



Berkeley Housing Authority

1901 Fairview St., Berkeley, CA 94703
Telephone: (510) 981 5470 Fax: (510) 981 5480

Office of the Executive Director

Item 7.B
NEW BUSINESS
February 9, 2017

To: Honorable Chairperson and
Members of the Housing Authority Board

From: William Wilkins, Executive Director

SUBJECT: Procurement of Independent Audit Services

RECOMMENDATION

Approve a resolution authorizing the Executive Director to issue a Request for Proposal for Independent Audit services for a three-year contract covering fiscal years ending June 30, 2017, June 30, 2018 and June 30, 2019, with an option for two-one year contracts for fiscal years ending June 30, 2020 and June 30, 2021.

BACKGROUND

The Housing Authority is required to have an independent audit of its financial reports on an annual basis. The audit report for the Federal Programs, Section 8 Housing Choice voucher and Moderate Rehabilitation, is due to the U.S. Department of Housing and Urban Development (HUD), nine months after the close of the fiscal year. Since BHA is on a July 1 – June 30 fiscal year, the submission is due by March 31st of the subsequent fiscal year.

The contract for audit services with Wallace Rowe/Cropper Crowe and Associates expired when the audit for FY2016 financial statements was completed.

A proposed Request for Proposal for the required audit services, that conforms with all applicable regulations, is attached for your review and approval.

FINANCIAL IMPACTS OF RECOMMENDATION

The contract will be awarded to the best offeror. Funds are budgeted annually for audit services expenditures in the appropriate audit expense budget.

CONTACT PERSON

Jesy Yturalde, Finance Manager, 981-5488
William Wilkins, Executive Director, 981-5471

Attachments:

1. Resolution
2. RFP Independent Audit Services

BERKELEY HOUSING AUTHORITY
Resolution 17-

AUTHORIZING THE EXECUTIVE DIRECTOR TO ISSUE A REQUEST FOR PROPOSAL FOR INDEPENDENT AUDIT SERVICES FOR A THREE YEAR CONTRACT COVERING FISCAL YEARS ENDING JUNE 30, 2017, JUNE 30, 2018 AND JUNE 30, 2019, WITH AN OPTION FOR TWO ONE-YEAR CONTRACTS FOR FISCAL YEARS ENDING JUNE 30, 2020 AND JUNE 30, 2021.

WHEREAS, the Berkeley Housing Authority is required by the US Department of Housing and Urban Development (HUD) to have an annual audit of its comprehensive annual financial reports; and

WHEREAS, in Independent Audit contract with Wallace Rowe/Cropper Rowe LLC expired with the completion of the audit of FY2016 financial statements; and

NOW, THEREFORE BE IT RESOLVED that the Executive Director is authorized to issue a Request for Proposal for Independent Audit services for a three-year contract covering fiscal years ending June 30, 2017, June 30, 2018 and June 30, 2019, with an option for two-one year contracts for fiscal years ending June 30, 2020 and June 30, 2021.

BE IT RESOVED FURTHER that the contract be awarded to the best offeror firm.

The foregoing Resolution was adopted by the Board of the Berkeley Housing Authority on February 9, 2017 by the following vote:

Ayes:

Noes:

Absent:

Attest: _____
William Wilkins, Secretary

**REQUEST FOR PROPOSALS (RFP)
Specification No. BHA 17-01
FOR
INDEPENDENT AUDIT SERVICES**

February 10, 2017

Dear Proposer:

The Berkeley Housing Authority (“BHA”) is soliciting written proposals from highly qualified public accounting firms to conduct the annual Independent Audit Services for the Authority. The audit shall be in accordance with the Single Audit Amendment Act and OMB Circular A-133 (Revised) and shall cover fiscal years ending June 30, 2017, 2018 and 2019 with an option to renew for a fourth and fifth year.

The scope of engagement, content of proposal, and vendor selection process are summarized in the RFP (attached). **Proposals must be received no later than 12:00 noon, March 10, 2017.** All responses must be in a sealed envelope and have “Authority Independent Audit Services” and “Specification No. 17-01” clearly marked on the outer most mailing envelope. Proposals will or will not be opened publicly.

Please mail or hand deliver one original and two copies of the proposal to:

Berkeley Housing Authority
Attn: Jesy Yturralde, Finance Manager
1936 University Ave., Suite 150
Berkeley, CA 94704

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

Proposers are requested to provide a contact person including name, phone number or email address so that they can receive any updates/changes to the process. Any questions concerning the anticipated work, or scope of the project, please email Jesy Yturalde at jyturalde@ci.berkeley.ca.us no later than **Tuesday, February 28, 2017 at 12:00 noon.**

We look forward to receiving and reviewing your response.

Sincerely,

William Wilkins
Executive Director

I. BACKGROUND

The Berkeley Housing Authority (BHA) was established as a legal entity separate from the City of Berkeley on July 1, 2007. The BHA administers the Federal Housing Choice Voucher Program (1,935 units), and the Federal Moderate Rehabilitation Program (98 units). In February 2014, the BHA completed the sale and disposition of the entire Federal Low Income Public Housing Program (61 units) and the State funded Residential Housing Construction Program (14 units) to a private developer.

The governing body of the BHA is the Board of Commissioners consisting of seven members appointed by the City of Berkeley Mayor, of whom two are Resident Commissioners. The Board is responsible for establishing BHA policy, long-term goals, objectives and direction.

II. AUDIT REQUIREMENTS

The audit requirements are:

1. The audit is to be conducted in accordance with Generally Accepted Auditing Standards (GAAS) in the United States of America; and the standards applicable to financial audits contained in Government Auditing Standards (GAS) issued by the Comptroller General of the United States.
2. The audit shall be performed according to the Single Audit Amendment Act of 1996, Public Law 98-502, and provisions of the U.S. Office of Management & Budget (OMB) Circular A-133 (Revised) "Audits of States, Local Governments and Non-Profit Organizations," and will include tests of the accounting records, a determination of major programs in accordance with OMB Circular A-133 and other procedures that are considered necessary to express such opinion and to render the required reports; and the requirements established under the Compliance Supplement for Single Audits, Notice PIH 96-32 (HA).
3. The audit shall follow and comply with the provisions of HUD Handbook IG 2000.04, REV-1, Consolidated Audit Guide for Audits of HUD Programs and HUD Handbook 7476.1, REV-1, Audits of Public Housing Agencies (PHAs) and Indian Housing Agencies (IHAs) by Independent Auditors.
4. In compliance with the reporting requirements of OMB Circular A-133 (Revised), the audit must be completed within nine (9) months following the close of the fiscal year. The audit report must be sent to required report recipients within 30 days following the completion of the audit, by March 31, 2018 for FY ending 6/30/17; March 31, 2019 for FY ending 6/30/2018, and by March 31, 2020 for FY ending 6/30/2019, as specified in the audit completion and report submission provisions of OMB Circular A-133 (Revised). As further required by HUD, a copy must be provided to the Berkeley Housing Authority's Financial Analyst at the HUD Field Office in San Francisco, California.
5. The audit shall include all Berkeley Housing Authority programs (as indicated in Part 3 of the Proposal), funded by the federal government directly or indirectly or through the state, county or city as flow-through of federal funds, and all other funds that make up the general operations.
6. The audit shall cover Auditor's responsibilities for auditing census data of BHA's defined benefit pension plan as defined under GASB 68.
7. The Independent Public Accountant shall render monthly status reports on the progress of the examination to the Housing Authority Executive Director and the BHA Finance Manager.
8. The Independent Public Accountant shall provide the BHA Finance Manager with all audit adjustments and supporting worksheets at the conclusion of the audit.

III. SCOPE OF EXAMINATION

1. The audit shall cover fiscal years ending June 30, 2017, 2018 and 2019, with an option to renew for a fourth and fifth year.
2. We anticipate our financial records will be closed and ready for audit by August 31st of each year. The books of account and financial records to be audited are maintained and located at the Authority's administration office located at 1936 University Ave., Ste. 150, Berkeley, Ca 94704. The Finance Manager or designate shall make these books and records available to the audit firm.
3. The financial audit shall include the following funds and shall take into account reporting requirements specified under the Single Audit Amendment Act of 1996 and OMB Circular A-133 (Revised), and under any information bulletin from HUD that may pertain to current programs or funds and for each renewal funding increment for the PHA's ongoing program.

<u>Fund</u>	<u>Program Description</u>
101	Section 8 Housing Choice Voucher (HCV) <ul style="list-style-type: none">• Family Self Sufficiency
102	Section 8 Moderate Rehabilitation (Mod Rehab)
201	Low Income Public Housing (LIPH), including use of disposition proceeds

Other funds/programs include FSS Family Self-Sufficiency and Business Activity (Security Deposit Loan Fund), which are not significant in amount.

4. The report package includes:
 - a. Financial Statements using Generally Accepted Accounting Standards in the United States;
 - b. Notes to Financial Statements including Footnotes on the Summary of Significant Accounting Policies and Federal Non Cash Assistance;
 - c. Auditor's opinion on the financial statements and required supplementary schedules;
 - d. Report on Compliance and on Internal Control Over Financial Reporting based on an audit of financial statements performed in accordance with Government Auditing Standards (GAS) and/or Generally Accepted Auditing Standards (GAAS);
 - e. Report on Compliance with requirement applicable to each "major program" and internal control over compliance in accordance with OMB Circular A-133;
 - f. Schedule of Findings and Questioned Costs (includes "Summary of Auditor's Results" and findings in the current and prior year audits).
 - g. Corrective Action Plan.

The auditor shall prepare certain required supplementary information (RSI) to supplement BHA's basic financial statements, including but not limited to the Management Discussion and Analysis

Supplementary information other than RSI, that is to be prepared by the auditor and included as part of the basic financial statements are:

1. Combining Statement of Net Assets
2. Combining Statement of Revenues, Expenses and Changes in Net Assets
3. Schedule of Expenditures of Federal Awards
4. Schedule of Funding Progress for OPEB
5. Report and schedule of Proportionate Share of Net Pension Liability and Pension Plan Contributions as defined under GASB 68
6. Any other schedule as determined necessary and appropriate.

Concerning Compliance Supplement Review, the scope of audit must cover the selected programs and reporting requirements, as applicable to BHA, described in HUD Notice PIH 95-31 HA. The programs described in the Notice are as follows:

1. Modernization and Development
 2. Procurement
 3. Operating Fund, if applicable
 4. Public Housing Assessment System (PHAS), if applicable
 5. Occupancy
 6. Family Self Sufficiency (FSS)
 7. Section 8 Rental Assistance
 8. Section 8 Project Based Voucher Program
9. HUD Real Estate Assessment Center (HUD REAC) Agreed-Upon Procedures. The audit includes performing agreed-upon procedures under AICPA Statements for Attestation Engagements (SSAE) No. 4, Agreed-Upon Procedures Engagements. The auditor will compare the electronically submitted data in the HUD REAC staging data base to certain information in the audited basic financial statements and attest to the fair presentation of the electronic information in relation to the audited basic financial statements in accordance with the audit provisions of the American Institute of Certified Public Accountants (AICPA) Statement of Audit Standards (SAS) No. 29 Report on Information Accompanying the Basic Financial Statements in Auditor-Submitted Documents. HUD Agreed-upon Procedures is required to be completed before March 31 of each year.
10. The audit firm will also be expected to prepare and electronically submit, by due date of March 31st each year, to the Bureau of Census and Data Collection (Form SF-SAC) along with the audited financial statements and comply with all the requirements.
11. Any other reports as requested by the Housing Authority and as required by HUD's Uniform Financial Reporting Standards (UFRS) for Public Housing Authorities.
12. Approximately 15 copies and an electronic copy of the audited financial reports must be presented to the Authority and an electronic copy.
13. The auditor will be expected to attend a meeting with the Finance Sub Committee and/or full Board Meeting to present the audit report and review the management letter. The letter would include non-reportable condition and immaterial instances of noncompliance and general recommendations on observations made during the audit that could be helpful to the financial management of the Authority.

IV. SCHEDULE (dates are subject to change)

- | | |
|---|-------------------|
| <input type="checkbox"/> Posting/Mailing of RFP: | February 10, 2017 |
| <input type="checkbox"/> Proposals due | March 10, 2017 |
| <input type="checkbox"/> Interviews/Review of References | March 30, 2017 |
| <input type="checkbox"/> Recommendation to Board for Contract | April 13, 2017 |
| <input type="checkbox"/> Start date of new contract | July 1, 2017 |

V. QUALIFICATIONS

The following are the minimum qualifications required for Public Accounting firm to be considered as a potential provider of services to the Berkeley Housing Authority.

1. Licensed to practice in the State of California.
2. Must meet all requirements for Auditors as specified in the General Accounting Office (GAO) "Yellow Book"
2. Must certify that there are no conflicts of interest which would prevent it from representing the Authority.
3. Must have a minimum of three years experience in providing independent audit services to a public housing authority.

VI. PROPOSAL REQUIREMENTS

1. The bid opening time and date require an original and two (2) copies of a complete and properly signed proposal. The envelope containing the proposal should be clearly marked "Authority Independent Audit Services" and "Specification No. 17-01" to show its contents. Supporting data should be forwarded in the same envelope. The Berkeley Housing Authority will not accept late or not properly marked proposals.
2. All proposals along with appropriate supporting documents must be received no later than 12:00 p.m., **March 10, 2017** - the time and date set for opening.

Documents are to be submitted to:

Jesy Yturralde, Finance Manager
Berkeley Housing Authority
1936 University Ave., Suite 150
Berkeley CA 94704

and must include the following in the order listed:

- i. A title page that includes the proposal subject, the firm' name, address, phone and fax numbers, contact person, date of the proposal, firm's Federal Tax I.D. number and license number with the State Board of Accountancy.
- ii. Table of Contents
- iii. A letter of transmittal signed by an owner, principal or officer of the firm who is authorized to commit the firm to contractual obligations, stating the understanding of the work to be done, the commitment to perform the work within the time frame, a statement why the firm believes it is the best qualified to perform the engagement and that the offer is an irrevocable offer for at least 60 days.
- iv. Information about the firm such as:
 - a. Is the firm local, national or regional?
 - b. Identification of audit staff and the audit partner that will conduct BHA audit. Resumes, including qualifications, experience and relevant continuing education training of the audit team that will be assigned to this contract should be included as an appendix to the proposal.
 - c. A statement that the firm is not debarred, suspended or otherwise prohibited from professional practice by any federal, state or local agency.

- d. A statement that the firm is independent with respect to BHA.
 - e. Provide the results of the firm's last peer review. A copy of the opinion and State Society's acceptance of the review should be included as an appendix to the proposal.
 - f. Provide prior experience in auditing housing authorities.
- v. References. Provide at least three (3) professional references (with phone numbers and email addresses of contact persons) that you have provided similar service to those required under this RFP. The clients listed should be those served by member/s of the audit team who will be assigned to BHA audit.
- vi. Fee Schedule / Compensation. The Firm must provide the maximum fees for each year of the three year contract and for the two-one year option terms, indicating the total estimated hours and hourly rates for the staff assigned to the project and its proposed reimbursable expenses. The Authority will negotiate an agreed upon fee schedule with the firm awarded contracts.
- vii. Attachments

VII. WITHDRAWAL OF RFP

Provided the application is received by the Berkeley Housing Authority prior to the time set for opening of proposals, proposals may be:

1. Withdrawn in person or by mail or fax (510) 981-5480
2. Modified in person or by mail or fax (510) 981-5480

VIII. COMPLIANCE WITH LAWS

The selected firm agrees to be bound by applicable Federal, State and Local laws, regulations and directives as they pertain to the performance of the audit contract.

IX. HUD REQUIREMENTS

Contractor agrees to comply with all relevant HUD requirements, including those set forth in the General Conditions for Non-Construction Contracts, form HUD-5370-C (05/2006) (Attachment 1).

X. AFFIRMATIVE ACTION

BHA strongly encourages minority-owned and women-owned business, socially and economically disadvantaged business enterprises, and small businesses to submit proposals, to participate as partners, or to participate in other business activity in response to this RFP.

Section 3 of the housing and Urban Development Act of 1968 requires BHA to the greatest extent feasible to provide employment opportunities to the Section 3 residents. Section 3 residents include of residents of Berkeley and other low-income residents of the City of Berkeley.

The firm awarded the contract agrees to use its best efforts to subcontract and employ Section 3 residents, minority business enterprises and/or women business enterprises. BHA is an equal opportunity employer and requires its entire contractor to comply with policies and regulations concerning equal employment opportunity.

XI. INSURANCE REQUIREMENTS

Firm shall maintain at all times during the performance of this Contract a professional liability insurance policy in the minimum amount of \$1,000,000 to cover any claims arising out of firm's performance of services under this Contract. Firm shall provide an original Certificate of Insurance evidencing the required coverage.

If the firm employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the BHA. The workers' compensation insurance shall provide: 1) that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the BHA Executive Director; and 2) for a waiver of any right of subrogation against BHA to the extent permitted by law.

XII. INFRINGEMENT AND INDEMNIFICATION

Contractor shall defend, hold harmless and indemnify the Authority, and its respective commissioners, members, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising out of or connected with the performance of this Contract and any of Contractor's operations or activities related thereto, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified or held harmless.

XIII. ACCEPTANCE OF PROPOSALS

The Housing Authority reserves the right to accept or reject any or all proposals, to take exception to these RFP requirements or to waive any informality and to exclude any proposals from further consideration for failure to fully comply with the requirements of this RFP.

IX. PREPARATION COSTS

All costs incurred in the preparation and presentation of a proposal shall be completely absorbed by the respondent. All supporting documentation submitted with proposals will become the property of the Housing Authority. Any material submitted that is to be considered confidential should be clearly marked as such.

X. SELECTION CRITERIA

- 1. Experience of the firm and assigned staff who will perform the audit 20%
- 2. Past performance of the firm for services of the same or similar nature 20%
- 4. Project team approach that demonstrates realistic time estimates to plan, perform and conclude the audit in a timely manner. 20%
- 7. Financial and technical resources to support the firm’s approach to the audit, Planning, performance and conclusion 7.5%
- 8. Other information included in the proposal response such as consideration of laws and regulations, HUD rules, etc. 7.5%
- 5. Cost of services to be provided 25%

XI. CONTRACT TERM

The Authority seeks to contract for an initial three year period, with (2) two 1-year renewal option.

XII. CONTRACT TERMINATION

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

XIII. METHOD OF AWARD

Award will be made to the top proposer based on complete proposals, scores of categories listed in section “X” above (Selection Criteria) as well as references.

XIV. ATTACHMENTS

- Attachment 1 HUD Form 5370 C
- Attachment 2 HUD Form 5369 C Certification and Representation of Offerors
- Attachment 3 Non-Collusion Affidavit

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Office of Labor Relations
OMB Approval No. 2577-0157 (exp. 12/31/2011)

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

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

- 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.

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

2. Withholding of funds

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

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

1. Minimum Wages

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

3. Records

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

4. Apprentices and Trainees

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

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

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

7. Subcontracts

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

8. Non-Federal Prevailing Wage Rates

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

**Certifications and
Representations
of Offerors
Non-Construction Contract**

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

ATTACHMENT 2

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)

- Black Americans Asian Pacific Americans
- Hispanic Americans Asian Indian Americans
- Native Americans 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.

Signature & Date:

Typed or Printed Name:

Title:

Non-Collusive Affidavit of Prime Bidder/Subcontractor

State of _____)
County of _____)
City of _____)

_____, being the first duly sworn, deposes and says that:

1. He/she is _____ of _____
(Owner, partner, etc.) (Company)
the Bidder that has submitted the attached Bid;

2. He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

3. Such Bid is genuine and is not a collusive or sham Bid;

4. Neither the said Bidder nor any of its officers, partners, owners, subcontractors, agents, representatives, employees or parties in interest including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix price or prices in the attached Bid or of any other Bidder, or to fix overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement and advantage against the Berkeley Housing Authority, or the owner of the property interested in the proposed contract;

5. No member of the Common Council, or other Officers of the City of Berkeley, or the Berkeley Housing Authority, or any person in the employ of the City or Agency is directly or indirectly interested in the bid, or the work to which it relates, or in any portion of the profits thereof; and,

6. The price of prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest including this affiant;

7. I have read and understand the attached document entitles "Additional Eligibility Requirement of Contractors Who Bid on Community Development Funded Projects and Contracts", and affirms that the Bidder meets the Eligibility Requirements and agree(s) to comply with the terms and conditions contained as the date hereof;

8. I am/The Bidder is not indebted to the Berkeley Housing Authority in any form or manner.

Signature: _____

Date: _____

Title: _____

Witness: _____