Procurement and Contracts Administration
3432 W 45th Street
West Palm Beach, FL 33407
www.pbchafl.org

Request for Proposals
PBCHA-RFP-2020-20
Green Physical Needs Assessment & Energy Audit
Issue Date: August 17, 2020
Closing Date and Time: September 21, 2020 at 2:00 P.M.

This communication serves to apprise you and your firm of the above Request for Proposal (RFP) for Green Physical Needs Assessment & Energy Audit. We invite you and your firm to respond to this RFP. Please review carefully all sections of the RFP, paying particular attention to the closing date and time listed above and within the body of the RFP.

All Inquiries For Information Should Be Directed To:
LaQuavial Pace, Contracts and Procurement Manager
Procurement Department
(561) 684-2160 ext. 107 (voice)
(561) 253-0706 (fax)
lpace@pbchafl.org

REQUEST FOR PROPOSAL (RFP)
PALM BEACH COUNTY HOUSING AUTHORITY

Issue Date: August 17, 2020

Title: Green Physical Needs Assessment & Energy Audit

Issuing Agency: Palm Beach County Housing Authority
3432 W 45th Street
West Palm Beach, FL 33407

Period of Contract: Until Completion

Sealed Bids Will Be Received Until September 21, 2020 until 2:00 P.M. For Furnishing the Services Described Herein.

All inquiries for information should be directed to: LaQuavial Pace, Contracts and Procurement Manager at lpace@pbchafl.org or (561) 684-2160 ext. 107. Please submit any questions to Contract Officer in writing no later than September 11, 2020 by 2:00 pm.

IF BIDS CAN BE MAILED OR HAND DELIVERED SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE.

In Compliance With This Request For Proposal And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offerors and Agrees To Furnish The Goods/Services In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation. The Undersigned Further Certifies That He/She Is Authorized To Sign This Document On Behalf Of The Submitting Firm.

_____ Date:_____
Name of Firm

_____ By:_____
Address Signature in ink

_____ Name:_____
City and State (Print or Type Name)

_____Zip Code: _____ Title:_____

FEI/FIN NO. _____ Phone: (_____)_____

E-mail: _____ Fax: (_____)_____

NOTE: Changes to this RFP may be issued in the form an addendum at any time prior to the due date and time for submitting bids. The Procurement Officer maintains a mailing list of all vendors that were provided copies of this solicitation (via vendor pickup, mail, fax or email). The Procurement Officer will send the addendum to any vendor who directly received a copy of the RFP from the Procurement Officer. Any vendor who did not directly receive a copy of the RFP from PBCHA is encouraged to visit PBCHA's web site regularly to learn of any changes to the solicitation (www.PBCHAFL.org) and contact the Procurement Officer to have their name added to the mailing list. PBCHA's purchasing regulations require each bidder to submit a signed copy of the addendum to the above delivery address by the bid due date and time or included with the firm's response to the solicitation.

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GREEN PHYSICAL NEEDS ASSESSMENT & ENERGY AUDIT

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ATTACHMENTS:

- Development Breakdown Report – Attachment A
- Federal Register/Vol. 76, No. 222/Thursday, November 17, 2011/Proposed Rule/Public Housing Energy Audits – Attachment B
- Federal Register/Vol. 76, No. 139/Wednesday, July 20, 2011/Proposed Rule/Public Housing Physical Needs Assessments – Attachment C
- HUD Form 5369-B Instructions to Offerors (Non-Construction) – Attachment D
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- Section III Clause and Minority Business Participation Commitment Form – Attachment G
- Statement of Compliance Training, Employment and Contracting Opportunities for Business and Lower Income Person – Attachment H
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SECTION I – GENERAL TERMS AND CONDITIONS

1.1 SUMMARY STATEMENT

The Palm Beach County Housing Authority, hereinafter referred to as "Authority," has a need for the provision of a contractor to perform a Green Physical Needs Assessment (GPNA) for properties located in Palm Beach County.

The intent of this Request for Proposals (RFP) is to award a contract to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the Authority.

Contractor shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities. No plea of ignorance by the contractor of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the contractor to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the RFP, will be accepted as a basis for varying the requirements of the Authority or the compensation to the contractor.

1.2 PROCUREMENT METHOD

A contract will be awarded in accordance with the Competitive Proposal procurement method per the Authority's Procurement Policy. The intent of this RFP is to award a contract to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the Authority.

1.3 CONTRACT TYPE

The contract that results from this RFP will be a Firm Fixed-Price contract. The Authority reserves the right to make multiple contract awards for any or all of the services required pursuant to this RFP.

1.4 CONTRACT DURATION

The contract resulting from this RFP shall be for a period of performance as defined by the RFP.

1.5 INDEPENDENT CONTRACTOR

It is expressly understood and agreed by both parties hereto that the Authority is contracting with the successful bidder as an independent contractor. The parties hereto understand and agree that the Authority shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful bidder under this contract and that the successful bidder has no authority to bind the Authority.

1.6 CONTRACTOR RESPONSIBILITY

Procurements shall be conducted only with responsible parties, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other Authorities), and financial and technical resources. If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

Contracts shall not be awarded to debarred, suspended or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) when necessary to protect the Authority in its business dealings.

1.7 CONDITIONS FOR SUBCONTRACTING AND APPROVALS

The Contractor may not subcontract any portion of the services provided under this RFP without obtaining the prior written approval of the Authority, which approval the Authority may withhold or condition in its sole and absolute subjective discretion. The Authority shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

1.8 MANDATORY CONTRACTUAL TERMS

By submitting a proposal in response to this RFP, a contractor, if selected for award, shall be deemed to have accepted the terms of this RFP, and any revisions thereto, and this RFP shall be made a part of the engagement contract with the successful contractor. Any contract resulting from a response to the RFP shall include any clauses required by Federal, State, Executive Orders and their implementing regulations.

1.9 INDEMNITY

Contractor covenants and agrees to fully indemnify and hold harmless, the Authority and the elected officials, employees, officers, directors, and representatives of the Authority, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the Authority, directly or indirectly arising out of resulting from or related to contractor's activities under this contract, including any acts or omissions of contractor, any agent, officer, director, representative, employee, consultant or subcontractor of contractor, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this contract, all without, however, waiving any governmental immunity available to the Authority under Florida law and without waiving any defenses of the parties under Florida law.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall promptly advise the authority in writing of any claim or demand against the Authority or contractor known to contractor related to or arising out of contractor's activities under this contract and shall see to the investigation and defense of such claim or demand at contractor's cost. The Authority shall have the right, at its option and at its own expense, to participate in such defense without relieving contractor of any of its obligations under this paragraph.

It is the express intent of the parties to this contract, that the indemnity provided for in this section, is an indemnity extended by contractor to indemnify, protect and hold harmless the Authority from consequences of the Authority's own negligence, provided however, that the indemnity provided for in this section shall apply only when the negligent act of the Authority is a contributory cause of the resultant injury, death, or damage, and shall have no application when the negligent act of the Authority is the sole cause of the resultant injury, death, or damage. Contractor further agrees to defend, at its own expense and on behalf of the Authority and in the name of the Authority, any claim or litigation brought against the Authority and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this indemnity shall apply, as set forth above.

1.9.1 PROFESSIONAL LIABILITY, COMMERCIAL GENERAL LIABILITY AND WORKERS COMPENSATION INSURANCE

Prior to the commencement of any work, contractor shall furnish copies of all required endorsements and an original completed certificate(s) of insurance to the Authority, which shall be clearly labeled "*Green Physical Needs Assessment.*" The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The Authority will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the Authority. The Authority shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the Authority. No officer or employee shall have authority to waive this requirement. The contractor shall provide the Authority with current certificates of insurance for all coverage required by the terms of this contract, naming the Palm Beach County Housing Authority and Banyan Club Apartment Holding Corp. and the U.S. Department of Housing and Urban Development as Additional Insured on all Commercial or Comprehensive General Liability policies.

The Authority reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by Authority's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will the Authority allow modification whereupon the Authority may incur increased risk.

A contractor's financial integrity is of interest to the Authority; therefore, subject to contractor's right to maintain reasonable deductibles in such amounts as are approved by the Authority, contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Florida and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

Type	Amount
Workers Compensation Employer's Liability	Statutory $1,000,000/$1,000,000/$1,000,000
Professional Liability	$1,000,000
Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Broad form property damage, to include fire legal liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage (f) $50,000
Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $2,000,000 per occurrence

The Authority shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the Authority, and may require the deletion, revision, or modifications of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the

Authority at the address listed below within 10 days of the requested change. Contractor shall pay any costs incurred resulting for said changes.

Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the Authority and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the Authority, with the exception of the workers' compensation and professional liability policies;

- Provide thirty (30) calendar days advance written notice directly to the Authority of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to the Authority. The Authority shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this agreement.

It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the Authority for liability arising out of operations under this contract.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

1.10 <u>SECTION 3</u>

If the successful bidder or a subcontractor of the successful bidder has the need to hire new persons to complete their contract responsibilities, they are required to direct their newly created employment and/or subcontracting opportunities to Section 3 residents and business concerns. In addition, the successful bidder must notify the recipient agency about their efforts to comply with Section 3 and submit any required documentation.

Section 3 Business Concern means a business concern that is (1) 51 percent or more owned by Section 3 residents; or (2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of ‘‘Section 3 business concern.”

Section 3 resident means: (1) A public housing resident; or (2) An individual who resides in Palm Beach County and who is: (i) A low-income person, as defined to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by HUD, with adjustments for smaller and larger families; or (ii) *A very low-income person,* as defined to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by HUD with adjustments for smaller and larger families.

1.11 BEST AVAILABLE DATA

All information contained in this RFP is the best data available to PBCHA and its affiliates at this time. This information is provided in this RFP is not intended as representation of binding legal effect. This information is furnished to assist respondents in preparing a response, PBCHA assumes no liability for any errors or omissions.

1.12 ADDITIONAL FORMS

The Contractor and its Sub-contractors shall complete any forms requested by the Authority not currently part of this Section or the RFP.

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SECTION II – SCOPE OF SERVICES

2.1 PURPOSE

The Palm Beach County Housing Authority (PBCHA) and its affiliates is requesting sealed proposals from licensed, qualified professional consultants to perform a Green Physical Needs Assessment (GPNA) and Energy Audit. The (GPNA) and Energy Audit must be conducted in accordance with U.S. Department of Housing and Urban Development (HUD) required criteria.

HUD regulations require Public Housing Authorities (PHAs) to conduct a Physical Needs Assessment (PNA) and an Energy Audit (EA) of its properties every 5 years. In the near future, HUD is expected to require that the PNA be expanded to integrate with an energy audit, and it will be required to be performed using HUD's PNA tool software, also known as the "PNA tool". The software and user guide are currently available from the HUD Capital Fund web page: http://portal.hud.gov/hudportal/HUD?src=/program_office/public_indian housing/program/ph/capfund/gpnatool .

The GPNA and Energy Audit will consist of a physical inspection of a sampling of all identified properties listed in Appendix A, Development Breakdown Report.

All identified physical improvements will meet or exceed the HUD mandatory standards, and those established by local health, safety, and building codes. At a minimum, the goal of the GPNA is to identify and provide a description of all physical improvements that will be required to bring the property back to a level comparable with "as built," to the degree reasonably possible based on available components and building age. The effort should provide the Authority with the information necessary to ensure long term physical viability and in a manner suitable for planning and budgeting purposes. Data shall be in a format suitable for HUD reporting requirements.

2.2 MINIMUM QUALIFICATIONS

The GPNA provider shall be experienced in performing residential assessments and have knowledge of building systems, health and safety issues, structural issues, energy efficiency and green construction, and cost estimating, including:

1) 5+ years of experience with facility inspection/assessment, including building systems, roofs, structural components, living spaces, plumbing, electrical, HVAC, building envelope, emergency systems, elevators, community and program spaces, offices, and grounds and other amenities.
2) Demonstrated track record of other contracts or similar services.
3) 5+ years of experience with cost estimating.
4) Knowledge of applicable local and state building codes and ordinances, including but not limited to the Florida State Energy Conservation Code Book Sections 405 and 506.
5) Knowledge of energy efficiency/green practices.
6) Knowledge of Section 504 and American with Disabilities Act.

7) Working knowledge of computer technology and systems.

The Energy Audit provider shall be experienced in the performance of residential building energy audits and shall have:

1) 5+ years of experience with performance of energy audits that consist of reviews of building systems to evaluate and identify projected costs, savings, and payback periods related to implementing any of a variety of potential energy conservation measures.
2) 5+ years of experience with performance of energy audits that identify green measures, or measures that do not result in energy savings, but which instead result in environmental benefits, such as improving indoor air quality.
3) Hold a current, valid certification from a state energy audit certifying agency for the state where the property is located or a nationally recognized energy audit certification provider, or hold other certification acceptable to HUD or expressed in HUD guidance.
4) Demonstrated track record of other contracts or similar services.
5) Working knowledge of computer technology and systems.

Contractors whose response to this RFP does not demonstrate that contractor meets these criteria will be eliminated without further evaluation.

2.3 SCOPE OF SERVICES

THE GREEN PHYSICAL NEEDS ASSESSMENT WILL CONSIST OF THE CONTRACTOR PROVIDING THE FOLLOWING SERVICES:

1) Follow the requirements and guidelines established by HUD which describes the required approach to GPNAs.

2) Perform interviews as needed with knowledgeable people as to the existing documents, plans, building histories, maintenance records, REAC scores, Modernization Department apartment inspection results, etc. of each property.

3) Identify all development components that will be part of the assessment.

4) Establish a sampling methodology for units that will include 25 percent of all units per property, with the exception that 100 percent of Section 504 units will be evaluated. The sample should also include at least 1 of each apartment size in each building type. Units must be distributed so that a variety of conditions will be evaluated (top floor units, corner units, areas where weathering occurs, etc.).

5) Sample 100 percent of common lobby areas and corridors.

6) Establish a plan to inspect 100% of site, all systems, paving and grading, building exteriors/envelope, finishes, program areas, offices, utilities, laundry facilities, mechanical areas, sprinklers, emergency systems, security, crawl spaces, playgrounds, etc. Please note if individual units have individual HVAC, etc., then these will be part of the 25 percent sample, except in cases where there may be typical components which should be assessed individually.

7) As part of the assessment, each individual component will receive an estimate of Expected Useful Life (EUL).

8) As part of the assessment, each individual component will be provided with a replacement cost on an individual component and for a total of those components. (Ex: per window and per window multiplied by all similar windows)

9) Each area that is designated as part of Section 504 or American with Disabilities Act (ADA) requirements will be inspected to assure the components are functioning per their purpose. Note a regulatory compliance review is not required for these units or areas, just a functionality and EUL assessment.

10) Upon completion of the inspections, a report will be provided to the Authority in narrative and spreadsheet forms that meets HUD and Agency requirements and will be in both paper and electronic format per their (HUD) requirements.

11) The assessment is of observable components and destructive testing is not anticipated and would only occur with prior Authority approval.

12) Any deficiencies that are identified and which could have an impact on health and safety will be brought to the attention of the Authority immediately.

GREEN PHYSICAL NEEDS ASSESSMENT REPORT PREPARATION

1) Upon completion of the inspections, the Contractor will provide a draft report to the Authority in narrative and spreadsheet form that meets HUD and Authority requirements and will be in both paper and electronic format per HUD requirements, including GPNA Tool. The draft report will contain the Green Physical Needs Assessment results including Energy Conservation Measures (ECM) from energy audits, and will be submitted to the Authority for review and comments. The report shall include the following topics.
    a. Any repair items that represent an immediate threat to health and safety.

    b. Any Section 504 work items, energy conservation measures, and any environmental hazard (asbestos/lead based paint) items.

    c. Separate HUD Form 52828, Green Physical Needs Assessment for each

asset management property/development assessed. Attach to each report color photographs and a detailed narrative describing the property's exterior and interior physical elements and condition, including architectural and structural components and mechanical systems.

d. Executive Summary

2) The Contractor will prepare a final report using input provided by the Authority.

THE <u>ENERGY AUDIT</u> WILL CONSIST OF THE CONTRACTOR PROVIDING THE FOLLOWING SERVICES:

1) Follow the requirements and guidelines established by HUD Federal Register/Vol. 76, No. 222/Thursday, November 17, 2011/Proposed Rule/Public Housing Energy Audits.

2) An energy audit shall analyze utility consumption, review property and building data, and evaluate Core ECMs that could result in cost-effective energy and water conservation. At the option of the Authority, an energy audit may also evaluate Advanced ECMs and green measures.

3) Energy audits for public housing shall at a minimum consider the Core ECMs and provide a comprehensive assessment report that includes:

a. A summary review of the findings of any previous energy audits;

b. An assessment of the existing property physical components affecting energy consumption, including an evaluation of the performance and condition of components within the Core ECM categories;

c. An assessment of building operations, maintenance, and resident education as it relates to energy conservation and green practices;

d. Analysis of fuel, electricity, and water bills and usage for at least the PHA-held accounts for trend analysis and industry benchmarking, and for tenant-held accounts where usage information is in the possession of the Authority;

e. Identification and evaluation of all energy conservation measures considered, which shall include at least those that have the potential for cost effective implementation;

f. Categorization of recommended energy conservation measures into improvements with payback periods of 12 years or less, greater than 12 years, and less than or equal to 20 years, and more than 20 years;

g. Projected cost of ECMs, and when a standard (less energy-efficient) building component is available, the projected cost of the standard component and the incremental cost of the ECM;

h. Projected annual savings in water consumption;

i. Projected annual energy consumption savings in the appropriate unit of measurement (*i.e.*, kilowatt hours, British Thermal Unit (BTU), gallons per cubic feet etc.) for recommended ECMs;

j. Projected annual savings in dollars for recommended ECMs;

k. Expected useful life of all ECMs and green measures;

l. Identification of life cycle costs or savings of ECMs and green measures, including disposal costs and maintenance costs; and

m. Energy auditor recommendations for optimal sequencing of ECM implementation for maximum benefit.

4) The energy audit will identify related physical work items that must be implemented at the same time to assure that a specific ECM can provide the maximum savings calculated, as well as to maintain health and safety (*e.g.*, the installation of an energy-efficient boiler may require that new, wider distribution lines be installed or rerouted to maximize the potential savings that could be realized from the boiler, and a weatherization project may require adjustments to ventilation systems to maintain adequate fresh air exchange). These complementary activities should be viewed as part of an improvement package required to achieve the overall energy savings.

5) Data and findings from prior energy audits that are deemed reliable and remain valid may be carried over to subsequent audits.

6) Where ECMs would replace existing components at the end of their useful life, the payback period shall be calculated by dividing the incremental cost of replacement with an ECM as compared with a standard component, by the projected annual savings of the ECM as compared with a standard component. Where ECMs would replace existing components before the end of their useful life (early replacement), the payback period calculation shall be modified to add the value of the remaining useful life of the component being replaced to the incremental cost of the ECM. This payback period calculation shall be modified in

a manner acceptable to HUD. Where ECMs would improve a project by adding new systems or new functionality, such as in the case of energy-generating equipment, the payback period shall be calculated by dividing the total cost of the ECM by the projected annual savings.

7) The energy audit shall differentiate between activities that are routine operating and maintenance activities and ECMs that are capital expenditures and can be financed with capital funds. Cleaning or changing air filters on certain mechanical equipment is a routine operational maintenance function that may result in energy conservation but is not an eligible capital expense.

8) For purposes of this part, the potential for cost-effective implementation of an energy conservation measure must be evaluated when the payback period is equal to or less than the estimated useful life of the component, or 12 years, whichever is less. Complete lifecycle cost analysis to refine cost impacts of energy conservation measures is recommended for those measures initially determined to be cost-effective.

ENERGY AUDIT REPORT PREPARATION

The energy auditor shall report on a project-level basis. The energy auditor shall submit a baseline report to the Authority and may submit an expanded report, as noted below. The baseline report shall include a recommendation as to whether the Authority should complete more extensive engineering reviews to determine whether consideration of Advanced ECMs or others would be warranted. The energy auditor's recommendation shall be based upon the potential lifecycle cost savings of the ECMs, the complexity associated with implementing the ECMs, and the age and condition of the project as a whole. If the Authority directs the energy auditor to complete additional analysis on these ECMs, the energy audit shall be expanded to include that analysis.

TRAINING AND TELEPHONE SUPPORT

The Contractor shall provide for:

1) Sixteen (16) hours of training.
2) Thirty (30) hours of telephone & on-line support with the module.
3) Hourly rate for support after the support time has been depleted.

2.4 DELIVERABLES AND SCHEDULE

Deliverables:

1. Hard copy and one (1) electronic copy shall be submitted by the Contractor in a "flash or thumb drive" or compact disk (CD) of the Draft Report of the Green Physical Needs Assessment Results and Energy Audits.

2. Hard copy and one (1) electronic copy shall be submitted by the Contractor in a "flash or thumb drive" or compact disk (CD) of the Final Report of the Green Physical Needs Assessment Results and Energy Audits.

3. The Contractor will provide the Authority with a copy of the HUD's Green Physical Needs Assessment Tool (GPNA) with all the Agency's PIC Data, GPNA Inspections, Comprehensive Cost Library, Replacement Needs, Refurbishment Needs, Sustainability Needs, Accessibility Needs, and Marketability Needs installed, if necessary.

Schedule:

1. The Draft Version of Physical Needs Assessment and Energy Audits Results are to be received by the Authority within ninety (90) days after the effective date of Notice to Proceed (NTP). The Notice to Proceed will be issued 5 days after contract signing.

2. The Final Version of Physical Needs Assessment and Energy Audit Results are to be received by the Authority within thirty (30) days after receipt of comments on the "Draft Version" of the PNA.

3. It is agreed that this schedule is subject to change based on HUD requirements that may be imposed due to executing a GPNA and/or Energy Audit Final Rule, and that schedule changes will not be unreasonable.

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SECTION III – EVALUATION FACTORS

3.1 SELECTION CRITERIA

Selection of a firm to render services pursuant to this RFP will be made in accordance with HUD and the Authority's procurement regulations. All responsive proposals received by the time and date specified in this RFP shall be evaluated by the RFP Evaluation Panel based on the following criteria and weights:

SELECTION CRITERIA	MAXIMUM POINTS
Experience conducting Green Physical Needs Assessments and Energy Audits (see Section 2.2 Minimum Qualifications).	30
Consultant qualifications, qualifications of principal(s), including required certifications (see Section 2.2, Minimum Qualifications).	30
Fixed Price. Total fixed price for services to be provided shall be described, including hourly rates by positions, total labor, travel expenses and training and telephone support.	30
Timeline for completion.	5
Palm Beach County Office Location.	5
TOTAL	**100**

3.2 PROPOSAL EVALUATION PROCEDURE

The Authority will use the following procedure to evaluate the Proposals and select a successful Offeror:

A. All proposals received within the established deadline that meet the submission requirements of the RFP will be evaluated by the RFP Evaluation Panel.

B. An RFP Evaluation Panel consisting of three (3) members will be established. The RFP Evaluation Panel shall consist of senior Authority employees.

C. The Authority's Contracting Officer will forward proposals that comply with the submission requirements to the RFP Evaluation Panel. Each such Proposal will be evaluated by the RFP Evaluation Panel using the selection criteria set forth in

Section 3.1, above, and scored on the basis of the information contained in the proposal. Factors not specified in the RFP shall not be considered. Each proposal will be considered on its own individual merit and not analyzed in comparison with other proposals. Each panel member assigning points shall be asked to provide a written narrative justification to support the rating given. The sum of the points assigned to each proposal by an individual panel member shall be known as the Offeror's "Raw Score." The Evaluation Panel chairperson shall fill out a composite worksheet displaying each panel member's Raw Score for each proposal. The Evaluation Panel will determine if negotiations with Offerors are necessary. Scores are subject to the outcome of negotiations.

D. The Evaluation Panel chairperson shall then average all the panel members' Raw Scores for each Offeror and post these numbers as the "Final Score" for each Offeror.

E. A competitive range will be established based on the rankings of the Offerors and the proposals will be classified as acceptable or unacceptable. The Authority reserves the right to establish a minimum score for the competitive range. Offerors whose proposals are classified as unacceptable shall be excluded from the remainder of the selection process and notified accordingly. Offerors whose proposals are classified as acceptable shall be ranked in order of highest final score. Award shall be made the Offeror with the highest final score.

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SECTION IV – FORMAT AND CONTENT OF PROPOSAL

4.1 POINT OF CONTACT

The sole point of contact in the Authority for purposes of this RFP prior to the award of a contract is the Authority's Modernization Coordinator. All contact relative to this RFP should be made in writing and directed to:

LaQuavial Pace, Contract and Procurement Manager
Palm Beach County Housing Authority
3432 W 45th Street
West Palm Beach, FL 33407
Telephone: (561) 684-2160 ext.107
E-mail: lpace@pbchafl.org

4.2 REQUEST FOR INFORMATION

Any prospective bidder desiring an explanation or interpretation of this RFP must request in writing, e-mail or regular mail, such request for information no later than seven (7) days prior to the proposal due date. Requests shall be directed to the point of contact at the address listed in Section 4.1, herein. Any information given to a prospective bidder concerning the solicitation will be furnished promptly to all prospective bidders if that information is necessary in submitting an offer, or if the lack of it would be prejudicial to any other prospective bidder. Oral explanations or instructions given before the award of the contract will not be binding on contract performance.

4.3 FORMAT AND CONTENT OF PROPOSALS

FIRMS INTERESTED IN RESPONDING TO THIS RFP MUST SUBMIT THE FOLLOWING INFORMATION, IN THE ORDER SPECIFIED BELOW. BE SURE TO ADDRESS ALL SELECTION CRITERIA (SECTION 3.1) IN YOUR RESPONSE.

TAB 1: Summary of proposal contents and Executive Summary.

TAB 2: Evidence that consultant meets minimum qualifications. Contractor is encouraged to submit relevant and concise information regarding their experience and qualifications to perform the requested services. A minimum of three (3) PHA references must be provided. Names and qualifications of staff persons that will be responsible for providing services to the Authority and identity of the staff person who will be the primary contact. Provide a resume for each staff person who will be working on the project.

TAB 3: Green Physical Needs Assessment: A detailed description of the services that will be provided and information outlining the proposed approach and methodology.

TAB 4: Energy Audits: A detailed description of the services that will be provided and information outlining the proposed approach and methodology.

TAB 5: Timeline for completion.

TAB 6: Required Energy Audit certification.

TAB 7: Fixed Price. Total fixed price for services to be provided shall be described including hourly rates by positions, total labor, travel expenses and training and telephone support.

TAB 8: Completed Attachment-D: Certifications and Representations of Offerors Non-Construction Contract (form HUD-5369-C), and completed Attachment-H: Previous Participation Certificate (form HUD-2530) if applicable.

4.4 GENERAL INFORMATION

A. Prepare your proposal in a practical, legible, clear, and straightforward manner.

B. Answer completely. Refer to Section III, Evaluation Factors, for the selection criteria that will be used to evaluate proposals. Any omissions must be completely explained and justified.

C. The Proposal shall be signed by an official authorized to bind the company.

D. Proposals submitted are irrevocable for 90 days following the closing date. This period may be extended at the Authority's request only with the bidder's written consent.

E. Unless there is no need for negotiations with any other Offerors, negotiations shall be conducted with Offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such Offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise solicitors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of the conformance to the solicitation requirements. No Offeror shall be provided any information about any other Offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other

proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt or proposal revisions based on negotiations.

F. Any actual or prospective contractor may protest the solicitation or award of a contract for the serious violations of the principles of this statement. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after contract award or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may at his discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

G. Cancellation of solicitations: This Request for Proposal may be canceled before offers are due if: The Authority no longer requires the supplies, services or construction; the Authority can no longer reasonably expect to fund the procurement; proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.

A solicitation may be canceled and all bids or proposals that have already been received may be rejected if: the supplies, services, or construction are no longer required; ambiguous or otherwise inadequate specifications were part of the solicitation; the solicitation did not provide for consideration of all factors of significance to the Authority; prices exceed available funds; there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or for good cause of a similar nature when it is in the best interest of the Authority.

The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.

A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any solicitation or future procurement of similar items.

If all otherwise acceptable proposals received in response to an RFP are at unreasonable prices, or only one proposal is received and the price is unreasonable, the Authority shall cancel the solicitation and either: a) Re-solicit using a request for proposals; or b) Complete the procurement by using the competitive proposals method (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method (when

only one proposal is received at an unreasonable price); provided, that the Contracting Officer determines in writing that such action is appropriate, all Offerors are informed of the Authority's intent to negotiate, and each responsible Offeror is given a reasonable opportunity to negotiate.

4.5 AMENDMENTS TO RFP

If it becomes necessary to revise this RFP, amendments will be provided to all prospective Offerors that picked up and signed for this RFP or otherwise are known by the Authority to have obtained this RFP. Amendments will be posted at http://www.pbchafl.org/ (It is the responsibility of the offeror to check this website throughout the open RFP period). Offerors shall acknowledge receipt of any amendments to this solicitation as defined in Section 3 of Attachment-C, Instructions to Offerors – Non-Construction (form HUD 5369-B). The Authority will not be responsible for incorrect proposals due to Offeror's noncompliance with amendments.

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SECTION V – PROPOSAL SUBMITTAL

5.1 FORM OF SUBMITTAL

Submit one (1) clearly labeled original and three (3) copies of your proposal as described in Section IV, Format and Content of Proposal, in a sealed package, addressed as follows:

Palm Beach County Housing Authority
3432 W 45th Street
West Palm Beach, FL 33407

Attention: LaQuavial Pace, Contracts and Procurement Manager
PROPOSAL - DO NOT OPEN
GREEN PHYSICAL NEEDS ASSESSMENT & ENERGY AUDIT
SOLICITATION NO: PBCHA-RFP-2020-20

5.2 DELIVERY OF PROPOSAL

The proposals shall be properly addressed as shown in 5.1, and delivered or mailed so that the proposal is received on or before the response date and time.

Requests for extension of this date or time shall not be granted. Bidders mailing bids should allow sufficient mail delivery time to ensure timely receipt by the Authority; please note that daily mail through the U.S. Post Office may arrive at the Authority after 4:00 PM. Bids received by the Authority after the closing time and date will not be considered, unless conditions apply per Section 6 of form HUD-5369-B, "Instructions to Offerors – Non-Construction." Bids delivered by e-mail or facsimile shall not be considered. The Authority does not accept responsibility for late or mis-delivered proposals.

5.3 RESPONSE DATE AND TIME

The response date and time is:

Monday, September 21, 2020 at 2:00 PM

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ATTACHMENT A

Development Breakdown

Attachment A – Development Breakdown

Report Residential Number of Units

Breakdown:

	Bedroom Size						Elevator	504 Units Bedroom Size						Total Units per Property
Property Name	**0**	**1**	**2**	**3**	**4**	**5**		**0**	**1**	**2**	**3**	**4**	**5**	
Dyson Circle Apartments		**38**	**12**	**30**	**36**	**6**	**2**		**12**					**134**
Schall Landing Apartments		**2**	**33**	**27**	**8**				**3**			**2**		**75**
Seminole Circle Apartments			**32**	**27**	**10**				**5**	**1**				**75**
Drexel House Apartments		**91**					**2**		**9**					**100**
Total Units		**131**	**77**	**84**	**54**	**6**	**4**		**29**	**1**		**2**		

	Bedroom Size							504 Units Bedroom Size						Total Units per Property
Property Name	**0**	**1**	**2**	**3**	**4**	**5**		**0**	**1**	**2**	**3**	**4**	**5**	
Banyan Club Apartments		**60**	**88**											**148**
Total Units		**60**	**88**											

Other:

Banyan Club Apartments: Office with Community Room, Detached Maintenance Facility and (1) Laundry Room
Drexel House Apartments: Office with Community Room, Maintenance Facility, Garbage Shute, (8) Laundry Rooms
Dyson Circle Apartments: Office with Community Room, Maintenance Facility and (2) Laundry Rooms
Schall Landing Apartments: Office with Community Room, Maintenance Facility
Seminole Circle Apartments: Office with Community Room, Maintenance Facility

ATTACHMENT B

Federal Register/Vol. 76, No. 222/Thursday, November 17, 2011/Proposed Rule/Public Housing Energy Audits

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR–5507–P–01]

RIN 2577–AC84

Public Housing Energy Audits

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise HUD's energy audit requirements applicable to HUD's public housing program for the purpose of clarifying such requirements, as well as identifying energy-efficient measures that need to be addressed in the audit and procedures for improved coordination with physical needs assessments. In addition, the rule moves the energy audit requirements to a different part of HUD's title of the Code of Federal Regulations.

DATES: *Comment Due Date:* January 17, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Riddel, Director, Office of Capital Improvements, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000; *telephone number* (202) 402–7378 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Because of the increasing importance of energy conservation, HUD is taking a more proactive approach toward encouraging energy efficiency in its housing programs. In order for public housing agencies (PHAs) to improve their capital planning processes, HUD determined that there is a need for stronger energy audit data.

Under existing regulations, all PHAs must complete an energy audit for each PHA-owned project under management at least once every 5 years. The existing regulations also require that standards for energy audits be equivalent to state standards. However, state standards for energy audits are variable or nonexistent (see, for example, the map of state energy codes by the Department of Energy at *http://www.energycodes.gov/states/*). Accordingly, it is HUD's view that energy audit standards present an area where additional guidance will produce more useful results.

In this rule, HUD proposes the energy conservation measures (ECMs) that a PHA must consider at a minimum when performing an energy audit. This rule also proposes certain minimum qualifications for energy auditors procured by PHAs to perform energy audits.

While this rule proposes ECMs that must be considered, as well as certain standards for energy audits and minimum qualifications for energy auditors, HUD specifically seeks public comment on whether there are other standards and qualifications that HUD should consider adopting.

HUD will be publishing separately a proposed rule on physical needs assessments (PNAs) that will require the completion of PNAs in conjunction with energy audits in order to integrate the audit properly with the PNA. The PNA rule proposes to require data derived from the energy audit to be included in a PNA, to facilitate the identification of cost-effective ECMs. ECMs also include water-related efficiency measures. If a PNA and energy audit are performed together, there could be cost savings to PHAs to the extent that many of the same components are reviewed for each. Through this rule and the PNA rule, HUD seeks to have PHAs move toward coordinating the performance of PNAs and energy audits with each other, to maximize the effective use of this type of information.

HUD specifically seeks comments from PHAs and other interested parties as to an appropriate time frame for performance and submission requirements.

Coordination between an energy auditor and PNA provider is considered to be important in the capital improvement decision-making process. As the consulting industry that services PHAs and the public housing program is introduced to coordinated or integrated PNAs and energy audits, the costs associated with performing both of these assessments may be reduced. Since energy conservation products are often newer technology whose prices tend to be reduced over time and because utility costs are more volatile than general costs, 2 years is considered by HUD to be the maximum time frame between the performance of an energy audit and a PNA that maintains cost and pricing alignment. In addition, coordination between an energy auditor and PNA provider is considered to be important for the evaluation of technical issues in the selection of component products and the sequencing of improvements. Coordination of the timing of these activities may reduce the possibility of additional cost to the PHA for consulting services outside of the contract cycle of professional providers.

HUD is interested in receiving feedback concerning the feasibility of requiring PHAs to coordinate the performance of energy audits and PNAs. HUD specifically invites comment on the potential benefits, feasibility, or challenges of preparing energy audits in conjunction with PNAs. HUD also specifically seeks public comment on how quickly energy audit information becomes obsolete for cost projection and strategic planning in a PNA.

II. This Proposed Rule

A. Overview of Changes

This proposed rule moves the regulations pertaining to energy audit requirements, which are currently codified in 24 CFR 965.302, to 24 CFR 905.300(b)(10)–905.300(b)(15), and clarifies HUD's requirements for energy audits performed in conjunction with PNAs.

Also through this rule, HUD proposes to modify these regulations to:

(1) Define an energy audit, ECMs, and ''green'' measures.

(2) Establish content and submission requirements for an energy audit, and facilitate the integration of the energy audit with the PNA that PHAs are required to conduct every 5 years. While many states have not adopted auditing standards (see *http://www.energycodes.gov/states/*), the PHA would still be required to comply with standards adopted for their state, where applicable. HUD is not at this time prescribing a specific energy audit form, so long as the required data is collected, and so long as energy auditing systems and formats are available from a number of sources, including the Department of Energy, Building Performance Institute (BPI), and the Residential Energy Services Network (RESNET).

(3) Define Core ECMs that must be considered and require further evaluation of those ECMs that have the potential for cost-effective implementation. Core ECMs generally represent commonplace conservation measures that have demonstrated track records of reducing energy and water consumption in a cost-effective manner and that can be routinely evaluated by an energy auditor. This rule defines Core ECMs in broad categories. Examples within the categories include: Changes to the building envelope such as insulation; energy-efficient mechanical equipment; low-flow water devices and other water conservation measures; energy-efficient lighting systems, including compact fluorescent lighting and motion controls; and Energy Star-certified appliances. As technology advances over time, HUD will provide further examples of ECMs in guidance.

(4) Recognize Advanced ECMs that may be addressed. PHAs are encouraged, but not required to consider Advanced ECMs, which represent alternative measures comprising advanced or experimental technology which, compared to the Core ECMs, can be more challenging to evaluate and implement. These are not alternatives that auditors would normally consider unless directed to do so, or unless there were local precedents that caused the measures to become commonly accepted local alternatives. Examples of Advanced ECMs include renewable energy technologies, such as solar and geothermal power, and green construction.

(5) Require that ECMs identified in the energy audit as cost-effective be organized into those with: Paybacks of 12 years or less, paybacks of greater than 12 and less than or equal to 20 years, and paybacks of more than 20 years. The 12-year and 20-year benchmarks correspond with the benchmarks for an Energy Performance Contract (EPC).

(6) Establish minimum qualifications for an energy auditor, and

(7) Provide for extension of the requirement to complete an initial energy audit in instances where industry capacity is a constraint.

This rule would not require PHAs to implement particular ECMs; however, the energy audit must provide PHAs with accurate information about ECMs for the PHAs to consider. It is HUD's position that when PHAs capture the cost-effectiveness data for ECMs, PHAs will implement the measures more frequently.

The proposed rule would require payback analysis for Core ECMs. Current guidance for a payback analysis is contained in the HUD publication ''Energy Conservation for Housing—A Workbook,'' dated September, 1998 (available at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/phecc/resources*), and this proposed rule would clarify and modify that guidance. The payback analysis in the proposed rule would recognize that for a replacement component, the incremental cost of a more efficient component should be used to determine cost-effectiveness. For example, if an Energy Star appliance costs $100 more than a standard appliance with the same estimated life and the component has to be replaced, in order for the Energy Star appliance to be cost-effective, it must cost $100 less to operate than the standard component over the designated payback period.

The result of a payback analysis would be considered in the context of this rule as a threshold for further evaluation of an ECM. A more detailed cost analysis may be conducted that includes complete lifecycle cost analysis; however, the baseline audit requires only that those lifecycle costs be generally identified, not that they be subjected to detailed cost analysis.

The proposed rule would not prevent PHAs from pursuing more advanced utility conservation and green measures, at their option. In making the distinction between Core ECMs and Advanced ECMs, HUD is recognizing extensive opportunities in public housing for simple cost-effective energy conservation improvements, while acknowledging that more advanced work may be possible in certain circumstances. The engineering and implementation costs of advanced technologies often make them impractical outside of the context of a comprehensive redevelopment, remodeling, or incentivized program, such as an EPC or targeted grant program. HUD's view is that it is preferable to concentrate limited funding on improvements that have been proven to be generally cost-effective and broadly available to PHAs. PHAs have different priorities and local requirements with respect to utility conservation and green improvements. Many improvements, while not providing monetary cost effectiveness, provide benefits in the form of an improved living environment for residents or a contribution to broader societal environmental goals. HUD recognizes those benefits, and encourages PHAs to consider a wide variety of measures. HUD's Office of Healthy Homes and Lead Hazard Control and the Environmental Protection Agency's Indoor Air Quality Standards, as well as Office of Public and Indian Housing (PIH) notices on green building, are useful resources for a PHA that is considering a program of green improvements.

While it is HUD's position that the performance of the energy audit at the same time as the PNA would be more efficient for PHAs, particularly in circumstances where a single provider can perform both services, HUD also recognizes that circumstances may not allow a PHA to perform both services together. Accordingly, this rule does not require the performance of the energy audit simultaneously with the PNA. HUD recognizes circumstances where an energy audit would be performed outside the 5-year cycle, such as an energy audit performed in relation to an EPC or another development project, or

to meet another HUD requirement. As in the case of a PNA, the first energy audit under the new final rule resulting from this proposed rule is likely to be the most costly and require the most intensive effort, with subsequent updates benefitting from the information collected in prior audits. HUD also recognizes that the capacity of the energy auditing industry might be limited in some areas, and allows for a delay in the performance of the audit in cases where local shortages in these professional services exist.

The rule does not propose to require an investment grade energy audit such as one that might be prepared for an energy performance contract or in order to evaluate a financial transaction. HUD is especially interested in receiving comments about appropriate energy audit requirements, as well as certification requirements and professional standards for energy auditors. HUD is interested in hearing from both the energy auditing industry and entities that have experience managing a real estate portfolio and have integrated energy audits into their planning process. HUD is also interested in receiving comments about any multiple purposes for which portfolio managers have used energy audits. HUD also invites comments about the proposed categories of ECMs that should be addressed in an energy audit, and conservation measures that are appropriate for use on a nationwide basis. HUD further invites comments from public housing and other interested parties on the needed capacity for performing integrated energy audits and PNAs.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

Reporting and Recordkeeping Burden:

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
905.300(b)(10) [1]	620	1	65	40,300
905.300(b)(14) [2]	620	1	25	15,500
905.300(b)(14)(vii) [3]	62	1	45	2,790
900.300(b)(15) [4]	62	1	45	2,790
Total Paperwork Burden for the New Rule				61,380
Total Burden from Previous Rule (24 CFR 965.302) [5]				29,440
Total additional burden as a result of this rule				31,940

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permittingelectronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–5361) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, *Fax number:* (202) 395–6947, and

Collette Pollard, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Regulatory Planning and Review

OMB reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). This rule was determined to be a

[1] Burden of energy audit performed once every 5 years for each of 3,200 PHAs, including data collection and site inspection.

[2] Burden of analysis and comprehensive report.

[3] Optional burden of expanded analysis as directed by PHA, estimated to be exercised by 10 percent of respondents.

[4] Optional burden of considering green measures as directed by PHA, estimated to be exercised by 10 percent of respondents.

[5] OMB Control No. 2577–0062.

''significant regulatory action,'' as defined in 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

This proposed rule would revise HUD's energy audit requirements applicable to HUD's public housing program for the purpose of clarifying such requirements and defining energy-efficient measures and audit procedures. It is estimated that the cost burden to PHAs could be up to $40 million every 5 years or $8 million annually. Notwithstanding the relatively modest cost to perform energy audits, there is a potential for PHAs to realize substantial savings. Each year, about $1.2 billion is budgeted for utilities for housing authorities. Assuming that this rule is effective and energy audits are successfully translated into energy savings, where, for example, only 10 percent efficiency and cost were achieved, it would translate into about $120 million in budget savings annually that could be affected to other uses. When tenant-paid utilities are included, the annual savings may be up to $173 million under the same conditions. Notwithstanding the potential benefit, this proposed rule is not economically significant as defined by Executive Order 12866 and OMB Circular A–4.

The potential costs of the rule are as follows. The new Energy Audit Rule does not change the current requirement that all PHAs perform an energy audit at least once every 5 years. However, there will be an economic impact to the extent that the new standards for performance exceed the standard of performance for the state in which each PHA is located.

The cost to perform the enhanced energy audit can be approximated using existing examples and HUD's own experience. HUD's Office of Affordable Housing Preservation (OAHP) manages the Green Retrofit Program (GRP), which involves OAHP direct engagement of providers to perform Physical Needs Assessment and Energy Audits for affordable housing projects. The GRP energy audit includes all of the components generally understood to be found in a baseline energy audit. HUD is using the GRP format as a source for the development of energy audit standards to be used in public housing, and the energy audit standards in the new rule will be comparable in complexity/comprehensiveness. OAHP has shared a summary of its costs to perform PNAs during Fiscal Year 2009/10 using its format for a set of 66 projects nationwide. These projects averaged 96 units per project. The average cost for the energy audit portion of the GRP for these projects was reported as $3,314 per project or $32.86 per unit.

In the absence of detailed cost figures for the energy audits currently being performed by PHAs, the most conservative approach to estimating the burden is to use the GRP figure of $32.86 per unit. Even without a mitigating adjustment for the current economic investment that PHAs are making to this activity, the economic burden to PHAs would be $39,864,536 ($32.86 × 1,213,163) every 5 years, or $7,972,907 annually. A mitigating adjustment of 50 percent to account for the existing burden is not an unreasonable assumption. Such an adjustment would reduce the 5-year and annual additional burden to $19,932,268 and $3,986,453, respectively.

There are also benefits to the rule. Nationwide, PHA-paid utility costs total around $1.3 billion annually, or about 25 percent of the costs to operate public housing. It is estimated that an additional $430 million in utility costs are paid by residents, but indirectly are paid by PHAs in the form of utility allowances that reduce resident rents. Assuming that this rule is effective and, for example, only 10 percent efficiency were achieved, that would translate into about $173 million in budget savings annually that could be realized and affected to other uses.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

This proposed rule that does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. All PHAs have been required to complete energy audits, which essentially review building systems for the purpose of assessing whether the project would benefit from energy conservation measures. This rule also clarifies the scope of the energy audit that would be made pursuant to the existing energy audit requirements, rather than creating a new requirement for PHAs. To the extent that the standards for the energy audit pursuant to this rule are more burdensome than the current state standards required for energy audits, there may be some incremental cost to some PHAs to perform audits to this standard. However, this cost would be miniscule fraction of each PHA's capital grant, and so would not be a significant economic impact. For example, making the most conservative assumption—that each small PHA would be required to hire an independent auditor rather than using existing staff time—the incremental cost would be $32.86 per unit per 5 years, or $6.57 per unit per year. The capital fund grant averages $1595 per unit, per year, so that the cost as a percentage of capital grant is only 0.4 percent. In actuality, the costs may be lower, because at least some small PHAs will have the staff resources to perform the audit in-house.

Notwithstanding the determination that this rule would not have a significant impact on PHAs, HUD specifically invites any comments regarding any less burdensome alternatives to this rule that will meet

HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR part 905 is 14.872.

List of Subjects in 24 CFR 905

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 905, as proposed to be revised at 76 FR 6661, February 7, 2011, as follows:

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

1. The authority statement for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, and 3535(d).

Subpart C—General Program Requirements

2. Amend § 905.300 by adding paragraphs (b)(10) through (b)(15) to read as follows:

§ 905.300 Capital Fund submission requirements.

* * * * *

(b) * * *

(10) *Energy audits.* All PHAs shall complete an energy audit for each PHA-owned project under management, not less than once every 5 years, unless otherwise specified in this part.

(i) Energy audits consist of reviews of building systems to evaluate and identify projected costs, savings, and payback periods related to implementing any of a variety of potential energy conservation measures. Energy audits required by this part may, but are not required to, also identify green measures, or measures that do not result in energy savings, but which instead result in environmental benefits, such as improving indoor air quality.

(ii) The purpose of this subpart is to provide minimum standards with respect to the performance of energy audits. PHAs are not required to implement any specific energy conservation measure identified in an energy audit, except to the extent required by other statutes, rules, or regulations. An energy audit, however, must provide PHA staff with accurate information about the condition of the PHA's properties with respect to energy conservation measures and to the payback associated with energy conservation measures. The audit may also provide information about the environmental or potential health benefits of green measures.

(iii) PHAs shall integrate utility management with capital planning, to maximize energy conservation and efficiency measures in a comprehensive approach to building design, development, and maintenance. Energy audits shall be conducted in conjunction with HUD's required PNA. Any planned, ongoing, or completed energy, utility, and green improvements must be captured in the PNA in a form and manner prescribed by HUD.

(iv) PHAs shall not be required to complete an energy audit for any project that is less than 5 years old at the time the PHA is required to complete the energy audit. PHAs shall not be required to complete an energy audit for any project for which a removal from the public housing inventory has been approved by HUD, such as a demolition, disposition, conversion to homeownership, or other conversion action.

(v) The first two energy audits completed under this section shall be completed in accordance with a time frame delineated by HUD.

(vi) When a PHA is required to submit an energy audit pursuant to this part for the first time, a PHA has the option of submitting an existing audit completed within the last 2 years if:

(A) The audit meets the data requirements under this section; and

(B) The audit was completed by an auditor that meets the requirements of this section.

(vii) When a PHA is required to complete and submit an energy audit for the first time, a PHA may request an additional 2 years to submit the audit if it cannot find a qualified auditor. To obtain HUD's approval, a PHA must provide documentation to its field office that demonstrates it issued a well-structured Request for Proposal (RFP) in accordance with 24 CFR 85.36, and received no bids from qualified respondents.

(11) *Energy and water conservation measures (ECMs).* ECMs are devices, systems, or processes that may reduce utility and energy consumption. For the purposes of this subpart, ECMs include ''Core ECMs'' and ''Advanced ECMs.''

(12) Core ECMs are defined as broadly available energy conservation measures that have proven track records of reducing energy and water consumption in a cost-effective manner. Core ECMs include, but are not limited to, the following ECM categories:

(i) Building envelope (ECMs such as, but not limited to, wall or attic insulation, roofs, storm doors, weatherization, radiant barriers, and windows);

(ii) Heating, cooling, and other mechanical equipment systems and controls (ECMs such as, but not limited to, energy efficient furnaces, air handlers, fans, condensers, boilers, hot water heaters, programmable thermostats, equipment refurbishment and commissioning, duct sealing, duct insulation, pipe insulation, water heating controls, and ventilation);

(iii) Water conservation (ECMs such as, but not limited to, low flow toilets, faucets, showerheads, and alternate irrigation);

(iv) Power, lighting systems, and controls (ECMs such as, but not limited to, compact fluorescent lighting, LED fixtures and exit signage, photocell controls, and motion controls);

(v) Appliances (ECMs such as, but not limited, to Energy Star-rated refrigerators, clothes washers, and dishwashers).

(13) Advanced ECMs are defined as alternative measures comprising advanced or experimental technology which, compared to Core ECMs, can be more challenging to evaluate and implement. These are not alternatives that auditors would normally consider unless directed to do so, or unless there were local precedents that caused the measures to become commonly accepted local alternatives. Advanced ECMs include, but are not limited to:

(i) Fuel conversions;

(ii) Conservation technologies (*e.g.,* green construction techniques, building energy management systems, and xeriscaping [6]); and

[6] Xeriscaping is the conservation of landscape irrigation water through creative and efficient landscape design.

(iii) Energy generating technologies and renewable energy systems (*e.g.,* solar, geothermal, and cogeneration [7]).

(14) *Energy audit technical requirements and reporting.* (i) An energy audit shall analyze utility consumption, review property and building data, and evaluate Core ECMs that could result in cost-effective energy and water conservation. At the option of the PHA, an energy audit may also evaluate Advanced ECMs and green measures.

(ii) Energy audits for public housing shall at a minimum consider the Core ECMs and provide a comprehensive assessment report that includes:

(A) A summary review of the findings of any previous energy audits;

(B) An assessment of the existing property physical components affecting energy consumption, including an evaluation of the performance and condition of components within the Core ECM categories.

(C) An assessment of building operations, maintenance, and resident education as it relates to energy conservation and green practices;

(D) Analysis of fuel, electricity, and water bills and usage for at least the PHA-held accounts for trend analysis and industry benchmarking, and for tenant-held accounts where usage information is in the possession of the PHA;

(E) Identification and evaluation of all energy conservation measures considered, which shall include at least those that have the potential for cost-effective implementation;

(F) Categorization of recommended energy conservation measures into improvements with payback periods of 12 years or less, greater than 12 and less than or equal to 20 years, and more than 20 years;

(G) Projected cost of ECMs, and where a standard (less energy-efficient) building component is available, the projected cost of the standard component and the incremental cost of the ECM;

(H) Projected annual savings in water consumption;

(I) Projected annual energy consumption savings in the appropriate unit of measurement (*i.e.,* kilowatt-hours, British Thermal Unit (BTU),[8] gallons, cubic feet etc.) for recommended ECMs;

(J) Projected annual savings in dollars for recommended ECMs;

(K) Expected useful life of all ECMs and green measures;

(L) Identification of life cycle costs or savings of ECMs and green measures, including disposal costs and maintenance costs; and

(M) Energy auditor recommendations for optimal sequencing of ECM implementation for maximum benefit.

(iii) The energy audit will identify related physical work items that must be implemented at the same time to assure that a specific ECM can provide the maximum savings calculated, as well as to maintain health and safety (*e.g.,* the installation of an energy-efficient boiler may require that new, wider distribution lines be installed or rerouted to maximize the potential savings that could be realized from the boiler; and a weatherization project may require adjustments to ventilation systems to maintain adequate fresh air exchange). These complementary activities should be viewed as part of an improvement package required to achieve the overall energy savings.

(iv) Data and findings from prior energy audits that are deemed reliable and remain valid may be carried over to subsequent audits.

(v) Where ECMs would replace existing components at the end of their useful life, the payback period shall be calculated by dividing the incremental cost of replacement with an ECM as compared with a standard component, by the projected annual savings of the ECM as compared with a standard component. Where ECMs would replace existing components before the end of their useful life (early replacement), the payback period calculation shall be modified to add the value of the remaining useful life of the component being replaced to the incremental cost of the ECM. This payback period calculation shall be modified in a manner acceptable to HUD. Where ECMs would improve a project by adding new systems or new functionality, such as in the case of energy-generating equipment, the payback period shall be calculated by dividing the total cost of the ECM by the projected annual savings.

(vi) The energy audit shall differentiate between activities that are routine operating and maintenance activities and ECMs that are capital expenditures and can be financed with capital funds. Cleaning or changing air filters on certain mechanical equipment is a routine operational maintenance function that may result in energy conservation but is not an eligible capital expense.

(vii) For purposes of this part, the potential for cost-effective implementation of an energy conservation measure must be evaluated when the payback period is equal to or less than the estimated useful life of the component or 12 years, whichever is less. Complete lifecycle cost analysis to refine cost impacts of energy conservation measures is recommended for those measures initially determined to be cost-effective.

(viii) The energy auditor shall report on a project-level basis. The energy auditor shall submit a baseline report to the PHA and may submit an expanded report, as noted below. The report shall include the elements in § 905.300(b)(14)(i) for at least the ECMs identified in § 905.300(b)(14)(i)(D). The baseline report shall include a recommendation as to whether the PHA should complete more extensive engineering reviews to determine whether consideration of Advanced ECMs or others would be warranted. The energy auditor's recommendation shall be based upon the potential lifecycle cost savings of the ECMs, the complexity associated with implementing the ECMs, and the age and condition of the project as a whole. If the PHA directs the energy auditor to complete additional analysis on these ECMs, the energy audit shall be expanded to include that analysis.

(ix) There may be occasions outside of the 5-year cycle when an energy audit is appropriate and necessary to comply with state-specific energy policies, participate in local utility company incentive programs, pursue an energy performance contract, or evaluate the financial condition of a project. Nothing in this subpart is to be construed as prohibiting an energy audit at any time that the PHA determines it to be in the interest of the project.

(x) Capital or operating funds may be used for energy audits whenever they are performed.

(xi) Energy audits required in this section do not need to be investment grade energy audits,[9] but must cover all projects, and be sufficient to determine projected savings and to prioritize potential work based on the goals and objectives identified by the PHA (*e.g.,* quickest payback, largest payback, speed of implementation, *etc.*). Any energy audit may rely on data from a HUD-required prior energy audit (such as described in part § 905.300(b)(14)(i)

[7] Cogeneration is the use of the byproduct of energy generation, primarily thermal energy, for other purposes that would normally require additional energy.

[8] A BTU is defined as the amount of heat required to raise the temperature of 1 pound (0.454 kg) of liquid water by 1 °F (0.556 °C) at a constant pressure of one atmosphere.

[9] Investment Grade Energy Audits are prepared specifically to support a financial transaction such as an energy performance contract.

or performed in relation to an energy performance contract) conducted on the same property, if the previous audit was completed within 2 years of the time of a required PNA or energy audit, and if the previous audit meets the data requirements of the audits prescribed by this section.

(xii) While the timing of an energy audit is coordinated with a PNA, there are several instances when HUD may require a current or updated energy audit. These include but are not limited to:

(A) When requesting HUD permission to transfer excess cash from one project to another;

(B) At the direction of HUD, when HUD energy consumption data or industry benchmarks indicate that a project's energy consumption levels are excessive when compared to similar projects within the project's climatic zone;

(C) When required to substantiate an exception to the Total Development Cost Limit in reference to 24 CFR 941.306; and

(D) When the PHA is substandard under any applicable performance rating system used by HUD to assess project-level performance both in terms of operations and financial condition.

(xiii) The energy auditor shall be experienced in the performance of residential building energy audits and shall hold a current, valid certification from a state energy audit certifying agency for the state where the property is located or a nationally recognized energy audit certification provider, or hold other certification acceptable to HUD or expressed in HUD guidance.

(15) *Green measures.* (i) Green measures are products, systems or processes that do not necessarily conserve energy, but result in other environmental benefits. These include, for example: use of low volatility or nonvolatile organic compound cabinets, flooring, paints, or sealants; physical changes required to effectively implement integrated pest management; and hazardous waste or construction debris removal processes.

(ii) An energy audit shall identify green measures if the PHA directs the energy auditor to include them in the energy audit, but they are not required to be included. Where an energy audit includes green measures, it shall identify the projected cost of the green measure, and where a standard building component is available, it shall identify the projected cost for the standard component and the incremental cost of the green measure.

Dated: October 21, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–29640 Filed 11–16–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC37

Privacy Act; Implementation

AGENCY: Office of the Secretary, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury (Treasury) amends this part to partially exempt a new Internal Revenue Service (IRS) system of records entitled ''Treasury/IRS 37.111—Preparer Tax Identification Number Records'' from certain provisions of the Privacy Act.

DATES: Comments must be received no later than December 19, 2011.

ADDRESSES: Please submit comments to David R. Williams, Director, Return Preparer Office, 1111 Constitution Ave. NW., Washington, DC 20224. Phone: (202) 927–6428 (not a toll-free number). Comments will be made available for inspection at the IRS Freedom of Information Reading Room (Room 1621), at the above address. The telephone number for the Reading Room is (202) 622–5164 (not a toll-free number). You may also submit comments through the Federal rulemaking portal at *http://www.regulations.gov* (follow the instructions for submitting comments).

FOR FURTHER INFORMATION CONTACT: David R. Williams, Director, Return Preparer Office, 1111 Constitution Ave. NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system is investigatory material compiled for law enforcement purposes. Treasury is hereby giving notice of a proposed rule to exempt ''Treasury/IRS 37.111—Preparer Tax Identification Number Records'' from certain provisions of the Privacy Act of 1974, pursuant to 5 U.S.C. 552a(k)(2). The proposed exemption pursuant to 5 U.S.C. 552a(k)(2) is from provisions (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) because the system contains investigatory material compiled for law enforcement purposes. The following are the reasons why this system of records maintained by the IRS is exempt pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974:

(1) 5 U.S.C. 552a(c)(3). These provisions of the Privacy Act provide for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at his/her request. The reasons for exempting this system of records from the foregoing provisions are:

(i) The release of disclosure accounting would put the subject of an investigation on notice that an investigation exists and that such person is the subject of that investigation.

(ii) Such release would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to which disclosure was made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the alteration or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating the subject and the scope of the investigation and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a(d)(1)–(4), (e)(4)(G), (e)(4)(H), and (f). These provisions of the Privacy Act relate to an individual's right to be notified of:

(i) The existence of records pertaining to such individual,

(ii) Requirements for identifying an individual who requested access to records,

(iii) The agency procedures relating to access to and amendment of records,

(iv) The content of the information contained in such records, and

(v) The civil remedies available to the individual in the event of an adverse determination by an agency concerning access to or amendment of information contained in record systems.

The reasons for exempting this system of records from the foregoing provisions are that notifying an individual (at the individual's request) of the existence of an investigative file pertaining to such

ATTACHMENT C

Federal Register/Vol. 76, No. 139/Wednesday, July 20, 2011/Proposed Rule/Public Housing Physical Needs Assessments

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR–5361–P–01]

RIN–2577–AC81

Public Housing: Physical Needs Assessment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise HUD's existing regulations governing a physical needs assessment (PNA) undertaken by a public housing agency (PHA). A PNA identifies all of the work that a PHA would need to undertake to bring each of its projects up to the applicable modernization and energy conservation standards. This rule would require PHAs to project the current modernization and life-cycle replacement repair needs of its projects over a 20-year period, rather than a 5-year period, because the 20-year period coincides better with the useful life of individual properties and their building components and systems to ensure the long-term viability of the property. Additionally, this rule proposes to integrate the performance of the PNA with the performance of an energy audit.

DATES: *Comments Due Date:* September 19, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin Gallagher, Capital Program Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–8000; telephone number 202–402–4192 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A PNA provides PHAs with critical information on the physical condition of each project in its inventory and assists PHAs with identifying and prioritizing work items that require repair and modernization. The requirement to conduct a PNA has long been part of the regulations for HUD's Public Housing Modernization program, found in 24 CFR part 968. HUD's proposed rule on the Public Housing Capital Fund, published on February 7, 2011, at 76 FR 6654, proposes to remove part 968 and incorporate public housing modernization requirements in the regulations governing the Public Housing Capital Fund program in 24 CFR part 905.

Although the requirement to conduct a PNA has long been part of the regulations for HUD's Public Housing Modernization program, HUD, on July 21, 2009; September 29, 2010; October 14, 2010; and December 2, 2010, hosted meetings with PHAs and their representatives to discuss how repair and modernization needs should be assessed, and the costs and benefits of obtaining that information to PHAs and to HUD. At these meetings, PHAs raised a number of issues regarding costs, the content of the PNAs, and the methodologies that would be involved. Information about these meetings is available at *http://portal.hud.gov/huddoc/report-on-pna.pdf.*

This rule proposes to revise the regulations governing the completion and submission of a PNA, currently found in 24 CFR part 968, based on consideration of issues raised at the above meetings, experience with funding for public housing capital expenditures under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, approved February 13, 2009 (Recovery Act)), the PNA requirement imposed on PHAs receiving Recovery Act capital funds, and HUD's further consideration of how a PNA should be undertaken, completed, and submitted by a PHA.

The existing requirements of 24 CFR part 968, subpart C (Comprehensive Grant Program), provide that PHAs with 250 or more units are required to periodically complete a PNA in conjunction with their Comprehensive Plan (see § 968.315(e)(2)). There is currently no requirement for PHAs with fewer than 250 units to conduct a PNA. Throughout this preamble where ''small'' PHAs are referenced, it is in the context of 24 CFR part 968, subpart B, which applies to PHAs with fewer than 250 public housing units. Section 5A of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437c–1(a)(1)), which establishes the PHA 5-year Plan, requires each PHA to submit to HUD, not less than once every 5 years, a plan that includes a statement of the mission of the PHA for serving the needs of low-income and very low-income families, and ''a statement of the goals and objectives * * * that will enable the housing authority to serve the needs identified.'' These needs are, in turn, reflected by PHAs in their Annual Statement/Performance and Evaluation Report (form HUD–50075.1) and Capital Fund Program—Five-Year Action Plan (form HUD–50075.2) and are funded under the capital fund formula authorized at section 9(d)(2) of the 1937

Act (42 U.S.C. 1437g(d)(2)) and established by regulation at 24 CFR 905.10. In accordance with these requirements, PHAs are expected to reflect their capital improvement and spending priorities in their Annual Statements and 5-year action plans, which should be based on PNAs that are prepared in accordance with the requirements of 24 CFR part 968.

The current PNA regulation at 24 CFR 968.315(e)(2) requires: A brief summary of the physical improvements needed to bring each development to HUD standards for modernization, energy conservation life-cycle cost effective performance standards, and lead-based paint testing and abatement standards; the replacement needs of equipment and structural elements during the period covered; a preliminary estimate of cost; any physical disparities between buildings occupied predominantly by one racial or ethnic group and the physical improvements required to correct the disparity; and the number of units the PHA is proposing for substantial rehabilitation and subsequent sale, if any (see 24 CFR 968.315(e)(2)). As to energy audits, HUD requires PHAs to complete an energy audit for each PHA-owned project under management, not less than once every 5 years (see 24 CFR 965.302).

II. This Proposed Rule

The need for PHAs to engage in strategic planning has increased considerably over the past decade as PHAs have transitioned to an asset-based accounting and management model more closely aligned to industry-standard real estate management procedures. A focus on the individual project, rather than on the macro level of the entirety of a PHA's public housing portfolio, further highlights the need for strategic planning over a longer term period. As the public housing portfolio ages, the need to strategically plan impacts all PHAs regardless of size. The opportunities for PHAs to take advantage of a variety of financing vehicles to modernize and develop public housing have also increased over the past decade. Thus, in managing their public housing portfolios, PHAs are increasingly called upon to make long-term reinvestment and portfolio management decisions that may entail demolition, disposition, conversion, financing, redevelopment, or repositioning of real estate assets. A key tool to accomplishing such strategic planning is a PNA.

This rule proposes to supplement the Public Housing Capital Fund Program regulation, published on February 7, 2011, at 76 FR 6654, to include new PNA regulations. This proposed rule would add a new paragraph (b)(9) to proposed new section § 905.300 in the rule of February 7, 2011 (see 76 FR 6665), which would require all PHAs, including small PHAs and Moving to Work PHAs, to complete PNAs and provide them to HUD so that PHAs may properly administer their Capital Fund programs, and so that HUD may effectuate its implementation and oversight functions in regard to the Capital Fund. In addition, because the rule refers to Moving to Work PHAs, the rule would add a definition of such PHAs in new proposed § 905.108, entitled ''Definitions.'' (See 76 FR 6661)

Section 9(d)(1)(L) of the 1937 Act, 42 U.S.C. 1437g(d)(1)(L)), includes in the list of eligible activities related to the Capital Fund ''integrated utility management and capital planning to maximize energy conservation and efficiency measures.'' While energy audits are already required, HUD is proposing to provide for the most cost-effective, useful, and efficient performance of activities funded under 42 U.S.C. 1437g(d)(1)(L) by requiring PHAs to complete their PNAs in conjunction with energy audits, and adopt or consider the findings of an energy audit, identify work items that correspond to energy conservation measures (ECMs), and incorporate cost-effective data from energy audits and PNAs into their assessment.

The integration of the energy audit and PNA is considered to be most effective when both activities are coordinated. In addition, coordination between an energy auditor and PNA provider is considered to be important for energy efficiency and capital upgrade decision-making. As the consulting industry that services PHAs and the public housing program is introduced to conducting coordinated or integrated PNAs and energy audits, the costs associated with performing both of these assessments may be reduced. HUD invites comment on the potential benefits and challenges of preparing energy audits in conjunction with PNAs. HUD is also interested in comment on the effect of aging on energy audit information as related to its usefulness for cost projection and strategic planning in a PNA.

This rule proposes to require PHAs to project the current modernization and life-cycle replacement repair needs over a 20-year period, rather than a 5-year period, in accordance with the useful life of individual properties and their building components and systems, to ensure the long-term viability of the property. This 20-year period is more closely related to the life cycle of buildings and major physical components than the current 5-year period. This proposed life-cycle-based, project-level PNA will enhance capital planning, recapitalization, and portfolio management practices by PHAs.

In addition, PNAs covering 20 years or more of projected capital needs are standard in real estate management. PNAs are standard requirements for refinancing, purchase of existing real estate, and property management. It is recognized that PNAs, especially in the later years of the 20-year period, will provide an estimate of future costs, not a statement of actual cost. These projections will be revised and become more accurate as time passes. The value of this order-of- magnitude estimate is the identification that there will be future obligations that must be planned and budgeted for in advance. Actual cost will be established by a contract for performance of the work; a PNA represents an informed estimate of future cost.

There currently exists no guidance as to the qualifications for the PNA provider. In addition, there exists no professional industry certification standard for providers of PNAs. Providers of such services range from architects and engineers to experienced practitioners from the building and inspection trades. Some PHAs directly employ staff people that perform physical needs assessment for their property. The proposed rule would establish minimum qualifications for the PNA provider, which standards would include experiential qualifications in property inspection and evaluation, cost estimating, energy efficiency and green capital upgrade and construction practices, and working knowledge of common information technology software. The rule would continue to permit the PHA to have its staff perform PNAs, but would give PHAs better guidance as to qualifications staff should have to perform this function. Although this is intended to minimize the compliance burden on PHAs, HUD understands that PHAs must weigh the decreased cost of the in-house assessment against the possibly greater objectivity, and hence validity, of third-party assessments. PHAs that plan to use PNAs to directly support a financial or funding transaction are advised to consider contracting with a third-party provider to the extent they are financially able. HUD invites public comment regarding appropriate qualifications for PNA providers and the appropriateness of PHA staff performing PNAs used for internal strategic planning purposes, PNAs used to directly support a funding

or financial transaction, or both. HUD also seeks comment on the implications of adopting a requirement that PHAs use independent third-party providers to conduct their PNAs and the extent to which such a requirement would affect the compliance burden on PHAs and the validity of the PNA data.

This rule would require that the PNA and energy audit be completed in conjunction with each other once every 5 years to promote coordination of capital planning involving the selection of building materials and supplies, as well as capital expenditures that address life-cycle replacement repairs and energy efficiency improvements. The new PNA regulation and PNA form being developed by HUD will record energy conservation measures as identified in an energy audit. This rule proposes that, using information from the energy audit, the PHA shall identify specific work items and their associated costs in the PNA that match energy conservation measures (ECMs) identified in the energy audit.

While HUD proposes to require PHAs to update the PNA annually (and wholly revise it once every 5 years), HUD proposes to minimize any burden associated with the updates by having the PNA submitted electronically via a mechanism that will allow HUD to both aggregate and analyze the PNA data. Moreover, the annual update of the PNA, as proposed to be required by this rule, will provide HUD with the information it needs to effectively monitor PHA performance with respect to the manner in which the PHA addresses capital repair needs and administers the Capital Fund. PNA updates will be used to show how PHAs reduce capital repair backlog in their inventory and will enable HUD to assess the impact on the physical needs of the entire public housing portfolio.

Annual Update. The specific procedures for annual PNA updates will be determined as the new PNA tool is developed, but HUD plans for these updates to be a simple process performed by PHA staff in an automated format. The PHA, at the conclusion of the fiscal year, would review the PNA that it had prepared and would eliminate capital costs for the year that just ended by eliminating estimated costs for capital improvements actually completed. For capital improvements that were not completed during the year that just ended, the costs for those incomplete improvements would be moved to a future year. The PHA would continue in this manner for each year until the next comprehensive PNA is performed to refresh the data. This is the standard process used in the management of multifamily real estate portfolios. In this way, the PHA and HUD will have continuous visibility of the effectiveness of Capital Funds for long- term capital and financial planning.

Initial Submission and Transition. HUD plans to require that the PNAs, as proposed, be required only after the appropriate submission and evaluation systems are developed. Additionally, for the first two PNAs and first two energy audits, HUD may establish different dates for the submission of this information, recognizing that the initial effort to aggregate PNA and energy audit data may not allow for integration of the information into the 5-year reporting format as contemplated. For example, the 5-year planning cycle places many PHAs in a timeframe to submit their 5-year plans in Fiscal Year (FY) 2011. The new HUD PNA format is not anticipated to be available for use before FY 2012. HUD has provided initial guidance to PHAs to extend their existing PNAs and delay performance of a wholly new PNA until availability of the new PNA tool. It is envisioned that PHAs will report on their 5-year plan in FY 2011 on the basis of their existing PNA, as extended. The PHA will then perform the new PNA when the PNA tool becomes available in 2012. Since the new PNA will provide a 20-year schedule and would be updated annually by the PHA, adequate information from the 2012 PNA would exist for the PHA to use as the basis for its 5-year plan of 2016. The next PNA would be performed in 2020, in advance of the PHA's 5-year plan for 2021. Thereafter, the timing of completion of new PNAs shall be aligned to support more directly the 5-year PHA plan cycle.

The current PNA regulation assesses the needs and costs to ensure long-term physical viability, while the proposed rule would require the PNA to include all projected capital costs needed to keep the projects decent, safe, in good repair, and in compliance with all public housing requirements. When preparing capital repair and life-cycle repair cost estimates for modernization purposes, PHAs will continue their current practice of complying with local building and construction codes, as well as with all applicable public housing requirements, including uniform physical conditions standards, section 504 of the Rehabilitation Act (see 29 U.S.C. 794), and Uniform Federal Accessibility Standards (UFAS) (see 24 CFR part 40) requirements.

HUD believes that the amendments to the PNA regulations as proposed to be provided in new § 905.300(b)(9) of this rule will make the PNA tool a more effective tool and therefore better address the modernization and life-cycle replacement repair needs of a PHA's projects. The PNA existing regulation in 24 CFR 968.315(e)(2) was already proposed to be removed by the February 7, 2011, proposed rule. (See 76 FR 6661)

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 905.300(b)(9)—PNA performed every 5 years including data collection and site inspection	620	1	[1] 130	80,600
§ 905.300(b)(9)—PNA data analysis and reporting	620	1	[2] 45	27,900
§ 905.300(b)(9)(vii)—annual update	2,480	1	[3] 8	19,840

REPORTING AND RECORDKEEPING BURDEN—Continued

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
Quality Assurance	104	1	[4] 16	1664
Total Paperwork Burden for the New Rule				130,004
Total Burden from current OMB ICR 2577–0157[5]				47,740
Total Additional Burden as a result of this rule				82,264

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication date. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–5361–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202–395–6947;

and one of the two options below:

Colette Pollard, HUD Reports Liaison Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 2204, Washington, DC 20410; or

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Regulatory Planning and Review

OMB reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). This rule is a ''significant regulatory action'' as defined in 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order).

The rule is not expected to have a significant economic impact. It is estimated that full compliance with the rule as proposed would cost PHAs, collectively, up to $29 million once every 5 years or an average of $5.9 million annually. The rule would not have any budgetary impact to the Federal Government, as costs to implement the PNA would be accommodated within HUD's existing budget authority. However, the additional expenses to expand PNA activities would generate some transfers from PHAs to those entities performing PNAs. These changes, however, are necessary for the transition to asset management and to accommodate the growing flexibility of financing granted to PHAs.

This proposed rule would require all PHAs to project the current modernization life-cycle replacement repair needs over a 20-year period.[6] This rule would coordinate the performance of the PNA with the performance of an energy audit and would expand the PNA requirements to apply to PHAs with fewer than 250 units.

The cost to perform PNAs can be approximated using existing examples and HUD's own experience.

HUD is using the PNA format of HUD's Green Retrofit Program (GRP), a Recovery Act program, as a source for the development of the PNA to be used in public housing and the new HUD PNA will be comparable in complexity/comprehensiveness.[7] HUD's Office of

[1] PHAs are only required to complete PNAs once every 5 years. This entry reflects the data collection and inspections. Therefore, to reflect the annual burden, a weighted average was derived by taking 1/5 of the total burden required of PHAs once every 5 years.

[2] This entry reflects the time to analyze the collected data, prepare a report, and upload the data to HUD.

[3] Per the new rule, PHAs will be required to complete an annual update in the years that they are not required to do a full PNA (thus annual updates will be required 4 out of every 5 years). Therefore, to reflect an annual burden, a weighted average was derived by taking 4/5 of the burden for PHAs to fulfill the annual update requirement.

[4] Quality Assurance will be performed by HUD on a sample of approximately 521 PNAs after each 5-year PNA cycle. Since all of the sampled PHAs would already have collected the basic quantity, component age, and other data into a PNA, the additional burden on the sampled PHAs is expected to be minimal.

[5] In the currently effective Information Collection Request (ICR), the burden is 15.4 hours annually for 3,100 PHAs.

[6] The current PNA regulation assesses the needs and costs to ensure long-term physical and social viability over a 5-year period.

[7] HUD's Office of Affordable Housing Programs, in the Office of Housing, manages the GRP, which involves direct engagement of providers to perform Physical Needs Assessment and Energy Audits for affordable housing projects. The GRP PNA is a baseline PNA including all of the components generally understood to be found in a PNA. It should be noted that the GRP includes an energy audit portion and an integrated pest management

Affordable Housing Programs (OAHP), in the Office of Housing, has shared a summary of its costs to perform PNAs during 2009/10 using its format for a set of 66 projects nationwide. These projects averaged 96 units per project, making them very comparable to the average project size of small PHAs of 84 units.

The average cost for the PNA portion of the GRP for these projects was $6,220 per project or $65.22 per unit.

During 2010, HUD staff in the Office of Public Housing visited a number of PHAs nationwide in an effort to familiarize itself with PNA procedures, forms, and formats used by PHAs, as well as to evaluate the burden of performance. These visits yielded some cost data that can be used as illustrative of the costs to perform PNAs to generally accepted industry standards for a baseline PNA. Notably, a large housing authority provided a copy of a proposal for its completed PNA indicating a cost of $63 per unit in 2007 from a nationally recognized high quality third-party provider. Two other PHAs, each of which had previously engaged third-party PNA providers to complete PNAs, are currently preparing to solicit proposals for new PNAs. Each indicated that their respective budget for the effort was $50 per unit in the context of having contracted for similar work previously and having baseline data from those prior assessments.

The $50 per-unit cost is used in this analysis as the cost to PHAs that are currently performing PNAs.

Assuming that PHAs are currently spending $50 per unit to perform PNAs and that it would cost $65.22 per unit under this rule, Exhibit-1 shows that compliance with the PNA requirements as proposed would cost about $79 million once every 5 years. However, the additional cost beyond what PHAs are already doing would be only $29 million. Small PHAs will be required to perform PNAs where no requirement previously existed. For these authorities, the cost would be estimated based upon the GRP cost data for similarly sized projects. This cost would be estimated at between $13,286,423 (203,717 units at $65.22 per unit) and $15,077,280 (2,424 projects at $6,220 per project) for the first performance of the PNA.

EXHIBIT—1

	Universe [1]						PNA current regulation		PNA proposed regulation		Estimate regulatory cost
	PHAs	% PHAs	Projects	% Projects	Total	% Units	$/Unit [2]	$Total	$/Unit [3]	$Total	
Under 250 Units	2,424	74.95	2,312	31.67	203,717	16.79	(PNA not required)		65.22	13,286,423	13,286,423
Over 250 Units	810	25.05	4,988	68.33	1,009,436	83.21	50.00	50,471,800	65.22	65,835,416	15,363,616
Totals	3,234	100.00	7,300	100.00	1,213,153	100.00	.....	50,471,800	.....	79,121,839	28,650,039

[1] The number of PIH units is from the PUD records.
[2] This is the average for Baltimore and Boston, each of which has previously hired third-party PNA contractors.
[3] HUD is using the Green Retrofit Physical Condition Assessment (GRPCA) as a source for the development of the PNA to be used in public housing and the new HUD PNA will be comparable complexity and comprehensiveness. The average cost of the PNA portion of the GRPCA for these assessments was $65.22 per unit.

Large PHAs that already are required to perform PNAs with 5-year terms will now be required to perform PNAs with 20-year terms and to potentially higher standards than the current PNA requirement. Regardless of the term of the PNA, it is assumed that an assessor would still be required to examine virtually every component of a project in order to determine its remaining useful life and whether that life falls within the term of the PNA. The difference in performance, therefore, is primarily the entry of data over a 20-year term rather than a 5-year term. The cost of greater standards of performance for large PHAs could be estimated at $15,363,616, representing the difference between the cost to perform a PNA to the GRP standard ($65.22 per unit) and the cost to perform a PNA to the PHAs standards in the absence of a new standard from HUD ($50 per unit) multiplied by the number of units (1,009,436) within larger authorities.

These estimates are probably high since it is known that some proportion of small PHAs (with fewer than 250 units) perform a PNA as a capital planning and strategic planning tool. Also, many larger PHAs (with 250 units or more) already perform PNAs to generally similar or higher standards than the baseline PNA required by the PNA rule and many PHAs perform, and will continue to perform, PNAs with in-house staff.

The rule also has significant benefits. Planning is a hallmark of a well-managed property. A Physical Needs Assessment (PNA) is a key planning tool. HUD distributes several billion dollars in capital and operating funds annually to PHAs. The quality and efficiency of property management directly impacts the effective use of these funds. While it is self-evident that efficiently managed real estate costs less to operate, it is not feasible to quantify a dollar cost savings owing to efficient management applicable to all properties, since the implementation of planning varies over a very broad spectrum. It is certainly feasible to assume that such savings would exceed the costs for performing PNAs on an aggregate basis. The following is a list (not exhaustive) of possible benefits of the rule.

1. The identification of capital expenditures far enough in advance of their required implementation to allow for consideration of the most efficient method of paying for the improvement, whether by the application of grant funds, borrowing, or other mechanisms, including repositioning of the property.

2. The identification of synergies in the timing and intensity of capital improvements, and the avoidance of duplicative or wasteful capital expenditures that might be lost in the subsequent comprehensive modernization or obsolescence of a property.

3. Informing a preventative maintenance strategy that most efficiently employs maintenance resources to maximize the useful life of property components and to potentially extend useful lives beyond their expected duration.

4. Minimizing unexpected component failures and the potential for additional costs for tenant relocation, emergency services, premium time, liability exposure, and insurance costs, etc.

5. Promoting the implementation of energy efficiency measures and the utility savings that accrue.

6. Increased occupancy and enhanced health and safety as a result of more habitable units.

portion, in addition to the PNA portion. Energy audits are already required to be performed every 5 years for every PHA regardless of size; integrated pest management is not a requirement in public housing and is not required by the new PNA.

This analysis also considers transfers. The proposed rule has the potential to generate about $29 million in additional PNA work every 5 years. These additional expenses would constitute a transfer from PHAs to those entities performing PNAs. There exists an active industry engaged in providing PNAs to PHAs.

HUD's economic analysis can be found at *http://www.regulations.gov* and in the docket file, which is available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

This proposed rule that does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule expands the PNA requirements to apply to PHAs that have fewer than 250 units. However, all PHAs, including small PHAs, have been required to complete energy audits, which essentially review building systems for the purpose of assessing whether the project would benefit from energy conservation measures.

With respect to small PHAs that would have to complete PNAs under this rule, while there is some burden, it is not considered a significant economic impact nor is it considered significant in the context of standard operating procedures for real estate management. The burden entails assembling existing physical data for the property and organizing a brief site survey of a sample of the physical property. It is generally acknowledged that the burden is greater the first time a PNA is completed, since a completed PNA becomes a data repository that is largely reusable. There are a total of approximately 3,100 PHAs. Of these, approximately 2,300 are small entities that have previously not been required to complete a PNA. While these 2,300 PHAs represent approximately 74 percent of all PHAs, they only represent approximately 20 percent of the units in the public housing portfolio, or 200,000 of the 1,200,000 units. The total additional paperwork burden imposed by the rule for small entities is 95,220 hours per year for 2,300 parties, or 41.4 hours per small PHA. HUD assumes for the purpose of this analysis that, in most cases, staff at small PHAs would complete the paperwork, thus requiring no additional expenditure beyond salaries. Even were the small PHAs to hire third parties to complete a PNA, the costs for completing a PNA once every 5 years are expected to be minimal when compared to the amount of Capital Funds the PHA will receive during that same 5-year period, and enable the PHA to more effectively expend those funds. Hence, this rule does not have significant economic impact on small PHAs.

Notwithstanding the determination that this rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites any comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR part 905 is 14.872.

List of Subjects in 24 CFR Part 905

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 905, as proposed to be revised at 76 FR 6661, February 7, 2011, as follows:

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

1. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g and 3535(d).

2. In § 905.108, add the definition of ''Moving to Work PHA'' in proper alphabetical order to read as follows:

§ 905.108 Definitions.

* * * * *

Moving to Work PHA means a PHA that participates in the Moving to Work (MTW) demonstration program, which provides PHAs the opportunity to design and test innovative, locally designed strategies that use federal dollars more efficiently, help residents find employment and become self-sufficient, and increase housing choices for low-income families. MTW is funded through annual appropriations acts.

* * * * *

3. In § 905.300, add a new paragraph (b)(9) to read as follows:

§ 905.300 Capital Fund Submission Requirements.

* * * * *

(b) * * *

(9) *Physical needs assessment (PNA).* Each PHA, including Moving to Work PHAs, shall complete and submit a comprehensive PNA at a time and in a form and manner prescribed by HUD that incorporates the life-cycle repair

and replacement costs of project systems and components for a 20-year period, for each public housing project in its inventory. The PNA will provide summary level information for the PHA's overall public housing portfolio, as well as information from the energy audit completed in conjunction with the PNA.

(i) The PNA and the associated estimates shall be completed without regard to whether funds are available at the time the PNA is completed to do the repair and replacement work projected by the PNA.

(ii) The PNA shall capture all capital costs needed to comply with public housing requirements, including section 504 of the Rehabilitation Act (see 29 U.S.C. 794), Uniform Federal Accessibility Standards (UFAS) requirements (see 24 CFR part 40), and Lead Safe Housing Rule (LSHR) requirements (see 24 CFR part 35).

(iii) The PNA shall account for the impact of any projected or actual removal of units from the inventory by the corresponding removal of cost associated with physical needs of those removed units.

(iv) The first two PNAs pursuant to this part and first two energy audits completed after [effective date of final rule to be inserted at final rule stage] shall be completed in accordance with a timeframe delineated by HUD in order to better enable PHAs, after the completion of the first PNA pursuant to this part, to better utilize the PNA in support of their 5-year planning cycle. After the completion of the first two PNAs and first two energy audits, the PHA shall completely update the PNA and energy audit no less often than once every 5 years.

(v) The PNA provider shall be experienced in the performance of residential building assessment including building systems, health and safety conditions, physical and structural conditions, cost estimating, and building modernization. The PNA provider shall have knowledge of energy efficiency and green capital upgrade and construction practices. The PNA submission shall identify the PNA provider(s). Additional qualifications shall include:

(A) Five (5) years or more of direct experience in physical facility inspection and/or assessment;

(B) Five (5) years or more of direct experience in cost estimating;

(C) Knowledge of applicable building standards and codes, including federal, state, and local requirements as demonstrated by experience, training, or certifications;

(D) Knowledge of energy conservation and energy efficiency and green capital upgrade and construction practices, as demonstrated by experience, training, or certifications;

(E) Working knowledge of commonly used computer technology and software.

(vi) The PNA shall be performed in conjunction with an energy audit and the energy audit findings shall be integrated into the PNA. PHAs that will have completed an energy audit within 2 years of the date that the PHA will complete its first PNA, pursuant to this part, shall not be required to complete a new energy audit concurrent with its first PNA if the existing energy audit contains the cost-effectiveness data required by HUD. Using information from the energy audit, the PHA shall identify specific work items and their associated costs in the PNA that match energy conservation measures (ECMs) identified in the energy audit. For each ECM reviewed as part of an energy audit, unless otherwise directed by HUD, the PNA shall incorporate the pay back data from the energy audit in a form and manner prescribed by HUD.

(vii) As modernization and repairs of public housing developments are completed, the PHA shall make revisions to its PNA to indicate that repairs to individual buildings have been addressed. These PNA revisions shall be completed on an annual basis.

(viii) The PHA shall submit its PNAs and annual updates to HUD in a time, manner, and format determined by HUD. HUD may evaluate the quality and accuracy of PNAs. HUD may require a PHA to revise its PNA to correct errors or inaccuracies, or elements of the PNA that do not comply with HUD requirements, all as determined by HUD. In addition, HUD may directly revise a PHA's PNA to make such corrections. To the extent such revisions are made, the PHA shall update the corrected PNA in its annual update submission.

(ix) A PHA shall not obligate or expend Capital Funds for administration, for transfers to operations, or for management improvements unless:

(A) A PNA has been submitted in a time, manner, and format determined by HUD in accordance with this subpart; and

(B) Corrections to the PNA required in accordance with paragraph (b)(9)(viii) of this section have been completed by the PHA within 3 months of having been notified of the need for correction by HUD.

Dated: June 10, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–18046 Filed 7–19–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 41

[REG–122813–11]

RIN 1545–BK35

Highway Use Tax; Filing and Payment for Taxable Period Beginning July 1, 2011

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the filing of Form 2290 ''Heavy Highway Vehicle Use Tax Return'' and payment of the associated highway use tax for the taxable period beginning July 1, 2011. These regulations affect owners and operators of highway motor vehicles with a taxable gross weight of 55,000 pounds or more. The text of the temporary regulations also serves as the text of the proposed regulations on this subject.

DATES: Written and electronic comments and requests for a public hearing must be received by October 18, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–122813–11), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–122813–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW.; Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–122813–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Natalie Payne, (202) 622–3130; concerning submissions of comments and requests for a public hearing, Regina Johnson, (202) 622–7180 (not toll-free numbers).

ATTACHMENT D

HUD Form 5369-B
Instructions to Offerors (Non-Construction)

Please initial and date each page of the HUD Form 5369-B

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:]

ATTACHMENT E

HUD Form 5369-C
Certifications and Representations of Offerors Non-Construction Contract

Certifications and Representations of Offerors
Non-Construction Contract

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

OMB Approval No: 2577-0180 (exp. 7/30/96)

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
[ ] Hispanic Americans
[ ] Native Americans
[ ] Asian Pacific Americans
[ ] Asian Indian 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)(l) 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)(l) 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)(l) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(l) 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:

ATTACHMENT F

HUD Form 5370-C General Contract Conditions – Non- Construction Contract

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. 3/31/2020)

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 $105,000 - use Section I**;
2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than $2,000 but not more than $150,000 - use Section II**; and
3) **Maintenance contracts** (including nonroutine maintenance), **greater than $150,000 – use Sections I and II**.

Section I - Clauses for All Non-Construction Contracts greater than $150,000

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.

(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 been titled to payment as described in paragraph (b) above.

(e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

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

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
(i) appeals under the clause titled Disputes;
(ii) litigation or settlement of claims arising from the performance of this contract; or,
(iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

(a) All disputes arising under or relating to this contract, *except for disputes arising under clauses contained in Section III, Labor Standards Provisions*, including any claims for damages for the alleged breach 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 pubic official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

(i) The awarding of any Federal contract;

(ii) The making of any Federal grant;

(iii) The making of any Federal loan;

(iv) The entering into of any cooperative agreement; and,

(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

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

(i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;

(ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;

(iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,

(iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

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

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

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

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

(b) Prohibition.

(i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

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.

ATTACHMENT G

Section III Clause and Minority Business Participation Commitment Form

SECTION III
COMPLIANCE CLAUSE AND COMMITMENT FORM

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

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

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

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

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

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

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to

the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Definitions

Low Income Person as used above means a **resident of the West Palm Beach-Boca Raton Area** at or below 80% of medium income as shown in the Income Table below.

Economic Opportunities as used above means contracts with (a) that is fifty-one percent (51%) or more owned by Section 3 residents; (b) whose permanent, full-time employees include persons, at least thirty percent (30%) of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or (c) that provides evidence of a commitment to subcontract in excess of twenty-five percent (25%) of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in (a) or (b).

Applicability

This Contract plus all Subcontracts.

Reporting

The Contractor will be required to report all new hires employed as a result of this Contract and to determine and report whether or not any of these **new** hires may be defined as low *income persons* based upon the above stated definition and by employing the income table below. For Subcontracts the Contractor will be responsible for requiring the Subcontractor to (a) report all new hires employed as a result of this Contract and to determine and report whether or not any of these **new** hires may be defined as *low income persons* based upon the above stated definition and by employing the income table below and (b) determine whether or not the Subcontractor may be defined as a *low income person* or a *Section III Business* based on the above stated definitions and income table below. These requirements apply to any tier of Subcontractors.

INCOME TABLE

This table shows 80% of median income for West Palm Beach-Boca Raton Area for the designated number of persons in a family.

Income Limit Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
Very Low (50%) Income Limits	$29,300	$33,450	$37,650	$41,800	$45,150	$48,500	$51,850	$55,200
Extremely Low (30%) Income Limits	$17,600	$20,100	$22,600	$25,750	$30,170	$34,590	$39,010	$43,430
Low (80%) Income Limits	$46,850	$53,550	$60,250	$66,900	$72,300	$77,650	$83,000	$88,350

Minority Business and Section 3 Participation
Commitment Form

Project Name:

It is the policy of Palm Beach County Housing Authority ("PBCHA") to encourage Minority and Section 3 participation in all contracts. To implement this policy, PBCHA shall encourage Minority and Section III participation through **subcontracting,** or other methods in contracting. You must complete this form, indicating the percentage of this Contract that **will be subcontracted to Minority and Section 3 Businesses and Section 3 Individuals**.

Minority Participation:
For the purpose of this commitment, the term "Minority Business" means a business at least 51 percent of which is owned and controlled by minority group members or, in the case of a publicly-owned business, at least 51 percent of the stock of which is minority owned, and the business is controlled by minority group members. For the purpose of the preceding sentence, "Minority Group Members" are citizens of the United States who are African-American, Hispanics, Asians, Pacific Islanders and American Indians.

Please indicate the percentage of minority business participation for this project. This refers to the percentage of the total dollar value of the Contract that will be subcontracted to minority firms.

_____ Percent *

To be considered a "minority business", the business must be so certified by the Palm Beach County Office of Equal Business Opportunity (OEBO), City of West Palm Beach or any other local, state, or federal agency that certifies businesses as a minority business.

Section 3 Participation:
For the purpose of this commitment, the term "Section 3" refers to Section 3 businesses and Section 3 individuals based on the definitions below:

Definitions:
Low Income Person as used above means a **resident of the West Palm Beach-Boca Raton Area** at or below 80% of medium income as shown in the Income Table below.

Economic Opportunities as used above means contracts with (a) businesses owned 51% or more by residents of West Palm Beach-Boca Raton metropolitan area at or below 80% of medium income or (b) business whose full-time employees are made up of at least 30% residents of Palm Beach County area at or below 80% of medium income. Such businesses are referred to as *Section 3 Business.*

Income Table

This table shows 80% of median income for West Palm Beach-Boca Raton Area for the designated number of persons in a family.

1 person	2 persons	3 persons	4 persons
$46,850	$53,550	$60,250	$66,900

5 persons	6 persons	7 persons	8 persons
$72,300	$77,650	$83,000	$88,350

To be considered a "Section 3 business or Section 3 individual"; the business must provide documentation supporting the income level of the employees and individuals.

Please indicate the percentage of Section 3 participation for this project. This refers to the percentage of the total dollar value of the Contract that will be available for Section 3 opportunities.

_____ Percent *

*PBCHA will consider Minority and Section 3 participation in awarding this Contract. PBCHA reserves the right to approve or disapprove any subcontractor list or individual.

FAILURE TO COMPLETE THIS FORM MAY RESULT IN YOUR BID/OFFEROR BEING DECLARED NON-RESPONSIVE THUS ELIMINATING YOUR FIRM FROM CONSIDERATION FOR THIS PROJECT.

The undersigned hereby certifies that he or she has read the terms of this commitment form and is authorized to bind the prospective bidder/offeror to the commitment herein set forth.

_____	_____
Firm's Name	Name of Authorized Officer – printed
_____	_____
Date	Signature of Authorized Officer – signed

SECTION III COMPLIANCE FORM

_____
Contractor

_____
Address

_____
City, State, Zip Code

Subject: Statement of compliance with Section III Clause

Gentlemen:

In accordance with the provisions stated herein I will make a "good faith effort" to provide opportunities for the training and employment to qualified low-income residents in the area in which this project is located (Palm Beach County Area). This clause and reporting requirements will be incorporated into any lower tier contracts.

Attached is the report form to disclose the number of positions available for employment. We will comply and seek out the low-income person for any open positions. Notices shall be posted in conspicuous places available to employees and applicants for any open positions.

Sincerely submitted,

_____
Typed Signature and Title

_____
Signature

_____
Date signed

CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3 PREFERENCE IN CONTRACTING AND DEMONSTRATION OF CAPABILITY

Name of Business_____

Address of Business_____

Type of Business: ___Corporation ___Partnership
___Sole Proprietorship ___Joint Venture

Attached is the following documentation as evidence of status:

For Business claiming status as a Section 3 resident-owned enterprise:

___Copy of resident lease
___Copy of evidence of participation in a public assistance program
___Copy of receipt of public assistance
___Other evidence

For Business entity as applicable:

___Copy of Articles of Incorporation
___Assumed Business Name Certificate
___List of owners/stockholders and % ownership of each
___Organization chart with names and titles and brief function statement
___Certificate of Good Standing
___Partnership Agreement
___Corporation Annual Report
___Latest Board minutes appointing officers
___Additional documentation

For Business claiming Section 3 status by subcontracting 25 percent of the dollar awarded to Section 3 business:

___List of subcontracted Section 3 business (es) and subcontract amount

For business claiming Section 3 status, claiming at least 30 percent of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:

_____ List of all current full-time employees
_____ PHA/IHA Residential lease less than 3 years from day of employment
_____ List of employee claiming Section 3 status
_____ Other evidence of Section 3 status less than 3 years from date of employment

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

___Current financial statement
___Statement of ability to comply with public policy
___List of owned equipment
___List of all contracts for the past two years

_____ _____
Authorizing Name (Business) Date

_____
Authorizing Signature (Business)

_____ _____
Authorizing Name Date
(Attested by)

_____
Authorizing Signature
(Attested by)

ATTACHMENT H

Statement of Compliance Training, Employment and Contracting Opportunities for Business and Lower Income Person

STATEFMENT OF COMPLIANCE
TRAINING, EMPLOYMENT, AND CONTRACTING OPPORTUNITIES FOR BUSINESS AND LOWER INCOME PERSONS

A. The project assisted under this contract/agreement is subject to the requirements of Sections 3 of the Housing and Urban Development Act 1968, as amended, 12 USC 1701s. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

B. Notwithstanding any other provisions of this contract/agreement, the applicant/recipient shall carry our the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary set forth in 24 CFR Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and others of the Secretary issued thereunder prior to the execution of this contract/agreement. The requirements of said regulations include but are not limited to development and implantation of an affirmative action plan for utilizing business concerns located within or owned in substantial part by persons residing in the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment and business opportunities required by Section 3; and incorporation of the "Section 3 clause" specified by Section 135.20 (b) of the regulations in connection with the project. The applicants/recipient certifies and agrees that it is under no contractual or other disability which would prevent it form complying with these requirements.

C. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the government of the application for this contract/agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant/recipient, its successors and assigns. Failure to fulfill these requirements shall subject the applicants/recipient, its contracts and subcontractors, it successors, and assign to the sanctions specified by this contract/agreement, and to such sanctions as are specified by 24 CFR Section 135.

Company Name: _____

Address: _____

Official Signature/Date: _____

Printed: _____

ATTACHMENT I

HUD Form 2530
Previous Participation Certificate

Previous Participation Certification

OMB Approval No. 2502-0118
(Exp. 05/31/2019)

US Department of Housing and Urban Development
Office of Housing/Federal Housing Commissioner

US Department of Agriculture
Farmers Home Administration

Part I to be completed by Principals of Multifamily Projects *(See instructions)* Reason for submission:		**For HUD HQ/FmHA use only**	
1. Agency name and City where the application is filed		**2**. Project Name, Project Number, City and Zip Code	
3. Loan or Contract amount $	**4**. Number of Units or Beds	**5**. Section of Act	**6**. Type of Project (check one) ☐ Existing ☐ Rehabilitation ☐ Proposed (New)

7. List all proposed Principals and attach organization chart for all organizations

Name and address of Principals and Affiliates (Name: Last, First, Middle Initial) proposing to participate	**8 Role of Each Principal in Project**	**9. SSN or IRS Employer Number**

Certifications: The principal(s) listed above hereby apply to HUD or USDA FmHA, as the case maybe, for approval to participate as principal(s) in the role(s) and project listed above. The principal(s) each certify that all the statements made on this form are true, complete and correct to the best of their knowledge and belief and are made in good faith, including any Exhibits attached to this form. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. The principal(s) further certify that to the best of their knowledge and belief:

1. Schedule A contains a listing, for the last ten years, of every project assisted or insured by HUD, USDA FmHA and/or State and local government housing finance agencies in which the principal(s) have participated or are now participating.
2. For the period beginning 10 years prior to the date of this certification, and except as shown on the certification:

a. No mortgage on a project listed has ever been in default, assigned to the Government or foreclosed, nor has it received mortgage relief from the mortgagee;
b. The principals have no defaults or noncompliance under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project;
c. There are no known unresolved findings as a result of HUD audits, management reviews or other Governmental investigations concerning the principals or their projects;
d. There has not been a suspension or termination of payments under any HUD assistance contract due to the principal's fault or negligence;
e. The principals have not been convicted of a felony and are not presently the subject of a complaint or indictment charging a felony. (A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less);
f. The principals have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;
g. The principals have not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond;

3. All the names of the principals who propose to participate in this project are listed above.
4. None of the principals is a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in Standards of Ethical Conduct for Employees of the Executive Branch in 5 C.F.R. Part 2635 (57 FR 35006) and HUD's Standard of Conduct in 24 C.F.R. Part 0 and USDA's Standard of Conduct in 7 C.F.R. Part 0 Subpart B.
5. None of the principals is a participant in an assisted or insured project as of this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification, have not been filed with HUD or FmHA.
6. None of the principals have been found by HUD or FmHA to be in noncompliance with any applicable fair housing and civil rights requirements in 24 CFR 5.105(a). (If any principals or affiliates have been found to be in noncompliance with any requirements, attach a signed statement explaining the relevant facts, circumstances, and resolution, if any).
7. None of the principals is a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.
8. Statements above (if any) to which the principal(s) cannot certify have been deleted by striking through the words with a pen, and the relevant principal(s) have initialed each deletion (if any) and have attached a true and accurate signed statement (if applicable) to explain the facts and circumstances.

Name of Principal	**Signature of Principal**	**Certification Date(mm/dd/yyyy**	**Area Code and Tel. No.**
This form prepared by (print name)		**Area Code and Tel. No.**	

Schedule A: List of Previous Projects and Section 8 Contracts. Below is a complete list of the principals' previous participation projects and participation history in multifamily Housing programs of HUD/FmHA, State and local Housing Finance Agencies. **Note:** Read and follow the instruction sheet carefully. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If no previous projects, write by your name, "**No previous participation, First Experience"**.

1. Principals Name (Last, First)	2. List of previous projects (Project name, project ID and, Govt. agency involved)	3.List Principals' Role(s) (indicate dates participated, and if fee or identity of interest participant)	4. Status of loan (current, defaulted, assigned, foreclosed)	5.Was the Project ever in default during your participation			6. Last MOR rating and Physical Insp. Score and date
				Yes	**No**	**If yes, explain**	

Part II- For HUD Internal Processing Only

Received and checked by me for accuracy and completeness; recommend approval or refer to Headquarters after checking appropriate box.

Date (mm/dd/yyyy)	Tel No. and area code	☐ A. No adverse information; form HUD-2530 approval recommended.	☐ C. Disclosure or Certification problem
Staff	Processing and Control	☐ B. Name match in system	☐ D. Other (attach memorandum)

Supervisor	Director of Housing/Director, Multifamily Division	Approved ☐ Yes ☐ No	Date (mm/dd/yyyy)

Instructions for Completing the Previous Participation Certificate, form HUD-2530

Carefully read these instructions and the applicable regulations. A copy of those regulations published at 24 C.F.R. 200.210 to 200.245 can be obtained from the Multifamily Housing Representative at any HUD Office. Type or print neatly in ink when filling out this form. Mark answers in all blocks of the form. If the form is not filled completely, it will delay approval of your application.

Attach extra sheets as you need them. Be sure to indicate "Continued on Attachments" wherever appropriate. Sign each additional page that you attach if it refers to you or your record.

Carefully read the certification before you sign it. Any questions regarding the form or how to complete it can be answered by your HUD Office Multifamily Housing Representative.

Purpose: This form provides HUD with a certified report of all previous participation in HUD multifamily housing projects by those parties making application. The information requested in this form is used by HUD to determine if you meet the standards established to ensure that all principal participants in HUD projects will honor their legal, financial and contractual obligations and are acceptable risks from the underwriting standpoint of an insurer, lender or governmental agency. HUD requires that you certify your record of previous participation in HUD/USDA-FmHA, State and Local Housing Finance Agency projects by completing and signing this form, before your project application or participation can be approved.

HUD approval of your certification is a necessary precondition for your participation in the project and in the capacity that you propose. If you do not file this certification, do not furnish the information requested accurately, or do not meet established standards, HUD will not approve your certification.

Note that approval of your certification does not obligate HUD to approve your project application, and it does not satisfy all other HUD program requirements relative to your qualifications.

Who Must Sign and File Form HUD-2530:

Form HUD-2530 must be completed and signed by all principals applying to participate in HUD multifamily housing projects, including those who have no previous participation. The form must be signed and filed by all principals and their affiliates who propose participating in the HUD project. Use a separate form for each role in the project unless there is an identity of interest.

Principals include all individuals, joint ventures, partnerships, corporations, trusts, non-profit organizations, any other public or private entity that will participate in the proposed project as a sponsor, owner, prime contractor, turnkey developer, managing agent, nursing home administrator or operator, packager, or consultant. Architects and attorneys who have any interest in the project other than an arm's length fee arrangement for professional services are also considered principals by HUD.

In the case of partnerships, all general partners regardless of their percentage interest and limited partners having a 25 percent or more interest in the partnership are considered principals. In the case of public or private corporations or governmental entities, principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation.

Affiliates are defined as any person or business concern that directly or indirectly controls the policy of a principal or has the power to do so. A holding or parent corporation would be an example of an affiliate if one of its subsidiaries is a principal.

Exception for Corporations – All principals and affiliates must personally sign the certificate except in the following situation. When a corporation is a principal, all of its officers, directors, trustees and stockholders with 10 percent or more of the common (voting) stock need not sign personally if they all have the same record to report. The officer who is authorized to sign for the corporation or agency will list the names and title of those who elect not to sign. However, any person who has a record of participation in HUD projects that is separate from that of his or her organization must report that activity on this form and sign his or her name. The objective is **full** disclosure.

Exemptions – The names of the following parties do not need to be listed on form HUD-2530: Public Housing Agencies, tenants, owners of less than five condominium or cooperative units and all others whose interests were acquired by inheritance or court order.

Where and When Form HUD-2530 Must Be Filed: The original of this form must be submitted to the HUD Office where your project application will be processed at the same time you file your initial project application. This form must be filed with applications for projects, or when otherwise required in the situations listed below:

- Projects to be financed with mortgages insured under the National Housing Act (FHA).
- Projects to be financed according to Section 202 of the Housing Act of 1959 (Elderly and Handicapped).
- Projects in which 20 percent or more of the units are to receive a subsidy as described in 24 C.F.R. 200.213.
- Purchase of a project subject to a mortgage insured or held by the Secretary of HUD.
- Purchase of a Secretary-owned project.
- Proposed substitution or addition of a principal or principal participation in a different capacity from that previously approved for the same project.
- Proposed acquisition by an existing limited partner of an additional interest in a project resulting in a total interest of 25 percent or more or proposed acquisition by a corporate stockholder of an additional interest in a project resulting in a total interest of 10 percent or more.
- Projects with U.S.D.A., Farmers Home Administration, or with state or local government housing finance agencies that include rental assistance under Section 8 of the Housing Act of 1937. For projects of this type, form HUD-2530 should be filed with the appropriate applications directly to those agencies.

Review of Adverse Determination: If approval of your participation in a HUD project is denied, withheld, or conditionally granted on the basis of your record of previous participation, you will be notified by the HUD Office. You may request reconsideration by the HUD Review Committee. Alternatively, you may request a hearing before a Hearing Officer. Either request must be made in writing within 30 days from your receipt of the notice of determination.

If you do request reconsideration by the Review Committee and the reconsideration results in an adverse determination, you may then request a hearing before a Hearing Officer. The Hearing Officer will issue a report to the Review Committee. You will be notified of the final ruling by certified mail.

Specific Line Instructions:

Reason for submitting this Certification: e.g., refinance, change in ownership, change in management agent, transfer of physical assets, etc.

Block 1: Fill in the name of the agency to which you are applying. For example: HUD Office, Farmers Home Administration District office, or the name of a State or local housing finance agency. Below that, fill in the name of the city where the office is located.

Block 2: Fill in the name of the project, such as "Greenwood Apts." If the name has not yet been selected, write "Name unknown." Below that, enter the HUD contract or project identification number, the Farmers Home Administration project number, or the State or local housing finance agency project or contract number. Include **all** project or contract identification numbers that are relevant to the project. Also enter the name of the city in which the project is located, and the ZIP Code.

Block 3: Fill in the dollar amount requested in the proposed mortgage, or the annual amount of rental assistance requested.

Block 4: Fill in the number of apartment units proposed, such as "40 units." For hospital projects or nursing homes, fill in the number of beds proposed, such as "100 beds."

Block 5: Fill in the section of the Housing Act under which the application is filed.

Block 7: Definitions of all those who are considered principals and affiliates are given above in the section titled "Who Must Sign and File...."

Block 8: Beside the name of each principal, fill in the appropriate role. The following are examples of possible roles that the principals may assume: Owner/Mortgagor, Managing Agent, Sponsor, Developer, General Con-tractor, Packager, Consultant, Nursing Home Administrator etc.

Block 9: Fill in the Social Security Number or IRS employer number of every principal listed, including affiliates.

Instructions for Completing Schedule A:

Be sure that Schedule A is filled-in completely, accurately and the certification is properly dated and signed, because it will serve as a legal record of your previous experience. All Multifamily Housing projects involving HUD/ FmHA, and State and local Housing Finance Agencies in which you have previously participated **must be** listed. Applicants are reminded that previous participation pertains to the individual principal within an entity as well as the entity itself. A newly formed company may not have previous participation, but the principals within the company may have had extensive participation and disclosure of that activity is required.

Column 2. ***All previous projects must be listed or your certification cannot be processed.*** Include the name of all projects, project number, city where it is located and the governmental agency (HUD, USDA-FmHA or state or local housing finance agency) that was involved.

Column 3. List the role(s) as a principal, dates participated and if fee or identity of interest (IOI) with owners.

Column 4. Indicate the current status of the loan. Except for current loan, the date associated with the status is required. Loans under a workout arrangement are considered assigned. For all noncurrent loans, an explanation of the status is required.

Column 5. Explain any project defaults during your participation.

Column 6. Provide the latest Management Review (MOR) rating and Physical Inspection score.

Certification: After you have completed all other parts of form HUD-2530, including schedule A, read the Certification carefully. In the box below the statement of the certification, fill in the names of all principals and affiliates as listed in block 7. Each principal should sign the certification with the exception in some cases of individuals associated with a corporation (see "Exception for Corporations" in the section of the instructions titled "Who Must Sign and File Form HUD-2530). Principal who is signing on behalf of the entity should attach signature authority document. Each principal who signs the form should fill in the date of the signature and a telephone number. By providing a telephone number, HUD can reach you in the event of any questions.

If you cannot certify and sign the certification as it is printed because some statements do not correctly describe your record, use a pen to strike through those parts that differ with your record, and then sign and certify.

Attach a signed statement of explanation of the items you have struck out on the certification. Item 2e. relates to felony convictions within the past 10 years. If you are convicted of a felony within the past 10 years, strike out 2e. and attach statement of explanation. A felony conviction will not necessarily cause your participation to be disapproved unless there is a criminal record or other evidence that your previous conduct or method of doing business has been such that your participation in the project would make it an unacceptable risk from the underwriting stand point of an insurer, lender or governmental agency.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by law (42 U.S.C. 3535(d) and 24 C.F.R. 200.217) and by regulation at 24 CFR 200.210. This information is needed so that principals applying to participate in multifamily programs can become HUD-approved participants. The information you provide will enable HUD to evaluate your record with respect to established standards of performance, responsibility and eligibility. Without prior approval, a principal may not participate in a proposed or existing multifamily project. HUD uses this information to evaluate whether or not principals pose an unsatisfactory underwriting risk. The information is used to evaluate the potential principals and approve only individuals and organizations that will honor their legal, financial and contractual obligations.

Privacy Act Statement: The Housing and Community Development Act of 1987, 42 U.S.C. 3543 requires persons applying for a Federally-insured or guaranteed loan to furnish his/her Social Security Number (SSN). HUD must have your SSN for identification of your records. HUD may use your SSN for automated processing of your records and to make requests for information about you and your previous records with other public agencies and private sector sources. HUD may disclose certain information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. You must provide all of the information requested in this application, including your SSN.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

A response is mandatory. Failure to provide any of the information will result in your disapproval of participation in this HUD program.