting list to HACA. The referred family must meet eligibility criteria

G.3 The initial term of the tenant lease must be for at least one year.

### **EXHIBIT 2**

#### **Housing Authority of the City of Austin Application for Project Based Voucher Assistance**

The Housing Authority of the City of Austin (HACA) requires that a separate proposal be submitted for each project for which Project Based Voucher (PBV) assistance is requested. A completed Application for Project Based Voucher Assistance must be included in each proposal. Proposers must follow these instructions:

- Proposal submission instructions are provided on page 6, “RFP Submissions Instructions & Terms” of HACA’s Request for Proposal document. As noted therein, one (1) PDF versions via <https://ha.internationaleprocurement.com/>. A copy of the proposal must be submitted by the specified due date. The materials must include a table of contents and be organized and divided by labeled sheets to clearly note the contents of each section.
- There are twenty (21) numbered sections of the Application for PBV Assistance. Proposers must respond to all sections except:
  - Section 11 – Applies only to Existing and Substantial Rehabilitation Projects
  - Section 12 – Applies only to New Construction Projects
  - Section 18 – Applies only to New Construction and Substantial Rehabilitation Projects
  - Section 19 – Applies only to Existing Projects
- Use the fillable fields in the application form to provide information wherever possible. If additional information is required, include it in the proposal submission in a separate, labeled tab. For example, Section 5 of the application form requires submission of a Tenant Selection Plan and Lease. This information should be included in a tab labeled “Section 5 Tenant Selection Plan and Lease”.

**Housing Authority of the City of Austin  
Application for Project Based Voucher Assistance**

**1. Owner Information**

**Date of Submission:**

**Owner Name:**

**Corporate Status (e.g.501(c)3, Corporation, LP, LLC, Sole Proprietor, Other):** \_\_\_\_\_

**Address:**

**Contact Person:** \_\_\_\_\_

**Phone Number:**

**Email Address:**

**2. General Project Information**

**Proposed PBV Project Name:** \_\_\_\_\_

**Total Units Proposed for PBV Assistance:** \_\_\_\_ **# Currently Occupied:** \_\_\_\_\_  
(The number of PBVs requested cannot exceed 50 with a minimum number no less than 10)

**Legal Name of Project Owner:**

**Proposed PBV Project Address:** \_\_\_\_\_

**Management Company/Agent for Proposed PBV Project:**

**Project Type (Existing, New Construction or Rehabilitation):** \_\_\_\_\_

**Number of Buildings in Project:** \_\_\_\_\_ **Total Acreage of Project Site:** \_\_\_\_\_

### 3. Summary of Project Units

Complete the bedroom distribution chart below for the overall project and for the requested PBV contract units.

	OBR	IBR	2BR	3BR	4BR	5BR	Total
All Units in Project							
Total Proposed PBV Contract Units							
# of Proposed PBV Units that are ADA handicapped accessible							
# of Proposed PBV Units that are equipped for sensory impaired							

### 4. Resident Population

Who is the intended target population for the proposed PBV units? Check All That Apply:

- Single Persons   
  Families   
  Elderly (over 62 years)   
  Disabled  
 "Qualifying" family or person requiring participation in a program of supportive services  
 Homeless   
  At risk of homelessness  
 Transition Age Youth Aging Out of Foster Care (TAY)  
 Other (please define)

### 5. Tenant Selection Plan and Lease

Attach a copy of the proposed tenant selection plan to occupy PBV units and the lease to be entered into between owner and tenant.

HACA's tenant selection procedures for its tenant-based voucher program apply for units assisted under the PBV Program. Prospective tenants for PBV projects selected by HACA pursuant to this solicitation will be drawn first from the City of Austin's database of chronically homeless individuals. All applicants indicating interest in the PBV units will be referred to HACA via the CoC Coordinated Assessment system and screened for Section 8 Project Based Voucher (PBV) eligibility. If the HACA referrals do not provide the owner with a suitable tenant for the unit within 30 days, the owner may refer a PBV eligible individual or family from the owner's waiting list to HACA for prescreening for eligibility. The referred family must meet HACA'S eligibility criteria.

The tenant selection plan must include a statement that applicants for the PBV units will be selected in accordance with all applicable HUD requirements and regulations. If participation in a supportive services program is required, incorporate detailed information on the requirements and how the program will be monitored. At a minimum, the plan must address the following:

- Screening policies and criteria to be used. If credit checks are used, describe acceptability criteria.
- Screening for credit and other factors must be consistent with the screening criteria used for non-assisted tenants

- Security deposit policies
- Procedures for accepting applications and selecting from the waiting list
- Unit transfer policies
- Compliance with Section 504 of the Rehabilitation Act of 1973, Fair Housing Act and relevant civil rights laws & statutes

**6. Requested Contract Term**

The initial HAP contract term can be for a maximum term of 20 years. Indicate the length of initial HAP contract term requested by owner:

**7. Other Project Based Assistance**

Are the proposed PBV units assisted through the Low Income Housing Tax Credit program?

Yes  No

Do any units within the proposed PBV project have another form of rental or other government assistance\*?  Yes  No

\*Refer to 24 CFR 983.54 for further information.

If Yes, describe type of assistance and units that are impacted.

**8. Affordability Restrictions**

Is there a housing affordability restriction in the deed or other document?  Yes  No

If Yes, describe the housing program requiring the restriction and the date of expiration.

If Yes, describe type of assistance and units that are impacted. \_\_\_\_\_

**9. Amenities**

**Unit Amenities**

Check off any amenities that will be provided. Add others below if not included on this list.

- Features adapted/adaptable for persons with disabilities
- Air conditioning
- Off street parking
- Laundry facilities
- Porches, decks, personal backyard
- Children's play areas
- Recreational facilities
- Common area function room(s)
- Other \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Community Amenities**

Distance To:	Less than .5 Mile	Approx. 1 Mile	More Than 1 Mile
Shopping, groceries, pharmacy, other everyday type of needs			
Employment Opportunities (i.e. organizations with 25 or more employees)			
Public Transportation			
Medical facilities			
Public Schools			
Parks, civic facilities			
Community Based Outpatient Clinics (CBOC)			

## 10. Deconcentration of Poverty and Expanding Housing and Economic Opportunities

Census Tract of Proposed PBV Project: \_\_\_\_\_ Poverty Rate\*: \_\_\_\_\_

\*Census tracts and poverty rates can be found by entering complete address and zip code at the following website: <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

**Applicants for PBV assistance must demonstrate that the proposed PBV project is consistent with HUD's statutory goal of "deconcentrating poverty and expanding housing and economic opportunities", regardless of the project's poverty rate as defined by the most recent census data. Provide a brief, separate response to each of the criteria listed below. If necessary, attach additional documentation.**

**HUD Designated Zone** - Whether the census tract in which the proposed project will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

**Public Housing Demolition** - Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition.

**Significant Revitalization** - Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization.

**Public Investment** - Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement.

**New Market Rate Units** - Whether new market-rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market-rate units will positively impact the poverty rate in the area.

**Decline in Poverty Rate** - If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate.

**Education and Economic Opportunities** - Whether there are meaningful opportunities for educational and economic advancements in the census tract where the proposed PBV development will be located.

## 11. Site and Neighborhood Standards: Existing and Rehabilitated Housing Projects

**Only proposals for PBV assistance in Existing or Rehabilitated projects must complete this section. Applicants must provide a brief narrative indicating how the proposed project conforms to the required site and neighborhood standards for these housing types. For each of the four criteria listed below, provide a brief narrative. Attach any additional materials as needed.**

(1)The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed, and is there adequate utilities and available streets to service the site.

(2)The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(3)The site must be accessible to social, recreational, educational, commercial and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents; and,

(4)The site must be located such that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower income workers is not excessive.

## **12. Site and Neighborhood Standards: New Construction Projects**

*Only proposals for PBV assistance in New Construction projects must complete this section. Applicants must provide a brief narrative indicating how the proposed project conforms to the required site and neighborhood standards for these housing types. For each of the seven criteria listed below, provide a brief narrative. Attach any additional materials as needed.*

(1)The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site;

(2)The site must not be located in an area of minority concentration, except as permitted under paragraph (3) below, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(3)A project may be located in an area of minority concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; or

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area.

(iii) As used in paragraph 3)(i) above, “sufficient” does not require that there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the City’s population.

(iv) Units may be considered “comparable opportunities,” as used in paragraph 3)(i) above, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(v) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population. (C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

(E) Minority families have benefited from local activities ( *e.g.* , acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(F) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(vi) Application of the “overriding housing needs” criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”). An “overriding housing need,” however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(4)The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority or non-minority residents in the area.

(5)The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(6)The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(7)The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(8)Except for new construction housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.




**14. Experience Owning Rental Housing (check if any apply):**

a.

- 10 years or more of experience owning affordable rental housing
- 1-9 years of experience owning affordable rental housing
- 10 years or more of experience owning other rental housing
- 1 to 9 years of experience owning other rental housing

b. Describe below your experience, including the number of years of experience in owning rental housing, the amount of that time devoted to affordable rental housing, if applicable; the number of units (specify separately number of affordable and other rental units); if the portfolio includes subsidized properties, the address(es) and funding source(s), and if assistance has ever been terminated. If assistance has been terminated, please identify the program(s) and state why. Attach any additional materials as needed.

**15. Experience Managing and Maintaining Rental Housing (check if any apply):**

a.

- 10 years or more of experience managing and maintaining affordable rental housing
- 1 to 9 years of experience managing and maintaining affordable rental housing
- 10 years or more of experience managing and maintaining other rental housing
- 1 to 9 years of experience managing and maintaining other rental housing

b. Describe below owner’s experience as a property manager or the experience of owner’s designated property manager, including the number of years of experience in managing and maintaining rental housing, number and type of units under management, the amount of that time devoted to affordable rental housing. Attach any additional materials as needed.

**16. Public Purpose (check if any apply):**

- 75% or more units in building would be restricted to low- or very-low income occupancy
- 50% to 74% of units in building would be restricted to low- or very-low income occupancy
- Units meet other City-identified priority needs such as supportive housing

Identify below what other City-identified priority would be met through the project-basing of units. Attach any additional materials as needed.



Provide a brief description of the nature of the owner's site control. Attach documentation where needed, i.e. a copy of site control contract, etc. \_\_\_\_\_

**Include the following attachments with the application:**

- Description of project work plans such as site/unit plans and elevations
- Statement of Sources and Uses for Funds to develop the project
- Operating pro forma
- Documentation regarding compliance with Davis – Bacon Wage rates if nine (9) or more units are proposed for project based assistance.

**19. Additional Information for Existing Projects**

Existing projects must include a property and unit description summary.

**20. Participation in the Enhanced Use Lease Program (EUL)**

Indicate if the project is part of an EUL program. More information on the EUL program can be found at <http://www.va.gov/AssetManagement/>

**21. Certifications**

*Provide the required information on a separate sheet of paper and attach to this application:*

1. The identity of the owner and other project principals and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest in the project;
2. A certification stating that the above-mentioned parties are not on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs;
3. A disclosure of any possible conflict of interest by any of these parties that would be a violation of the PBV Housing Assistance Payments (HAP) contract.

*I, \_\_\_\_\_, attest and certify that all of the information herein contained is true and accurate to the best of my knowledge. I understand that by submitting this application for project-based assistance application there is no commitment from the Housing Authority of the City of Austin that my proposal will be accepted. I understand that in-place existing tenants must be certified as eligible to receive project-based assistance, and if they are not eligible, I may not displace them in order to qualify their unit for PBV. I understand and agree to abide by all applicable federal Section 8 requirements found at 24 CFR Part 983 and HACA's PBV requirements found in its Administrative Plan.*

---

Signature of Owner

Title

Date



**EXHIBIT 3**  
**SCORING CRITERIA**  
**REQUEST FOR PROPOSAL**  
**PROJECT BASED VOUCHERS**

<b>FACTOR</b>	<b>MAX POINTS</b>
A. Supportive Services Plan and Capacity	20 points
B. Financial Feasibility	20 points
C. Previous Experience of Applicant in Development and Property Management of Projects of Similar Scale for Similar Target Population	20 points
D. Project Design	20 points
E. Development Serves Homeless or Chronic Homeless individuals or families and complies with a <i>Housing First</i> approach.	20 points
F. High Opportunity Area	20 points
G. Project Readiness	20 points
TOTAL MAXIMUM POINTS:	140 points (Minimum points required for voucher award: 100)

**A. SUPPORTIVE SERVICES PLAN AND CAPACITY**

A high scoring Supportive Services Plan must demonstrate that the proposer:

Has planned and documented a high quality supportive services program that is results/outcome oriented and responsive to projected needs of the resident population. It should include narrative and a matrix that lists the types of supportive services, the eligible target population for each type of service, the number of persons to be served for each type of service, where the service will be provided, who will provide each services, the amount budgeted for each service, and the projected outcomes of each service;

Has identified and secured the resources, partnerships and staffing needed to effectively execute the plan.

This must include specific funding amounts by service type and provider including information on the duration of the funding. General or conditional support letters are not adequate; and,

Has assembled and obtained firm commitments from a team with documented track record(s) of effectively providing such services in residential locations to comparable populations. This must be demonstrated by providing reference projects of similar scale and scope.

Supportive Services Plan must include:

- A comprehensive case management component with reasonable staff to case manager ratios identified; and
- A discussion of issues and proposed strategies to address the specific supportive service needs related to housing of chronically homeless households.

The types of services that HACA will deem eligible to qualify a project to meet HUD’s definition of families receiving supportive services include, but are not limited to:

- **Job readiness / Job training:** Includes preparation and counseling, job development and placement, follow-up assistance after placement, completion of FSS “Contract of Family Participation;
- **Education:** Includes education for the completion of GED, post-secondary education, or computer training classes for children and adults;
- **Household Training:** Includes homemaking, parenting skills, financial literacy and stability programs;
- **Self-Sufficiency Services and Resources:** Includes participating in the FSS program and accessing all appropriate services to assist the family to achieve economic independence and self-sufficiency;
- **Substance Abuse Treatment:** Includes counseling, treatment for substance abuse and participation in ongoing support groups; and
- **Onsite Office Space and Group Room:** Includes office space to be used by VA case managers and or group space to conduct onsite classes and groups.

**(20 points)** Development has secured resources to provide at least 5 eligible support services.

**(15 point)** Development has secured resources to provide at least 4 eligible support services.

**(10 points)** Development has secured resources to provide at least 3 eligible support services.

**(5 points)** Development has secured resources to provide at least 2 eligible support services.

**(0 points)** Development has not secured resources to provide eligible support services.

**MAXIMUM POINTS**

**20 points**

**B. FINANCIAL FEASIBILITY**

For new construction or rehabilitated housing, 10 of 20 points will be assigned based on the extent to which the proposal demonstrates that:

- A comprehensive and realistic construction and permanent financing budget has been prepared; and,
- Construction and permanent funding is firmly committed including documentation from all funding sources.

HACA will assign points by reviewing the construction and permanent financing committed at the time of application – or deemed by HACA to be highly likely to be committed within a reasonable period of time after proposal submission - and specifics on the plan to secure remaining funding. HACA may defer final approval of a proposal pending receipt of financing commitments from the City of Austin or other funding sources from which the developer has requested funding.

All projects (whether new construction, rehab or existing) must provide a 15 year operating proforma with line item detail sufficient for a knowledgeable reviewer to evaluate the feasibility and completeness

of the budget. For new construction and rehabilitation projects, the operating proforma will constitute 10 of the 20 points for this rating factor. For existing housing, the operating proforma will constitute 20 of 20 points for this rating factor. The operating proforma must include line item detail including, but not limited to:

- Estimated revenue by all sources; and,
- Estimated expenses for all categories including maintenance, utilities, capital reserves, security, resident supportive services, insurance, taxes, etc.
- Footnotes or other narrative must be presented where necessary to clarify assumptions about sources and uses. HACA will review budgets to assess whether realistic and appropriate assumptions have been made regarding the cost and level of on-site staffing, security and other costs.
- The amount of the compliance monitoring fee.

**MAXIMUM POINTS**

**20 points**

**C. PREVIOUS EXPERIENCE OF APPLICANT IN DEVELOPMENT AND PROPERTY MANAGEMENT**

For new construction and rehabilitation projects, a high scoring proposal must demonstrate that the applicant has either directly or through its team assembled all of the personnel, skills and other resources needed to complete the development project described in the proposal. This can be evidenced by reference projects of similar scale, budget and complexity.

For all proposals (new construction, rehab, existing), a high scoring proposal must demonstrate that the applicant has a track record of successfully leasing up and managing projects of similar scale, complexity and resident populations, and has developed a responsive and comprehensive management plan:

- Information on the portfolio currently managed by the property management team must be presented including number of units, population housed, and location. Proposals should include experience managing properties of comparable scale that house chronically homeless individuals or families.
- The management/maintenance plan presented in the proposal should not be a boilerplate example. A high scoring proposal will include a management plan that reflects the specific considerations of the site and the resident population including site/occupancy rules where applicable.
- Include a detailed management and maintenance staffing plan that provides sufficient information for HACA reviewers to determine the level of staffing that will be present on-site during business and nonbusiness hours, the approach to off-hour emergencies and other relevant property management information.

**MAXIMUM POINTS**

**20 points**

**D. PROJECT DESIGN**

A high scoring proposal will demonstrate that the project incorporates good design, especially utilizing “green,” environmentally sustainable building principles. Good design also incorporates site, unit and common area features and amenities that are responsive to the needs of the resident population. In evaluating this rating factor, HACA will consider information presented in the proposal including:

- The extent to which the project design incorporates “best practices” for the resident population. For example, projects that house chronically homeless must incorporate a range of design considerations related to safety, durability, the need to encourage socialization, the need for on-site services.
- LEED or other similar designations that provide evidence of environmentally sustainable design.
- Other energy efficiency features and improvements.
- Treatment of common areas and building grounds.
- Availability of other on-site amenities.

**MAXIMUM POINTS****20 points****E. DEVELOPMENT SERVES HOMELESS OR CHRONIC HOMELESS COMMUNITY**

(20 points) Development serves Chronic Homeless individuals or families and will comply with a Housing First approach.

(15 points) Development serves Homeless individuals or families and will comply with a *Housing First* approach.

**MAXIMUM POINTS****20 points**

**F. HIGH OPPORTUNITY AREA**

A high scoring proposal will be located in a high opportunity area that provides improved educational and economic opportunities for residents. In evaluating this factor, HACA will consider information provided in the proposal including:

(20 points) Development located in a census tract with a poverty rate at or below 20%.

(10 points) Development located in a census tract with a poverty rate greater than 20% but the site includes one of the following feature:

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;
- A census tract in which the location of the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;
- A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;
- A census tract where there has been an overall decline in the poverty rate within the past five years; or
- A census tract where there are meaningful opportunities for educational and economic advancement.

**MAXIMUM POINTS****20 points****G. PROJECT READINESS**

The proposal must include a project timeline indicating major milestones including when project units will be ready for occupancy:

- **(20 points):** Existing housing that will be ready for occupancy within 60 days of award selection date for PBVs under this notice.
- **(20 points):** Newly constructed or rehabilitated units that will execute an agreement to enter into housing assistance payments (AHAP) and start construction within 24 months of the award announcement.

**MAXIMUM POINTS****20 points**

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## CHAPTER 17 PROJECT-BASED VOUCHERS

### INTRODUCTION

This chapter describes HUD regulations and PHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the PHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the PHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may

receive under this program.

## PART I: GENERAL REQUIREMENTS

### **17-I.A. OVERVIEW [24 CFR 983.5; FR Notice 1/18/17; Notice PIH 2017-21]**

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

#### **HACA Policy**

HACA will operate a project-based voucher program as outlined in this chapter.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the PHA is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, the PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the PHA has vouchers available for project-basing [FR Notice 1/18/17].

#### **Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21]**

The PHA may project-base an additional 10 percent of its units above the 20 percent program limit. The units may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap. Units qualify under this exception if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.
- Are specifically made available to house families that are comprised of or include a veteran.
  - *Veteran* means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.

- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates. Only units that are under a HAP contract that was first executed on or after April 18, 2017, may be covered by the 10 percent exception.

#### PHA Policy

The PHA will not set aside units above the 20 percent program limit.

#### **Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]**

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after April 18, 2017.

#### PHA Policy

HACA will not project-base any units not subject to the 20 percent cap.

#### **17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]**

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

#### HACA Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, HACA's policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.

#### **17-I.C. RELOCATION REQUIREMENTS [24 CFR 983.7]**

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local

public funds, or funds available from other sources. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of the PHA to ensure the owner complies with these requirements.

### **17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

The PHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the PHA must comply with the PHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

## **PART II: PBV OWNER PROPOSALS**

### **17-II.A. OVERVIEW**

With certain exceptions, the PHA must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57]. The PHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

### **17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51(b)]**

The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

#### PHA request for PBV Proposals.

The PHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the PHA request. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

The PHA may select proposal that were previously selected based on a competition.

This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. The PHA need not conduct another competition.

**Units Selected Non-Competitively [FR Notice 1/18/17; Notice PIH 2017-21; 24 CFR 983.51(b)]**

For certain public housing projects where the PHA has an ownership interest or control, the PHA may attach PBV assistance non-competitively without following one of the two processes above.

This exception applies to projects in which the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory within five years of the date on which the PHA entered into the AHAP or HAP.

- If the PHA is planning rehabilitation or new construction on the project, a minimum threshold of \$25,000 per unit in hard costs must be expended.
- If the PHA plans to replace public housing by attaching PBV assistance to existing housing in which the PHA has an ownership interest or control, then the \$25,000 per unit minimum threshold does not apply as long as the existing housing substantially complies with HQS.
- The PHA must include in the administrative plan what work it plans to do on the property or site and how many PBV units will be added to the site.
- *Ownership interest* means that the PHA or its officers, employees, or agents are in an entity that holds any direct or indirect interest in the building, including, but not limited to an interest as: titleholder; lessee; stockholder; member, or general or limited partner; or a member of a limited liability corporation.

HACA Policy

HACA is currently undertaking a complete redevelopment and expansion of its Chalmers Courts public housing property in east Austin. In accordance with HUD requirements, this redevelopment and expansion will exceed the required minimum of \$25,000 in per unit hard costs. This property is a high priority for HACA – it is in an area of expanding

opportunity that is rapidly gentrifying and where there is a significant need for additional affordable housing to meet the needs of current residents of the area and others moving to Austin. The first phase of the redevelopment is the construction of 86 new affordable housing units south of the existing Chalmers Courts site (Chalmers South). HACA may elect to project-base vouchers not to exceed 43 units at Chalmers South or no more than half of the total units at Chalmers South. Once complete, HACA will relocate residents from either the east or west side of the existing Chalmers Courts site, minimizing displacement and disruption to families. A redevelopment will then begin on either the east or west side of the site. The exact order of redevelopment is dependent on the financing tools which ultimately will be available, including use of the Low Income Housing Tax Credit program.

The east side and west side redevelopments of Chalmers Courts will involve the construction of approximately 160 units on each side. Once fully completed, the new Chalmers Courts – south, west and east – will total approximately 400 units, significantly helping address Austin’s affordable housing needs.

HACA has determined that the placement of project-based Housing Choice Vouchers, as well as the placement of a to-be-determined number of project-based HUD VASH vouchers, will significantly benefit HACA’s ability to meet its mission of serving the lowest income persons in our community, including seniors, persons with disabilities, transitioning homeless, and families with children.

### **Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]**

PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

#### **HACA Policy**

#### **HACA Request for Proposals for Rehabilitated and Newly Constructed Units**

HACA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspapers and trade journals.

**Austin American Statesman**

**The Austin Chronicle**

**The Villager**

## **El Mundo**

**HACA may also advertise the RFPs in other trade journals and industry sources, including electronic advertising, as HACA determines is appropriate for the project.**

In addition, HACA will post the RFP and proposal submission and rating and ranking procedures on its electronic web site.

HACA will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for two consecutive weeks. The advertisement will specify the number of project based units that HACA estimates will be available. The due date for proposals will be specified in the RFP. In order for the proposal to be considered, the owner must submit the proposal to HACA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

HACA will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

Owner experience and capability to build or rehabilitate housing as identified in the RFP;

Extent to which the project furthers HACA's goal of deconcentrating poverty and expanding housing and economic opportunities;

If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

Projects which will provide affordable housing and support services to individuals or families experiencing homelessness.

Projects which will provide affordable housing and support services to low-income or homeless veterans.

### **HACA Requests for Proposals for Existing Housing Units**

HACA will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals.

**Austin American Statesman**

**The Austin Chronicle**

**The Villager**

**El Mundo**

**HACA may also advertise the RFPs in other trade journals and industry sources, including electronic advertising, as HACA determines is appropriate for the project.**

In addition, HACA will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site.

HACA may periodically publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for two consecutive weeks. The advertisement will specify the number of project based units available. The due date for proposals will be specified in the RFP. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;

Extent to which the project furthers HACA's goal of deconcentrating poverty and expanding housing and economic opportunities;

Extent to which units are occupied by families that are eligible to participate in the PBV program.

Projects which will provide affordable housing and support services to individuals or families experiencing homelessness.

Projects which will provide affordable housing and support services to low-income or homeless veterans.

**HACA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program**

HACA may select, without competition, a proposal for housing assisted under a federal, State, or local government housing assistance, community development, or supportive services program that required competitive selection of proposals (e.g., HOME and units competitively awarded low-income housing tax credits (LIHTCs)), where the proposal has been selected in accordance with such program's competitive selection requirements within 3 years of the PBV proposal selection date, and the earlier competitively selected housing assistance proposal did not involve any consideration that the project would receive PBV assistance.

HACA may periodically advertise that it is accepting proposals, in the following newspapers and trade journals:

**Austin American Statesman**

**The Austin Chronicle**

**The Villager**

**El Mundo**

**HACA may also advertise the RFPs in other trade journals and industry sources, including electronic advertising, as HACA determines is appropriate for the project.**

In addition to, or in place of advertising, HACA may, on an ongoing basis, also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance. Any awards of PBV units selected under this method will be published in the Austin American Statesman within 30 days of the award.

Proposals will be reviewed on a first-come first-serve basis. HACA will evaluate each proposal on its merits using the following factors: Owner experience and capability to build or rehabilitate housing as identified in the RFP;

Extent to which the project furthers HACA's goal of deconcentrating poverty and expanding housing and economic opportunities; and

Projects that will provide affordable housing and support services to individuals or families experiencing homelessness.

Projects which will provide affordable housing and support services to low-income or homeless veterans.

**PHA-Owned Units [24 CFR 983.51(e) 983.59, FR Notice 1/18/17 and Notice PIH 2017-21]**

A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. . This also applies to noncompetitive selections. If the PHA selects a proposal for housing that is owned or controlled by the PHA, the PHA must identify the entity that will review the PHA proposal selection process and perform specific functions with respect to rent determinations, the term of the HAP contract, and inspections In the case of PHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the PHA and a HUD-approved independent entity. In addition, an independent entity must determine the rent to owner, the redetermined rent to owner, and reasonable rent. Housing quality standards inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local

government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

### HACA Policy

HACA may submit a proposal for project-based housing that is owned or controlled by HACA or its subsidiary. If the proposal for HACA-owned or controlled housing is selected, the HUD field office or a HUD-approved independent entity will review the selection process to determine if the HACA owned or controlled units were appropriately selected based on the selection procedures specified in HACA's administrative plan. HACA will make documentation available for public inspection regarding the basis of selection of a PVB proposal.

For HACA-owned or controlled housing, the initial contract rent will be approved by an independent entity. In addition, housing quality standards inspections will be conducted by an independent entity.

The PHA may only compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services. The PHA and independent entity may not charge the family any fee for the appraisal or the services provided by the independent entity.

### **PHA Notice of Owner Selection [24 CFR 983.51(d)]**

The PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

### HACA Policy

Within 15 business days of HACA making the selection, HACA will notify the selected owner in writing of the owner's selection for the PBV program. HACA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

In addition, HACA will post the notice of owner selection on its electronic website. The announcement will include the name of the owner that was selected for the PBV program.

HACA will make available to any interested party its rating and ranking sheets and

documents that identify HACA's basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. HACA will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

HACA will make these documents available for review at HACA during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

### **17-II.C. HOUSING TYPE [24 CFR 983.52]**

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of PHA selection, the units substantially comply with housing quality standards (HQS). Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

The PHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The PHA choice of housing type must be reflected in its solicitation for proposals.

### **17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

#### **Ineligible Housing Types [24 CFR 983.53]**

The PHA may not attach or pay PBV assistance to:

- shared housing units;
- units on the grounds of a penal reformatory, medical, mental, or similar public or private institution;
- nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities);
- units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students;
- manufactured homes;
- and transitional housing.

In addition, the PHA may not attach or pay PBV assistance for a unit occupied by an owner and the PHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

### **Subsidized Housing [24 CFR 983.54]**

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that a PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the PHA in accordance with HUD requirements.

### **17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, Notice PIH 2013-11, and FR Notice 2/28/20]**

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

HUD requires new construction and rehabilitation housing that will include forms of governmental assistance other than PBVs to undergo a subsidy layering review (SLR) prior to entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP).

Subsidy layering requirements do not apply to existing housing, when PBV is the only governmental assistance, or for projects already subject to a PBV HAP contract, even if the project is recapitalized with outside sources of funding.

When a PHA selects a new construction or rehabilitation project, the PHA must require information regarding all HUD and/or other federal, state, or local governmental assistance to be disclosed by the project owner using Form HUD-2880. Appendix A of FR Notice 2/28/20 contains a list of all required documentation.

Either HUD or a HUD-approved housing credit agency (HCA) in the PHA's jurisdiction performs the subsidy layering review. The PHA must request an SLR through their local HUD Field Office or, if eligible, through a participating HCA.

If the SLR request is submitted to an approved HCA, and the proposed project-based voucher assistance meets HUD subsidy layering requirements, the HCA must submit a certification to HUD and notify the PHA. The PHA may proceed to execute an AHAP at that time if the environmental approval is received.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

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**17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT****25 Percent per Project Cap [24 CFR 983.56, FR Notice 1/18/17, and Notice PIH 2017-21]**

In general, the PHA may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

**Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]**

As of April 18, 2017, units are not counted against the 25 percent or 25-unit per project cap if:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services. Projects where these caps were implemented prior to HOTMA (HAP contracts executed prior to April 18, 2017) may continue to use the former exceptions and may renew their HAP contracts under the old requirements, unless the PHA and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

***Supportive Services***

PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. As of April 18, 2017, the project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit. It is not necessary that the services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

### HACA Policy

HACA may develop housing for occupancy by families in need of services. This may include disabled families, families in need of particular supportive services, or families participating in the Family Self-Sufficiency (FSS) program. Families will not be required to accept and receive supportive services for the exception to apply to the unit.

The following types of services will be provided depending on the needs of the family:

### Supportive Services

The types of supportive services that will be offered include, but are not limited to:

**Job readiness / Job training:** Includes preparation and counseling, job development and placement, follow-up assistance after placement, completion of FSS “Contract of Family Participation;

**Education:** Includes education for the completion of GED, post-secondary education, or computer training classes for children and adults.;

**Household Training:** Includes homemaking, parenting skills, financial literacy and stability programs;

**Self-Sufficiency Services and Resources:** Includes participating in the FSS program and accessing all appropriate services to assist the family to achieve economic independence and self-sufficiency.

**Substance Abuse Treatment:** Includes counseling, treatment for substance abuse and participation in ongoing support groups.

### **Projects not Subject to a Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]]**

PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance.

### HACA Policy

HACA does not have any PBV units that are subject to the per project cap exception.

### **Promoting Partially-Assisted Projects [24 CFR 983.56(c)]**

A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

A PHA may establish a per-project cap on the number of units that will receive PBV assistance

or other project-based assistance in a multifamily project containing excepted units or in a single-family building. A PHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-project cap of less than 25 units or 25 percent of units.

PHA Policy:

Excepted units will be limited to units for elderly families.

Beyond that, the PHA will not impose any further cap on the number of PBV units assisted per project.

## **17-II.G. SITE SELECTION STANDARDS**

### **Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]**

The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless the PHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the PHA administrative plan.

In addition, prior to selecting a proposal, the PHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

HACA Policy

It is HACA's goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal, HACA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, HACA will grant exceptions to the 20 percent standard where HACA determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;

A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;

A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;

A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;

A census tract where there has been an overall decline in the poverty rate within the past five years; or

A census tract where there are meaningful opportunities for educational and economic advancement.

**Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]**

The PHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

**New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless the PHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;

- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

### **17-II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]**

HACA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). HACA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The PHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The PHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The PHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

## **PART III: DWELLING UNITS**

### **17-III.A. OVERVIEW**

This part identifies the special housing quality standards that apply to the PBV program, housing

accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

### **17-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]**

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 does not apply to the PBV program.

#### **Lead-based Paint [24 CFR 983.101(c)]**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

### **17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

### **17-III.D. INSPECTING UNITS**

#### **Pre-selection Inspection [24 CFR 983.103(a)]**

The PHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with HQS.

#### **Pre-HAP Contract Inspections [24 CFR 983.103(b), FR Notice 1/18/17, and Notice PIH 2017-20]**

The PHA must inspect each contract unit before execution of the HAP contract. The PHA may

not provide assistance on behalf of the family until the unit fully complies with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions, or if the unit passed an alternative inspection.

HACA Policy

HACA will not provide assistance on behalf of the family until the unit fully complies with HQS.

**Turnover Inspections [24 CFR 983.103(c)]**

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS.

**Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]**

At least once every 24 months during the term of the HAP contract, the PHA must inspect a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement.

HACA Policy

HACA will inspect on an annual basis a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement. If more than 20% of the annual sample fails the annual inspection, HACA shall re-inspect 100 percent of the contract units in the building.

**Other Inspections [24 CFR 983.103(e)]**

The PHA must inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting PHA supervisory quality control HQS inspections, the HACA will include a representative sample of both tenant-based and project-based units.

**Inspecting PHA-Owned Units [24 CFR 983.103(f)]**

In the case of PHA-owned units, the inspections must be performed by an independent entity designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

**PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS**

**17-IV.A. OVERVIEW [24 CFR 983.151]**

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

**17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT**

In order to offer PBV assistance in rehabilitated or newly constructed units, the PHA must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. The PHA may not enter into an Agreement commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and the PHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

**Content of the Agreement [24 CFR 983.152(d)]**

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;

- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.

#### **Execution of the Agreement [24 CFR 983.153]**

The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner. The PHA may not enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, the PHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the PHA may not enter into the Agreement until the environmental review is completed and the PHA has received environmental approval. However, the PHA does not need to conduct a subsidy layering review in the case of a HAP contract for existing housing or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

#### HACA Policy

HACA will enter into the Agreement with the owner within 15 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

### **17-IV.C. CONDUCT OF DEVELOPMENT WORK**

#### **Labor Standards [24 CFR 983.154(b)]**

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor

standards.

**Equal Opportunity [24 CFR 983.154(c)]**

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

**Owner Disclosure [24 CFR 983.154(d) and (e)]**

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

**17-IV.D. COMPLETION OF HOUSING**

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

**Evidence of Completion [24 CFR 983.155(b)]**

At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA:

Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and

Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the PHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

HACA Policy

HACA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. HACA will specify any additional documentation requirements in the Agreement to enter into the HAP contract.

**PHA Acceptance of Completed Units [24 CFR 983.156]**

Upon notice from the owner that the housing is completed, the PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. The PHA must also

determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

If the PHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## **PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

### **17-V.A. OVERVIEW**

The PHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

### **17-V.B. HAP CONTRACT REQUIREMENTS**

#### **Contract Information [24 CFR 983.203]**

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will exceed the 25 percent per project cap, which will be set aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and

- The initial rent to owner for the first 12 months of the HAP contract term.

**Execution of the HAP Contract [24 CFR 983.204; FR Notice 1/18/17]**

The PHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the Housing Quality Standards (HQS), unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions. For existing housing, the HAP contract must be executed promptly after the PHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

HACA Policy

For existing housing, the HAP contract will be executed within 15 business days of HACA determining that all units pass HQS.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 15 business days of HACA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

**Term of HAP Contract [24 CFR 983.205; FR Notice 1/18/17 and Notice PIH 2017-21]**

The PHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, or more than 20 years. In the case of PHA-owned units, the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

HACA Policy

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the PHA may extend the term of the contract for an additional term of up to 20 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. A PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 40 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable

housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

### HACA Policy

When determining whether or not to extend an expiring PBV contract, HACA will consider several factors including, but not limited to:

- The cost of extending the contract and the amount of available budget authority;
- The condition of the contract units;
- The owner's record of compliance with obligations under the HAP contract and lease(s);
- Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for tenant-based assistance.

### ***Termination by PHA [24 CFR 983.205(c) and FR Notice 1/18/17]***

The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

In times of insufficient funding, HUD requires that PHAs first take all cost-saving measures prior to failing to make payments under existing PBV HAP contracts.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

### ***Termination by Owner [24 CFR 983.205(d)]***

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the

owner may terminate the HAP contract by giving notice to the PHA. In this case, families living in the contract units must be offered tenant-based assistance.

**Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206; FR Notice 1/18/17 and Notice PIH 2017-21]**

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the PHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

**Remedies for HQS Violations [24 CFR 983.208(b)]**

The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If the PHA determines that a contract does not comply with HQS, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

HACA Policy

HACA will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies defined in the tenant-based voucher program. These policies are contained in Chapter 8 of HACA's HCV Administrative Plan.

## **17-V.C. AMENDMENTS TO THE HAP CONTRACT**

### **Substitution of Contract Units [24 CFR 983.207(a)]**

At the PHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, the PHA must inspect the proposed unit and determine the reasonable rent for the unit.

### **Addition of Contract Units [FR Notice 1/18/17 and Notice PIH 2017-21]**

The PHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, the PHA must submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

#### HACA Policy

HACA will consider adding contract units to the HAP contract when HACA determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and

Voucher holders are having difficulty finding units that meet program requirements.

**17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(b) and 983.302(e)]**

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

**17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]**

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;

- The family does not own or have any interest in the contract unit (does not apply to family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

### **17-V.F. ADDITIONAL HAP REQUIREMENTS**

#### **Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]**

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

#### HACA Policy

HACA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. HACA will specify any special design standards or additional requirements in the request for PBV proposals (RFP), the agreement to enter into HAP contract, and the HAP contract.

#### **Vacancy Payments [24 CFR 983.352(b)]**

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

#### HACA Policy

If an assisted family moves out of the unit without notice or is deceased, the owner may keep the HAP payable for the calendar month when the family moves out (move out month). However, the owner may not keep the payment if HACA determines that the vacancy is the owner's fault.

HACA shall not pay for an overlapping HAP.

HACA will decide on case-by-case basis if HACA will provide vacancy payments to the owner. The HAP Contract with the owner will contain any such agreements including the amount of the vacancy payment and the period of time for which the owner qualifies for these payments.

If HACA provides a vacancy payment as defined in a HAP contract with an owner, the following policies would apply:

When a family vacates its unit, the owner is eligible for a vacancy payment if:

The owner gives HACA prompt written notice certifying that the family has vacated the unit and containing the date when the family moved out (to the best of the owner's knowledge and belief).

The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed.

The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy.

The owner provides any additional information required and requested by HACA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payment in the form and manner required by HACA and must provide any information or substantiation required by HACA to determine the amount of any vacancy payment.

**Vacancy loss and payment Calculation:**

The vacancy loss begins the later of:

The date the unit is rent ready, per the owner / manager.

The day after the lease end date for the HAP was paid to the owner.

The vacancy payment will not exceed the monthly contract rent.

Any rental payment received by the owner from the tenant (including amounts available from the tenant's security deposit) will be deducted from the vacancy payment.

Vacancy loss extends from the beginning of the first calendar month after the move-out month for a period not exceeding one full month following the move-out month.

Vacancy loss calculation will be based on actual calendar days per month.

Vacancy payments may cover only the period the unit remains vacant and is in rent-ready condition.

## **PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS**

### **17-VI.A. OVERVIEW**

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

### **17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]**

The PHA may select families for the PBV program from those who are participants in the PHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

#### HACA Policy

HACA will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3 of HACA's HCV Administrative Plan.

#### **In-Place Families [24 CFR 983.251(b)]**

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected

by the PHA is considered an “in-place family.” These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the PHA’s waiting list. Once the family’s continued eligibility is determined (the PHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and the PHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

### **17-VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]**

The PHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. The PHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the PHA. If the PHA chooses to offer a separate waiting list for PBV assistance, the PHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a PHA decides to establish a separate PBV waiting list, the PHA may use a single waiting list for the PHA’s whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

#### HACA Policy

HACA will establish and manage separate PBV waiting lists for PBV units in particular projects or buildings or sets of PBV units in a project.

### **17-VI.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

Applicants who will occupy units with PBV assistance must be selected from the PHA’s waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units. The PHA may place families referred by the PBV owner on its PBV waiting list.

#### **Income Targeting [24 CFR 983.251(c)(6)]**

At least 75 percent of the families admitted to the PHA’s tenant-based and project-based voucher programs during the PHA fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

#### **Units with Accessibility Features [24 CFR 983.251(c)(7)]**

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

**Preferences [24 CFR 983.251(d), FR Notice 11/24/08]**

The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. The PHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B above.

The PHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the PHA plan. The PHA may not, however, grant a preference to a person with a specific disability [FR Notice 1/18/17].

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If the PHA has projects with “excepted units” for elderly families or supportive services, the PHA must give preference to such families when referring families to these units [24 CFR 983.261(b); FR Notice 1/18/17].

HACA Policy

HACA will provide a selection preference when required by the regulation (e.g., eligible in-place families, elderly families or units with supportive services, or mobility impaired persons for accessible units).

HACA may offer additional preferences for the PBV program or for particular PBV projects or units. HACA will collaborate with the PBV partner to define the additional preferences, eligibility requirements and referral process.

HACA will use separate waiting lists for PBV units in individual projects. At the time the project’s waiting list is opened, applicants on the Housing Choice Voucher programs tenant-based waiting list will be given the opportunity to be added to any open project-based voucher waiting list. Additionally, referrals would come directly from the collaborating agency to be added to the project-based voucher waiting list. Households who meet the criteria would be given first preference for the limited preference units.

If HACA’s Housing Choice waiting list is open when an applicant is placed on the PBV waiting list, applicants will be given the opportunity to apply to the Housing Choice

Voucher waiting list. The applicant will remain on the waiting list for tenant-based voucher assistance, even after the applicant has applied for, received, or refused an offer of PBV assistance.

**ELYSIUM GRAND**

HACA will project-base 25 HUD-VASH vouchers at the Elysium Grand, located at 3300 Oak Creek Drive, Austin TX 78727.

**Tenant Selection**

HACA will accept HUD-VASH applicants for vacant units in the order received from the Veterans Affairs Austin Outpatient Clinic in accordance with HUD-VASH Operating Requirements.

**TERRACE AT OAK SPRINGS (previously Housing First at Oak Springs)**

HACA will project-base 25 HUD-VASH vouchers and 25 Housing Choice Vouchers at the Terrace at Oak Springs (previously Housing First at Oak Springs), located at 3000 Oak Springs Drive, Austin TX 78702.

**Tenant Selection**

HACA will accept HUD-VASH applicants for vacant units in the order received from the Veterans Affairs Austin Outpatient Clinic in accordance with HUD-VASH Operating Requirements.

For non-specified category vouchers, HACA will allow the PBV owner to refer households for placement on the waiting list. HACA will use the following local preferences for purposes of establishing priority. The local preferences are weighted differently, with the higher number representing a higher ranking. Each applicant family can be granted a maximum of one local preference plus the Owner Referral preference (if they qualify). Weights for each preference are as follows:

Owner Referral	= 1
Project-Specific Supportive Services Need	= 1
Disability	= 1
Chronically Homeless	= 2

**Owner Referral Preference:** HACA will give preference to households (including individuals) referred by the project owner who have completed a Coordinated Assessment administered by a member of the Austin/Travis County Continuum of Care

(CoC) and been verified by the CoC Lead Agency as the highest priority eligible household as required by the project's funding sources.

**Project-Specific Supportive Services Need Preference:** HACA will give preference to households (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing, who without appropriate supportive services will not be able to obtain or maintain housing, and for whom such services cannot be provided in a non-segregated setting. HACA will verify qualification for this preference with the PBV owner's on-site clinical staff. Disabled residents shall not be required to accept particular services offered at the project. HACA is prohibited from granting preferences to persons with specific disabilities (24 CFR 982.207(b)(3)).

**Disability:** HACA will give preference to disabled families. A disabled family is a family in which the head, spouse or co-head is disabled using the current HUD definition of disability.

**Chronically Homeless Preference:** HACA will give preference to households (including individuals) who meet the HUD definition of chronically homeless defined in the Final Rule published December 4, 2015 (24 CFR Part 91).

When notified of a vacancy in a non-specified voucher unit, HACA will first draw applicants that meet and score the highest site-based preferences based on date and time of application. HACA will then draw all other applicants based on the date and time of application.

### **Pathways at Chalmers Court East**

HACA will project-base 50 vouchers at Chalmers Court East, eight (8) will be Project-based VASH Vouchers. The property is located at 1700 E 3<sup>rd</sup> Street, Austin Texas.

### **Tenant Selection**

Eight (8) Project-based VASH Vouchers

For the eight PBV VASH vouchers. HACA will accept HUD-VASH applicants for vacant units in the order received from the Veterans Affairs Austin Outpatient Clinic in accordance with HUD-VASH Operating Requirements.

Forty-two (42) regular Project-based Vouchers

HACA will use the same selection preferences that are used for the HCV tenant-base voucher program for the 42 regular PBV units.

Applicants on the Housing Choice Voucher programs tenant-base waiting list will be given the opportunity to be added to Pathways at Chalmers Court East project-based voucher waiting

list. If the Housing Choice Voucher waiting list doesn't provide enough referrals to fill the available project-based voucher units, referrals would come directly from Pathways at Chalmers Court East to be added to the project-based voucher waiting list. Households who meet the Housing Choice Voucher initial eligibility requirements will be referred to Pathways at Chalmers Court East for a project-based voucher unit.

Eligible applicants must meet Pathways at Chalmers Court East tenant selection screening criteria.

If the applicant was previously on the Housing Choice Voucher waiting and decides not to lease a unit at Pathways at Chalmers Court East, the applicant will remain on the HCV tenant-base voucher waiting list.

If the applicant was not previously on the Housing Choice Voucher waiting list and was referred to apply by Pathways at Chalmers Court East and refuses an offer of PBV assistance or does not meet Pathways at Chalmers Court East's screening criteria, they will not be eligible to remain on the regular tenant-base Housing Choice Voucher waiting list.

### **Pathways at Chalmers Court West**

HACA will project-base 50 vouchers at Chalmers Court West, eight (8) will be Project-based VASH Vouchers. The property is located at 1700 E 3<sup>rd</sup> Street, Austin Texas.

### **Tenant Selection**

#### Eight (8) Project-based VASH Vouchers

For the eight PBV VASH vouchers. HACA will accept HUD-VASH applicants for vacant units in the order received from the Veterans Affairs Austin Outpatient Clinic in accordance with HUD-VASH Operating Requirements.

#### Forty-two (42) regular Project-based Vouchers

HACA will use the same selection preferences that are used for the HCV tenant-base voucher program for the 42 regular PBV units.

Applicants on the Housing Choice Voucher programs tenant-base waiting list will be given the opportunity to be added to Pathways at Chalmers Court West project-based voucher waiting list. If the Housing Choice Voucher waiting list doesn't provide enough referrals to fill the available project-based voucher units, referrals would come directly from Pathways at Chalmers Court West to be added to the project-based voucher waiting list. Households who meet the Housing Choice Voucher initial eligibility requirements will be referred to Pathways at Chalmers Court West for a project-based voucher unit.

Eligible applicants must meet Pathways at Chalmers Court West tenant selection screening criteria.

If the applicant was previously on the Housing Choice Voucher waiting and decides not to lease a unit at Pathways at Chalmers Court West, the applicant will remain on the HCV tenant-base voucher waiting list.

If the applicant was not previously on the Housing Choice Voucher waiting list and was referred to apply by Pathways at Chalmers Court West and refuses an offer of PBV assistance or does not meet Pathways at Chalmers Court West's screening criteria, they will not be eligible to remain on the regular tenant-base Housing Choice Voucher waiting list.

### **Cambrian East Riverside**

HACA will project-base 8 vouchers at Cambrian East Riverside located at 1806 Clubview Avenue, Austin TX 78741

HACA will use the same selection preferences that are used for the HCV tenant-base voucher program.

Applicants on the Housing Choice Voucher programs tenant-base waiting list will be given the opportunity to be added to the Cambrian East Riverside project-based voucher waiting list. If the Housing Choice Voucher waiting list does not provide enough referrals to fill the available project-based voucher units, referrals would come directly from Cambrian East Riverside to be added to the project-based voucher waiting list. Households who meet the Housing Choice Voucher initial eligibility requirements will be referred to Cambrian East Riverside for a project-base voucher unit.

Eligible applicants must meet Cambrian East Riverside's tenant selection screening criteria.

If the applicant was previously on the Housing Choice Voucher waiting and decides not to lease a unit at Cambrian East Riverside, the applicant will remain on the waiting list for HCV tenant-based voucher assistance.

If the applicant was not previously on the Housing Choice Voucher waiting list and was referred to apply by Cambrian East Riverside and refuses an offer of PBV assistance or doesn't meet Cambrian East Riverside's screening criteria, they will not be eligible to remain on the regular tenant-base Housing Choice Voucher waiting list.

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## **17-VI.E. OFFER OF PBV ASSISTANCE**

### **Refusal of Offer [24 CFR 983.251(e)(3)]**

The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant on the waiting list for tenant-based voucher assistance;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy;
- Remove the applicant from the tenant-based voucher waiting list.

### **Disapproval by Landlord [24 CFR 983.251(e)(2)]**

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

### **Acceptance of Offer [24 CFR 983.252]**

#### ***Family Briefing***

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

#### ***Persons with Disabilities***

If an applicant family's head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

#### ***Persons with Limited English Proficiency***

The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

## **17-VI.F. OWNER SELECTION OF TENANTS**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

### **Leasing [24 CFR 983.253(a)]**

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the PHA from the PHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

### **Filling Vacancies [24 CFR 983.254(a)]**

The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

#### HACA Policy

The owner must notify HACA in writing (mail, fax, or e-mail) within five business days of learning about any vacancy or expected vacancy.

HACA will make every reasonable effort to refer families to the owner within 15 business days of receiving such notice from the owner.

### **Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]**

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

#### HACA Policy

If any contract units have been vacant for 120 days, HACA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. HACA will provide the notice to the owner within 10 business days of the 120<sup>th</sup> day of the vacancy. The amendment to the HAP contract will be effective the 1<sup>st</sup> day of the month following the date of HACA's notice.

## **17-VI.G. TENANT SCREENING [24 CFR 983.255]**

### **PHA Responsibility**

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

#### HACA Policy

HACA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The PHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by the PHA) of the family's current landlord and any prior landlords.

In addition, the PHA may offer the owner other information the PHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The PHA must provide applicant families a description of the PHA policy on providing information to owners, and the PHA must give the same types of information to all owners.

The PHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

#### HACA Policy

HACA will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of the turnover HQS inspection or before. HACA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

### **Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;

- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

## PART VII: OCCUPANCY

### 17-VII.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

### 17-VII.B. LEASE [24 CFR 983.256]

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

#### Form of Lease [24 CFR 983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

The PHA may review the owner's lease form to determine if the lease complies with state and local law. If the PHA determines that the lease does not comply with state or local law, the PHA may decline to approve the tenancy.

#### HACA Policy

HACA generally will not review the owner's lease for compliance with state or local law but reserves the right to review an owner lease for compliance with state or local law.

#### Lease Requirements [24 CFR 983.256(c)]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;

- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

**Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

**Initial Term and Lease Renewal [24 CFR 983.256(f)]**

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The PHA terminates the HAP contract
- The PHA terminates assistance for the family

**Changes in the Lease [24 CFR 983.256(e)]**

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

**Owner Termination of Tenancy [24 CFR 983.257]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

***Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]***

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

**Continuation of Housing Assistance Payments [24 CFR 982.258]**

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

HACA Policy

If a participating family receiving zero rental assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify HACA of the change and request an interim reexamination before the expiration of the 180-day period.

**Security Deposits [24 CFR 983.259]**

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

HACA Policy

HACA will allow the owner to collect a security deposit amount that is not in excess of amounts charged by the owner to unassisted tenants.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as

reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

### **7-VII.C. MOVES**

#### **Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]**

If the PHA determines that a family is occupying a wrong size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

#### HACA Policy

HACA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of HACA's determination. HACA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same building or project;
- PBV assistance in another project; and
- Tenant-based voucher assistance.

If the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

If the PHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit

from the HAP contract.

### HACA Policy

When HACA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, HACA will terminate the housing assistance payments at the expiration of this 30-day period.

HACA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

### **Family Right to Move [24 CFR 983.261]**

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the PHA. If the family wishes to move with continued tenant-based assistance, the family must contact the PHA to request the rental assistance prior to providing notice to terminate the lease.

### HACA Policy

PBV participants may be eligible to move when all the following criteria are true:

- The PBV participant family has completed 1 full year of occupancy;
- The participant family has no outstanding debts to the owner and / or HACA; and
- The participant family has given advance notice of intent to vacate to the owner and HACA in accord with any terms of the lease.

If the family terminates the lease in accordance with these requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

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### **17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.262]**

As of April 17, 2018, the PHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless the units are [24 CFR 983.56]:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project

If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the PHA and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying HAP on behalf of the family.

Further, when a family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” because the family is no longer an elderly family due to a change in family composition the PHA has the discretion to allow the family to remain in the excepted unit. . If the PHA does not exercise this discretion, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA must cease paying housing assistance payments on behalf of the non-qualifying family.

Individuals in units with supportive services who choose to no longer participate in a service or who no longer qualify for services they qualified for at the time of initial occupancy cannot subsequently be denied continued housing opportunity because of this changed circumstance. A PHA or owner cannot determine that a participant’s needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program

requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the PHA.

The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly family member or long-term or permanent hospitalization or nursing care), the elderly family member no longer resides in the unit. In this case, the unit may continue to be counted as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualified family.

#### HACA Policy

HACA will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to circumstances beyond the remaining family members' control.

In all other cases, HACA will provide written notice to the family and owner within 10 business days of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, HACA will terminate the housing assistance payments at the expiration of this 30-day period.

HACA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

### **PART VIII: DETERMINING RENT TO OWNER**

#### **17-VIII.A. OVERVIEW**

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

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**17-VIII.B. RENT LIMITS [24 CFR 983.301]**

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

**Certain Tax Credit Units [24 CFR 983.301(c)]**

For certain tax credit units, the rent limits are determined differently than for other PBV units.

Different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard;

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

***Definitions***

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

*Tax credit rent* is the rent charged for comparable units of the same bedroom size in the project

that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

### **Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]**

The PHA must determine reasonable rent in accordance with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner; the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

#### HACA Policy

HACA will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, HACA will use the higher initial rent to owner amount.

### **Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]**

When determining the initial rent to owner, the PHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, the PHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment standard amount for use in the PBV program.

Likewise, the PHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based

voucher programs.

### HACA Policy

Upon written request by the owner, HACA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. HACA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, HACA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if HACA determines it is necessary due to PHA budgetary constraints.

### **Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)]**

While small area FMRs (SAFMRs) do not apply to PBV projects, PHAs that operate a tenant-based program under SAFMRs may apply SAFMRs to all future PBV HAP contracts. If the PHA adopts this policy, it must apply to all future PBV projects and the PHA's entire jurisdiction. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy.

Further, the PHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective dates of PHA implementation, provided the owner is willing to mutually agree to doing so and the application is prospective. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

### PHA Policy

The PHA will not apply SAFMRs to the PHA's PBV program.

### **Redetermination of Rent [24 CFR 983.302]**

The PHA must redetermine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

### ***Rent Increase***

If an owner wishes to request an increase in the rent to owner from the PHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the PHA. The PHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the

PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

#### HACA Policy

An owner's request for a rent increase must be submitted to HACA 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

The PHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

#### ***Rent Decrease***

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

#### ***Notice of Rent Change***

The rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent. The PHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

#### HACA Policy

HACA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

#### **PHA-Owned Units [24 CFR 983.301(g)]**

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHA must use the rent to owner established by the independent entity.

### **17-VIII.C. REASONABLE RENT [24 CFR 983.303]**

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

#### **When Rent Reasonable Determinations Are Required**

The PHA must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a 10 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- The PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building or project; or
- There is any other change that may substantially affect the reasonable rent.

#### **How to Determine Reasonable Rent**

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

#### ***Comparability Analysis***

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

#### **PHA-Owned Units**

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the

PHA and to the HUD field office where the project is located.

**Owner Certification of Reasonable Rent**

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the PHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

**17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL**

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

**Other Subsidy [24 CFR 983.304]**

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

***Combining Subsidy***

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

**Rent Control [24 CFR 983.305]**

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

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## PART IX: PAYMENTS TO OWNER

### 17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

### 17-IX.B. VACANCY PAYMENTS [24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

#### HACA Policy

If HACA determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, HACA will notify the landlord of the amount of housing assistance payment that the owner must repay. HACA will require the owner to repay the amount owed in accordance with the policies defined in HACA's HCV Administrative Plan Section 16-IV.B.

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner. The PHA may only make vacancy payments if:

- The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);

- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

### HACA Policy

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified HACA of the vacancy in accordance with the policy in Section 17-VI.F.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and HACA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by HACA within 10 business days of HACA's request, no vacancy payments will be made.

### **17-IX.C. TENANT RENT TO OWNER [24 CFR 983.353]**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

### **Tenant and PHA Responsibilities**

The family is not responsible for the portion of rent to owner that is covered by the housing

assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

### **Utility Reimbursements**

If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

#### HACA Policy

HACA will make utility reimbursements payments directly to the family.

## **17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]**

### **Meals and Supportive Services**

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

### **Other Charges by Owner**

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

**EXHIBIT 17-1: PBV DEVELOPMENT INFORMATION**

(Fill out one for each development)

**Date:** [Enter the date on which this form was completed]

**DEVELOPMENT INFORMATION**

**Development Name:** [Insert name of PBV development]

**Address:** [Insert full address of PBV development]

**Owner Information:** [Insert PBV development owner name and contact information. If development is PHA-owned, enter "PHA-owned."]

**Property Management Company:** [Insert property management company name and contact information, or enter "None"]

**PHA-Owned:** [Enter "Yes" or "No." If yes, enter name of independent entity]

**Mixed Finance Development:** [Enter "Yes" or "No." If yes, list other types of funding and units to which other funding applies.]

**HAP CONTRACT**

**Effective Date of Contract:** [Enter start date of HAP contract]

**HOTMA Requirements:** [If HAP contract was signed prior to April 18, 2017, enter "Pre-HOTMA." If HAP contract was signed on or after April 18, 2017, enter "Post-HOTMA."]

**Term of HAP Contract:** [Enter term from HAP contract]

**Expiration Date of Contract:** [Enter expiration date from HAP contract]

**PBV UNITS**

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	Total
# of Units							
Initial Contract							

<b>Rent</b>	\$	\$	\$	\$	\$	\$	
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**Accessible Units and Features:** [Identify which units are accessible and describe accessibility features or enter “None”]

**Target Population:** [Describe targeted population in accordance with HAP contract or enter “None”]

**Excepted Units:** [Identify excepted unit types below or enter “None”]

**Supportive Services:** [Enter “Yes, see Exhibit D of HAP Contract” or enter “No”]

**Elderly Units:** [Enter “Yes” or “No.” If yes, identify which units are elderly units.]

**Disabled Units** (only for HAP contracts executed prior to April 18, 2017) [Enter “Yes” or “No.” If yes, identify which units are for persons with disabilities.]

**Are units excepted because they are located in a low-poverty census tract area?:** [Enter “Yes” or “No”]

**WAITING LIST AND SELECTION**

**Waiting List Type:** [ Enter “Site-based waiting list,” “Combined with HCV,” “Waiting list for entire PBV program,” or “Merged with another assisted housing program”]

**Preferences:** [Enter “Same as HCV; see Chapter 4” or describe preferences offered. If different from HCV, also note in Section 17.1.B of this policy.]

**Preference Verification:** [Enter “Same as HCV; see Chapter 4” or describe for each preference listed above. If different from HCV, note in Section 17.1.B of this policy.]

**For the PBV program, is the income limit the same as the HCV program?** (Note: In mixed finance developments, other income limits may also apply.) [Enter “Same as HCV; see Chapter 3” or clearly describe. If different from HCV, note in Section 17.1.B of this policy.]

**OCCUPANCY**

**Subsidy Standards:** [Enter “Same as HCV; see Chapter 5” or describe. If different from HCV, note in Section 17.1.B of this policy]

**Utilities:** [Enter in accordance with HAP contract Exhibit C]

**Vacancy Payments:** [Enter in accordance with HAP contract Part 1, e, 2 and Section 17-V.F. within this chapter]

**EXHIBIT 17-2: Special Provisions Applying to TPVs Awarded as Part of a Voluntary Conversion of Public Housing Units in Projects that Include RAD PBV Units**

**[24 CFR Part 972.200; Notice PIH 2019-05; Notice PIH 2019-23]**

Under certain circumstances, HUD allows small PHAs to reposition a public housing project (or portion of a project) by voluntarily converting units to tenant-based housing choice voucher assistance. In order to preserve affordable housing for residents of the project, the PHA is given priority to receive replacement tenant protection vouchers (TPVs). As part of the voluntary conversion, the PHA has the option to continue to operate it as rental housing. If so, the PHA or subsequent owner must allow existing families to remain in their units using the TPV in the form of tenant-based assistance. In this situation, however, the PHA may choose to project-base these TPVs in the former public housing project. Families must still be provided with the option to remain in their unit using tenant-based assistance. In order for the PHA to project-base the assistance and include these units on the PBV HAP contract, the family must voluntarily consent in writing to PBV assistance following the requirements in Appendix A of Notice PIH 2019-05. If the family fails to consent to PBV assistance and chooses to remain using tenant-based assistance, the family’s unit is excluded from the PBV HAP contract until the family moves out or consents to switching to PBV assistance. In general, all applicable program regulations and guidance for the standard PBV program apply to these units.

The PHA may also convert units in the same former public housing project to the PBV program under the rental assistance demonstration (RAD) program. The RAD statute authorizes HUD to waive certain statutory and regulatory provisions governing the standard PBV program and specify alternative requirements. In order to facilitate the uniform treatment of residents and units at the project, Notice PIH 2019-23 extended some of the alternative requirements to non-RAD PBV units in the converted project (i.e., the TPV units in the project). As such, while PBV TPV units in the converted project generally follow the requirements for the standard PBV program listed in this chapter, where HUD has specified alternative requirements for non-RAD PBV units in the project, PBV TPV units will instead follow the requirements outlined in Chapter 18 of this policy for the RAD PBV program.

**RAD Requirements Applicable to Non-RAD units in the Project**

<b>Alternative Requirement under RAD as Listed in Notice PIH 2019-23</b>	<b>Standard PBV Policy That Does Not Apply</b>	<b>Applicable Policy in Chapter 18</b>
1.6.A.4. Site Selection – Compliance with PBV Goals	17-II.G. SITE SELECTION STANDARDS applies with the exception of	18-II.F. SITE SELECTION STANDARDS

	deconcentration of poverty and expanding housing and economic opportunity requirements.	
1.6.B.5.d. PBV Site-Specific Utility Allowances	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-VII.C. UTILITY ALLOWANCES
1.6.C.1. No Rescreening of Tenants upon Conversion	Policies contained in Chapter 3 relating to eligibility do not apply to existing tenants who receive TPVs.	18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION
1.6.C.2. Right to Return	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-I.D. RELOCATION REQUIREMENTS
1.6.C.3. Phase-in of Tenant Rent Increases	Alternative requirements under RAD. No corresponding policy in Chapter 17.	18-VIII.D. PHASE-IN OF TENANT RENT INCREASES
1.6.C.4. Family Self Sufficiency (FSS) and Resident Opportunities and Self-Sufficiency Service Coordinator (ROSS-SC) Programs	Not covered in administrative plan.	18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS
1.6.C.5. Resident Participation and Funding	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-VI.D. RESIDENT PARTICIPATION AND FUNDING
1.6.C.6. Resident Procedural Rights	Policies related to hearings in Chapter 16 apply, with added	18-VI.H. RESIDENTS' PROCEDURAL RIGHTS

	procedural rights and notice requirements as outlined in Chapter 18.	
1.6.C.7. Earned Income Disregard (EID)	Alternative requirements under RAD for in-place residents.  New admissions follow policies in Chapter 6.	18-VI.G. EARNED INCOME DISALLOWANCE
1.6.C.8. Jobs Plus	Not covered in administrative plan.	No corresponding policy.
1.6.C.9. When Total Tenant Payment Exceeds Gross Rent	Alternative requirements under RAD for in-place residents.  New admissions follow policies in 17-VII.B. LEASE, Continuation of Housing Assistance Payments.	18-VI.B. LEASE, Continuation of Housing Assistance Payments
1.6.C.10. Under-Occupied Unit	Alternative requirements under RAD for in-place residents.  New admissions follow 17-VII.C. MOVES, Overcrowded, Under-Occupied, and Accessible Units	18-VI.E. MOVES, Overcrowded, Under-Occupied, and Accessible Units
1.6.D.4. Establishment of Waiting List	Alternative requirements under RAD for initial establishment of the waiting list.  Once waiting list is established, follow 17-VI.D. SELECTION	18-V.D. ORGANIZATION OF THE WAITING LIST

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	FROM THE WAITING LIST	
1.6.D.10. Initial Certifications and Tenant Rent Calculations	Alternative requirements under RAD for in-place residents. No corresponding policy in Chapter 17.	18-VIII.C. TENANT RENT TO OWNER, Initial Certifications

Note, while Notice PIH 2019-05 states that the PHA must screen families for eligibility for a tenant protection voucher and that families must be below the low-income limit (80 percent of AMI), Notice PIH 2019-23 waives these requirements for residents in projects that include RAD PBV units.

# General Conditions for Non-Construction Contracts

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

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

Office of Public and Indian Housing  
Office of Labor Relations  
OMB Approval No. 2577-0157 (exp. 01/31/2014)

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

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

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

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

### 3. Termination for Convenience and Default

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

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

### 1. Definitions

The following definitions are applicable to this contract:

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

### 2. Changes

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

proposal submitted before final payment of the contract.

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

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

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

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

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

#### 6. Energy Efficiency

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

#### 7. Disputes

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

#### 8. Contract Termination; Debarment

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

#### 9. Assignment of Contract

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

#### 10. Certificate and Release

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

#### 11. Organizational Conflicts of Interest

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

#### 12. Inspection and Acceptance

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

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

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

### 13. Interest of Members of Congress

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

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

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

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

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

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## 16. Equal Employment Opportunity

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

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

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

## 17. Dissemination or Disclosure of Information

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

## 18. Contractor's Status

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

## 19. Other Contractors

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

## 20. Liens

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

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

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

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

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

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

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

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

**Instructions to Bidders for Contracts  
Public and Indian Housing Programs**

# Instructions to Bidders for Contracts

## Public and Indian Housing Programs

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### 1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

### 2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

### 3. Amendments to Invitations for Bids

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

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

### 4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

- (1) Integrity;
- (2) Compliance with public policy;
- (3) Record of past performance; and
- (4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

## 5. Late Submissions, Modifications, and Withdrawal of Bids

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

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

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

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

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

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

(g) Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

## 6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

## 7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

## 8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

#### **9. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)**

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

#### **10. Assurance of Completion**

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[ ] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[ ] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[ ] (3) a 20 percent cash escrow;

[ ] (4) a 25 percent irrevocable letter of credit; or,

[ ] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

#### **11. Preconstruction Conference (applicable to construction contracts)**

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

#### **12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)**

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to be used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [ ] does [ ] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

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

**Representations, Certifications,  
and Other Statements of Bidders**  
**Public and Indian Housing Programs**

# Representations, Certifications, and Other Statements of Bidders

## Public and Indian Housing Programs

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### 1. Certificate of Independent Price Determination

#### (a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

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

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

\_\_\_\_\_ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

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

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

[ ] [Contracting Officer check if following paragraph is applicable]

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

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

### 2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

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

(1) [ ] has, [ ] has not employed or retained any person or company to solicit or obtain this contract; and

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

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

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

### 3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

#### 4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

#### 5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

#### 6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

#### 7. Small, Minority, Women-Owned Business Concern Representation

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

(a) [ ] is, [ ] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [ ] is, [ ] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [ ] is, [ ] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- |                        |                              |
|------------------------|------------------------------|
| [ ] Black Americans    | [ ] Asian Pacific Americans  |
| [ ] Hispanic Americans | [ ] Asian Indian Americans   |
| [ ] Native Americans   | [ ] Hasidic Jewish Americans |

#### 8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

**9. Certification of Eligibility Under the Davis-Bacon Act** (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

**10. Certification of Nonsegregated Facilities** (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

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

**11. Clean Air and Water Certification** (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

**12. Previous Participation Certificate** (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [ ] is, [ ] is not included with the bid.

**13. Bidder's Signature**

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

\_\_\_\_\_  
(Signature and Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Address)

# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The HA may

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

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

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

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

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

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

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

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

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

[Describe bid or proposal preparation instructions here:]

# Certifications and Representations of Offerors Non-Construction Contract

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

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

## 1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

## 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

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

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

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

#### 4. Organizational Conflicts of Interest Certification

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

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

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

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

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

#### 5. Authorized Negotiators (RFPs only)

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

#### 6. Conflict of Interest

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

#### 7. Offeror's Signature

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

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Signature & Date:

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Typed or Printed Name:

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Title:

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**HOUSING AUTHORITY OF THE CITY OF AUSTIN**  
**P.O. BOX 41119 AUSTIN TEXAS 78704-1119 (512) 477-4488**  
**FEDERAL EXEMPT ENTITY #74-6000117**

**VENDOR DATA SHEET (ALL SUPPLIERS)**

<b>BUSINESS NAME (DBA)</b>			
<b>ADDRESS</b>			
<b>CITY</b>	<b>STATE</b>	<b>ZIP</b>	<b>PHONE FAX</b>
<b>TYPE OF OWNERSHIP</b> <input type="checkbox"/> CORPORATION <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> SOLE PROPRIETORSHIP <input type="checkbox"/> JOINT PROPRIETORSHIP			
<b>IF MINORITY, WHAT STATUS?</b> <input type="checkbox"/> BLACK <input type="checkbox"/> HISPANIC <input type="checkbox"/> AMERICAN INDIAN <input type="checkbox"/> ALASKAN NATIVE <input type="checkbox"/> ASIAN AMERICAN <input type="checkbox"/> WOMAN <input type="checkbox"/> MBE CERTIFIED			
<b>FEI#</b>	<b>FORM 1099 REQUIRED</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>BUSINESS DESCRIPTION</b>

**PRINCIPALS/OWNERS**

<b>NAME</b>	<b>TITLE</b>	<b>PHONE</b>	<b>ADDRESS</b>

**BUSINESS REFERENCES**

<b>NAME</b>	<b>TITLE</b>	<b>ADDRESS</b>	<b>PHONE</b>

**REMITTANCE ADDRESS**

<b>NAME</b>			
<b>ADDRESS</b>			
<b>CITY</b>	<b>STATE</b>	<b>ZIP</b>	<b>PHONE</b>
<b>EMAIL ADDRESS:</b>			

**AUTHORIZED SIGNATURE**

**TITLE**

**DATE**

## Request for Taxpayer Identification Number and Certification

**Give form to the  
 requester. Do not  
 send to the IRS.**

<b>Print or type See Specific Instructions on page 2.</b>	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
or
Employer identification number

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

## **STATEMENT OF BIDDER'S QUALIFICATIONS**

Submit on a separate sheet(s) the following information and data. Include with Bid Proposal.

1. Name of Bidder.
2. Permanent main office address.
3. When organized.
4. State whether bidder is a Corporation, Partnership, or Sole Proprietor.
5. If "Corporation, date and State of Incorporation."
6. A breakdown of the minority ownership of the business (Gender, White, Black Hispanic, American Hispanic, American Indian/Eskimo, Asian/Pacific islander, etc.). Who owns what percent of the business, and any other related information.
7. Number of years engaged in contracting business under present name.
8. Contract in progress (gross amounts of contracts, estimated completion dated, project owner, architect).
9. General character of work performed by your company.
10. Report on any failures to complete work awarded to you (where, when & why).  
Report any contracts you have defaulted on.
11. Name & address of bonding company and name and address of agent.
12. List of three (3) currently completed projects, including name, address, phone number, and type of work
13. List any previous contracts, including dated executed with HACA.

**FORM OF NON-COLLUSIVE AFFIDAVIT**

AFFIDAVIT

Prime Bidder

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says:

That he is \_\_\_\_\_ the party making the foregoing  
(A partner or officer of the firm, corp., of etc.)  
proposal or bid and attests to the following:

- (1) That affiant employed no person, corporation, firm association, or other organization, either directly or indirectly, to secure the public contract under which he received payment, other than persons regularly employed by the affiant whose services in connection with the construction of the public building of project or in securing the public contract were in the regular course of their duties for affiant; and
- (2) That no part of the contract price received by affiant was paid or will be paid to any person, corporation, firm, association, or other organization for solicitation the contract, other than the payment of their normal compensation to persons regularly employed by the affiant whose services in connection with the construction of the public building or project were in the regular course of their duties for affiant.
- (3) That such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Housing Authority of the City of Austin or any person interested in the proposal contract; and that all statements in said proposal or bid are true.

\_\_\_\_\_  
Signature\*

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

My Commission expires \_\_\_\_\_, 20 \_\_\_\_\_

\*Bidder if the bidder is an individual; all partners if the bidder is a partnership; Officer if the bidder is a corporation.