

## REQUEST FOR QUALIFICATIONS – DEVELOPER SERVICES

The Tennessee Housing Development Corporation (THDC) a non-profit or instrumentality of the Jackson Housing Authority (JHA) is soliciting proposals from qualified firms for an indefinite quantity contract (IQC) for the provision of developer services. The RFQ package, which contains the general scope of services, evaluation criteria and submission requirement, is available and can be download from JHA's website at: [www.jacksonha.com](http://www.jacksonha.com)

Reponses must be delivered to the JHA Administrative office at 125 Preston Street, Jackson, TN. 38301, and electronic (PDF) submittals emailed to [jcephus@jacksonha.com](mailto:jcephus@jacksonha.com) by 4:00 p.m. local time (CST), Friday February 4th, 2022.

**RFQ 2022-01**

**REQUEST FOR QUALIFICATIONS**

**DEVELOPER SERVICES**

**FOR INDEFINITE QUANTITY CONTRACT (IQC)**

**TENNESSEE HOUSING DEVELOPMENT  
CORPORATION (THDC)**

**125 Preston Street**

**Jackson, TN. 38301**

**[www.jacksonha.com](http://www.jacksonha.com)**

**Mark C. Reid**

**Executive Director**

**ISSUED**

**January 04, 2022**

**REQUEST FOR QUALIFICATIONS (RFQ)  
FOR INDEFINITE QUANTITY CONTRACT  
(IQC)  
FOR THE PROVISION OF DEVELOPER SERVICES**

**Introduction**

This solicitation is being conducted by the Tennessee Housing Development Corporation (THDC). THDC is a non-profit or "instrumentality" of the Jackson Housing Authority (JHA).

The Jackson Housing Authority (JHA) mission is *"To provide quality housing and supporting services for low- and moderate-income persons, which promote upward mobility and a better standard of living."*

THDC was organized by the Jackson Housing Authority ("JHA") in 1998. Application for 501(c)3 non-profit status was made to the Internal Revenue Service in February 1999. THDC is a vehicle for providing affordable housing opportunities to very low, low and some moderate-income persons and families.

This solicitation conforms to federal procurement regulations found at 24 CFR 85.36, using the Competitive Negotiations method of procurement.

THDC is seeking Development Services to assist it in functioning as the Developer of multiple affordable real estate transactions. THDC has closed a total of six (6) Mixed-Finance transactions in which it was the Developer.

THDC believes it prudent to re-procure Development Services for transactions to occur over the next few years. At least four (4) transactions are envisioned, some involving properties currently owned by JHA. However, this is only an estimate in volume and focus.

Each respondent's response to this RFQ must address at least the following core services:

- 1) Development services including due diligence and financial packaging
- 2) Legal services including deal documents and deal structuring
- 3) Financial services including but not limited to forecasts of Low-Income Housing Tax Credit (LIHTC) equity, RAD transactions, and associated accounting

In addition, THDC is inviting respondents to describe capabilities that provide "value added" to the development process. Such value added could include linkages to lenders, syndicators, underwriters, providers of due diligence services and the like; skill in capacity-building, real estate strategy, development project management, redevelopment, and experience with financing tools available only to housing authorities and their use in Tennessee.

THDC reserves the right to select multiple respondents or no respondents as a result of this solicitation. Respondents may or may not be interviewed, depending on whether they are considered, according to the Ranking Criteria, to have a reasonable chance of eventually obtaining an award. Respondents selected for interview may or may not be

asked to provide one or more Best and Final Offers as a means of clarifying their submittal and therefore their chances of eventually obtaining an award.

Awards, if any, will be in the form of Indefinite Quantity Contracts (IQC), with specific work to be in the form of Task Orders negotiated on a case-by-case basis.

It is possible that THDC will also negotiate, within the IQC, one or more Task Orders for Development Services not necessarily tied to specific transactions but that support the overall THDC affordable housing development effort.

### **Ranking Criteria**

#### **Development Capabilities of the Team or Firm: 40 points**

This criterion evaluates the capability of each respondent to assist THDC to develop affordable housing, through the provision of: 1) Development services including due diligence and financial packaging; 2) Legal services including deal documents and deal structuring; and 3) Financial services including but not limited to forecasts of Low-Income Housing Tax Credit (LIHTC) equity, and associating financial analysis and accounting.

This criterion will be scored based on the affordable housing development experience of each respondent, as measured by number and value of affordable housing transactions within the past five (5) years. A description of (a) number of dwelling units and associated affordable dwelling units, (b) ownership structure and (c) financial structure resulting from each transaction should be included. A summary of the sources and uses of financing for each cited transaction should also be furnished.

“Affordable” is defined as housing serving households whose incomes are at or below 80% of Area Median Income (AMI). THDC recognizes that LIHTC developments further limit affordability to 60% of AMI, with the 80% meeting HUD’s definition for properties involved in Section 9 lending and operating subsidy provision.

#### **Knowledge and Skills of the Individuals to be Assigned: 20 points**

This criterion evaluates the knowledge and skills of the individuals who will actually be providing the various kinds of development, legal, and financial analysis services. The IQC will contain a Key Individuals clause requiring the individuals cited in the submittal and scored under this criterion, to be assigned and remain in place except with THDC approval.

This criterion will be scored based on the resumes’ to be submitted for individuals to be assigned to provide the various kinds of development, legal, and financial analysis services. It is important to provide information on the likely burden of each individual’s time, expressed in full-time equivalent (FTE) terms.

**Proposed Terms of THDC Participation:**

20 points

This criterion evaluates the prevailing approach of each respondent, as described in its submittal, with regard to collaborating with THDC. This collaboration will involve negotiating at least the following conditions:

- Ownership of properties developed
- Terms and amount of fee required by the respondent in the so-called Pre-Development phase
- Distribution of Developer Fee
- Distribution of Cash Flow

This criterion will be scored based on the degree to which each respondent is willing to maximize participation of THDC in various aspects including ownership, Developer Fee, and Cash Flow.

**Value Added Elements**

20 points

This criterion evaluates capabilities that provide value added to the development process. This could include, but is not limited to, such characteristics as linkages to lenders, syndicators, underwriters, providers of due diligence services and the like; skill in capacity-building, real estate strategy, development project management, redevelopment; affordable housing experience in Tennessee; and experience with financing tools available only to housing authorities (for example, the Rental Assistance Demonstration Program - RAD), and use of PHA instrumentalities for development purposes.

**Submission Format**

Packages should be submitted by 4:00 P. M. CST on February 4th, 2022 to Tennessee Housing Development Corporation, 125 Preston Street, Jackson, Tennessee, 38301; and electronic (PDF) submittals will be emailed to [jcephus@jacksonha.com](mailto:jcephus@jacksonha.com).

Proposals are to be submitted organized in the sequence shown below. The proposal must have a cover letter signed by a person authorized to bind the firm. The proposal must contain the address, office phone, cell phone, fax number, and email address for the primary contact person.

**Note that elaborate proposals are not expected.**

What is sought in the proposal is a simple, straightforward presentation of the experience and capabilities that qualify the Offeror to do the work (with particular reference to key individuals), proposed terms, and *value-added* capabilities. Therefore, submittals should be organized into four (4) sections:

- 1) Development Capabilities of the Team or Firm
- 2) Resumes of the Individuals to be Assigned to Transactions
- 3) Proposed Terms of THDC Participation
- 4) Value Added Capabilities

### **Selection Process**

THDC will structure an Evaluation Panel which will rank order all submittals using the Ranking Criteria described above. The Evaluation Panel may, at its option, interview one or more respondents depending on whether they are considered, according to the Ranking Criteria, to have a reasonable chance of eventually obtaining an award. The interviews would serve to clarify each interviewee's submittal and could lead to a refinement of the ranking by the Evaluation Panel.

The Evaluation Panel may, at its option, seek supplemental submissions from one or more interviewees, termed a "Best and Final Offer" or "BAFO". The "BAFO" would serve to further clarify each BAFO invitee's qualifications and could lead to a refinement of the invitee's technical ranking by the Evaluation Panel.

### **Notice to Proceed Process**

Award of an Indefinite Quantity Contract (IQC) under this solicitation will not automatically lead to a notice to proceed.

Instead, any actual work if any will result from the successful negotiation of one or more Task Orders. THDC envisions seeking to negotiate a separate Task Order for each transaction it intends to execute.

It is THDC's expectation that the successful respondent will use its proposed terms of THDC participation (as described in its submittal) as a framework, subject to further negotiations with THDC regarding each specific proposed transaction and/or task order. As applicable, specialized services from team members (such as legal and accounting services) will have firm-specific contracts tied to and financed by each transaction.

THDC also reserves the right to attempt to negotiate one or more Task Orders for Development Services not necessarily tied to specific transactions but that support the overall THDC affordable housing development effort.

THDC reserves the right to make multiple awards or no awards, at its option, under this solicitation.

**Non-Collusion Affidavit**

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn, deposes and says that:

- (1) He/she is \_\_\_\_\_ of \_\_\_\_\_, the contractor that has submitted the attached Proposal;
- (2) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- (3) Such Proposal is genuine and not collusive or sham; that said contractor 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 communication or conference, with any person, agreed to fix any overhead, profit or cost element of said price, or that of any other person or to secure any advantage against the Tennessee Housing Development Corporation or any person interested in the proposed contract and that all statements in said proposal of bid are true; and
- (4) Any professional fees arrived at during negotiations must be fair and proper and are not to be tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the contractor or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

My Commission Expires: \_\_\_\_\_

**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 an offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. 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 protester.

#### 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 ensure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]



# General Conditions for Non-Construction Contracts

## Section 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. 1/01/2014)

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

**Applicability. This form HUD-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.

=====

### 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

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.

#### 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

- Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;
- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
  - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
  - (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
  - (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
  - (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

## 5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
  - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.

- (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

## 6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

---

subcontractor responsible 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.