



REQUEST FOR PROPOSALS TITLE PAGE
Include This Page as the First Page in Your Proposal Response

City of Lynchburg, Virginia
Procurement Division

Proposal Title: **Pre-Qualification Architectural and Engineering Services for Parks and Recreation**

This is the City of Lynchburg's Request for Proposals No. 2022-055, issued April 20, 2022. Direct inquires for information to: Melissa Tillman, Phone: 434-455-4228 or by email to melissa.tillman@lynchburgva.gov. All responses to this solicitation shall be in strict accordance with the requirements set forth in this proposal document and the ensuing contract documents.

All requests for clarification of or questions regarding this request for proposal must be made in writing, by email to melissa.tillman@lynchburgva.gov and received by 1:00 p.m., May 18, 2022. Any alteration or changes to this Request for Proposals will be made only by written addendum issued by the City of Lynchburg, Procurement Division.

Sealed proposals will be publicly accepted prior to 4:00 p.m., May 26, 2022, however only the names of firms responding will be available for announcement. Proposals received after the stated due date and time shall not be considered. Submit proposals in a sealed, opaque envelope, and put the RFP number, title, due date and time on the lower left front. Offerors are responsible for having their proposal stamped by Procurement Division staff before the deadline indicated above and acknowledge all addenda so issued in the space provided below. All Offerors are responsible for obtaining issued addenda from the City's Procurement Division website: <http://www.lynchburgva.gov/current-solicitations>.

Acknowledge receipt of addenda here: No. _____ Date: _____ No. _____ Date: _____

Submit Proposals: BY MAIL, GROUND DELIVERY, OR HAND DELIVER TO:

Procurement Division
Third Floor City Hall
900 Church Street
Lynchburg, Virginia 24504

Information the Offeror deems Proprietary is included in the proposal response in section(s): _____

See Paragraph B. on page 2 for guidelines on submitting proprietary information.

In compliance with this Request for Proposals and all the conditions imposed therein, the undersigned offers and agrees to furnish the services in accordance with the attached proposal or as mutually agreed by subsequent negotiations. By my signature below, I certify that I am authorized to bind the Offeror in any and all negotiations and/or contractual matters relating to this Request for Proposals. Indicate which services you are requesting pre-qualification for below. Sign in ink and type or print requested information.

Full Legal Name of Offeror: _____

Fed ID OR SOC. SEC. NO.: _____ Date: _____

Address: _____ Phone: () _____

Signature: _____ Fax: () _____

Typed or Printed Name, Title

City Procurement Signature: Melissa Tillman

Title Page 2- Pre-Qualification Architectural and Engineering Services for Parks and Recreation:

Offerors shall mark in the first column beside each areas of expertise that they are submitting proposals to pre-qualify for:

	A	Bicycle and Trail Design
	B	Bid Phase Services
	C	Construction Administration
	D	Construction Inspection
	E	Design Document Preparation
	F	Drone Capabilities
	G	Electrical System Design
	H	Geotechnical Services
	I	Grant Compliance
	J	Landscape Architects
	K	Parks and Trails Amenities Design
	L	Project Management
	M	Public Relations
	N	Retaining Wall Design / Consulting
	O	Site Security Design / Consulting
	P	Sports Lighting Design / Consulting
	Q	Walking Bridge Design
	R	Wi-Fi Infrastructure Design / Consulting

Please Note:

The City reserves the right to award to multiple firms and pre-qualify firms based on their specific areas of expertise. Individual work assignments will be negotiated for each specific project on an as needed basis. It shall be the sole decision of the City regarding which architect/engineer the assignment is awarded to if contracts are awarded to multiple firms. The City reserves the right to perform work in-house or to award large projects through a separate procurement action. **Pre-qualification does not guarantee any future contract.**

I. SUBMISSION OF PROPOSALS

- A. **An original (1), so marked, and four (4) copies, so marked, for a total of five (5)** of your proposal document are required. **In addition, one (1) copy of proposal in an electronic format, either on a USB drive OR send an electronic file via e-mail to melissa.tillman@lynchburgva.gov within 24 hours after the proposal due date; do not send the file before the advertised due date.** The City of Lynchburg (City) will not assume responsibility for reproduction where an insufficient number of copies have been supplied. In any such case, the City will notify the Offeror of the deficiency and request that the appropriate number of copies be delivered within 24 hours. Failure to comply with this or other requirements of this Request for Proposal shall be grounds for the City to reject such proposals. Telegraphic or facsimile submission of proposals is not acceptable and any such proposals will not be considered.
- B. **Submission of Proprietary Information:** Trade secrets or proprietary information submitted by an Offeror in connection with this procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however the Offeror must invoke the protection of this section prior to or upon submission of the data or the materials, and must identify the data or other materials to be protected and state the reason why protection is necessary (Section 2.2-4342F of the Code of Virginia). Offerors shall submit, in a separate section of the proposal, any information considered proprietary and any copyrighted material and clearly identify the information as proprietary and/or copyrighted information. Offerors may not declare their entire proposal proprietary nor may they declare proposed pricing to be proprietary.

References may be made within the body of the proposal to proprietary information; however all information contained within the body of the proposal not in the separate section labeled proprietary shall be considered Public Information.

- C. Proposals having any erasures or corrections must be initialed by the Offeror in ink.
- D. The City reserves the right to accept or reject any or all proposals, to waive informalities, and to reissue any request for proposals and to award contracts to multiple Offerors. Any contract resulting from this Request for Proposal shall not be exclusive to the Successful firm. The City reserves the right to contract with firms not party to the resultant contract for similar work if it determines this to be in their best interest.
- E. By submitting a proposal response, the Offeror agrees that the proposal response will not be withdrawn for a period of 90 days following the due date for proposal responses.
- F. By submitting a proposal response, the Offeror certifies that it has not combined, conspired or agreed to intentionally rig, alter or otherwise manipulate, or to cause to be rigged, altered or otherwise manipulated its proposal response for the purpose of allocating purchases or sales to or among persons, raising or otherwise fixing the prices of the goods or services, or excluding other persons from dealing with the City.
- G. By submitting a proposal response, the Offeror certifies that its proposal is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontracting firm in connection with its proposal; and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised.
- H. Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All responsible Offerors are encouraged to submit proposals.
- I. It is the policy of the City to maximize participation by minority and women owned business enterprises in all aspects of City contracting opportunities. The City does not discriminate against faith-based organizations
- J. The City will not be responsible for any expense incurred by any Offeror in preparing and submitting a proposal response. All proposals submitted will become the property of the City.
- K. By submitting a proposal, the Offeror is certifying that Offeror is not currently debarred by the City, or in a procurement involving federal funds, by the Federal Government. A copy of the City's debarment procedure in accordance with Section 18.1-10 of the City's Procurement Ordinance is available upon request.

II. INTRODUCTION

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals from interested architectural and engineering firms (Offeror) that can become pre-qualified consultants for various parks and recreation services. This service has not been previously solicited, so this is a new Requirement Contract for professional services to be provided on an “as needed” or “on-call” basis. When the need for services arises in connection with a specific project, the City will issue a Task Order to the Consultant for the professional services.

Pre-qualification does not guarantee any future contract. Per Virginia Code 2.2-4303.1, *the sum of all projects performed in a one year contract term shall not exceed \$8 million and the fee for any single project shall not exceed \$2.5 million*. It is understood that projects may not be completed during the contract term; however all terms and conditions of this contract shall survive until work is completed.

The City reserves the right to award to multiple firms and pre-qualify firms based on their specific areas of expertise. Individual work assignments will be negotiated for each specific project on an as-needed basis. It shall be the sole decision of the City regarding which firm the assignment is awarded to, if contracts are awarded to multiple firms. The City reserves the right to perform work in-house or to award large projects through a separate procurement action.

The selected Consultant and City will mutually define the project specific scope of services on a per project basis. The Consultant shall be responsible for performing all professional services as defined in each approved Task Order, on a per project basis. Development of plans and specifications for projects should be in conformance with the requirements outlined in the City’s Manual of Specifications and Details, latest revision: <http://www.lynchburgva.gov/manual-specifications>.

Funding for capital and maintenance projects is appropriated by the City's Capital Improvement Program (CIP) which is financed by local, state, and federal funds. The City is part of the First Cities Initiative and receives Community Development Block Grant (CDBG) funds and/or HOME Investment Partnerships Program (HOME) funds, as well as funding through various federal and state grant awards.

III. BACKGROUND

The City of Lynchburg’s Parks and Recreation Department currently maintains 17 parks and over 40 miles of trails. Their plans are to improve the connectivity of bicycling, walking and hiking paths and champion environmental initiatives such as the rehabilitation of the health of the Blackwater Creek Trail. Development of amenities such as pavilions, public restrooms and recreational spaces, is a goal across many of the City’s parks.

IV. SCOPE OF SERVICES

This RFP will pre-qualify architectural and engineering firms as consultants to provide professional services. Offerors should mark on Title Page 2 the areas that they desire to become pre-qualified for and then describe their ability to provide one or more specific services listed below under Section 2 of their proposal. Proposals should be detailed with respect to the services that the Offeror has expertise in, based on the following requirements and descriptions outlined below.

- A. Bicycle and trail design** – The Offeror shall demonstrate experience with designing bicycle and walking paths and hiking trails. When applicable, trails shall be developed for ADA compliance and accessibility for public access. The City's is still developing pedestrian access along the Blackwater Creek and James River and the City's Parks and Recreation has a Master Plan to expand services.
- B. Bid phase services** - The Offeror may be required to provide consulting services during the bid phase of projects. This may include development of bid alternates; facilitation and documentation of pre-bid conferences; consultation on the acceptability of substitute materials; responding to bidders questions; preparation of addenda; and review, evaluation and negotiation of the lowest responsible bids.
- C. Construction administration** - The Offeror shall demonstrate the ability to provide construction administration services for transportation projects. Work may include facilitation and documentation of the pre-construction conference; review and approval of shop drawings, tests, and inspections; determine the acceptability of substitute materials or equipment; make project inspections and document the findings of work quality; approve or disapprove work completed by the contractor; review the contractor's schedule throughout the project; respond to requests for information pertaining to the design and issue instructions to the contractor; prepare and/or review change orders; review and approve contractor's pay requests; conduct substantial completion inspections and preparation of the project punch-list; and otherwise act as the representative of the City to the extent authorized during the construction phase of the project.
- D. Construction inspection** - The Offeror shall have available construction inspection services to the extent required by the City. This may include the use of a full-time project inspector for Quality Control and or Quality Assurance purposes.
- E. Design document preparation** - The Offeror shall have the capacity to produce construction design documents. This includes: preparation of preliminary engineering or conceptual design reports, preparation of Bid Documents (to include drawings, specifications, easement plats) in multiple phases to allow City review and comments, working with City staff in resolving comments, development of erosion and sediment control plans, development of Stormwater plans (SWPPP), environmental permit applications and reporting requirements, development of traffic control plans as-needed, preparation of opinions of probable construction cost at agreed upon phases of the design project, and working and negotiating with appropriate government agencies and authorities to achieve project approval.
- Design reports, plans and specifications shall be signed and sealed by a Professional Engineer, licensed in the Commonwealth of Virginia. The City utilizes its own Manual of Specifications and Standard Details for commonly required details and items. These are available on the City's website at: www.lynchburgva.gov . The City Procurement Division also provides front-end documents and specifications for most bid projects.
- F. Drone capabilities**- The Offeror shall demonstrate capabilities to provide high definition video cameras, to produce live-feed and time-lapse videos for construction projects, in addition to still images in daylight or infrared.
- G. Electrical System Design** – The Offeror shall demonstrate the licensure and experience of designing electrical systems for park/trail lighting, amenities and site infrastructure design. This will include writing specifications documents, schematic diagrams and wiring diagrams.

(a) Site Lighting- Offeror demonstrates the ability to perform site lighting studies and ability to translate that into a concept and/or construction documents for the installation of site lighting in park settings. Both high and low voltage site lighting are used in City parks, with power sources using both traditional grid-wired and on-site solar infrastructures.

(b) Site Electrical Infrastructure Design- Offeror can work with both existing and/or new sites to design construction documents for the electrical infrastructure to fit the site's needs. Sites can be as simple as a small pocket park to a large scale regional park.

H. Geotechnical services - The Offeror shall have available, either in-house or via sub-consultant, geotechnical study expertise to include soil studies, depth of groundwater, depth of rock analysis, and other geotechnical services as needed. This shall include: exploration, sampling, analysis and recommendations.

I. Grant Compliance – The City receives funding from various state and federal sources. The main grant that Parks and Recreation uses is the CDBG (Community Development Block Grant). Regulatory compliance with documentation, recordkeeping and paperwork is critical. If Offeror's have experience with grant compliance then they should document this in their proposal.

The Attachment **PART II** details requirements that are associated with the issuance of contracts and/or purchase orders that utilize CDBG and/or HOME funds. Subparts A-E would be applicable for professional services and Section F only applies to construction contracts. The City's Procurement Division will verify with the Grant Manager for current requirements throughout the Contract, if any revisions occur to the included Subparts, Attachments or Davis-Bacon Wage Rates, then the latest version will apply to each approved Task Order under the Consultant's resulting pre-qualification contract.

J. Landscape architects – The Offeror shall demonstrate experience with landscape architecture through the planning, designing, management and development of natural environments for the City's Parks and Recreation Department. The goal is to design attractive and functional public parks, gardens, playgrounds and public spaces.

K. Parks and Trail Amenities Design- The Offeror shall have experience designing park and trail amenities to develop multi-use system that provide comfortable, convenient and safe places to exercise and socialize for pedestrians and bicyclists. Amenities would include: pavilions, public restrooms, benches, tables, trash receptacles, bicycle racks/shelters, drinking fountains, informational signage and other park related structures.

L. Project management – The Offeror shall demonstrate experience with project management for construction related services. The involvement could include project initiation, conception, planning, execution, contractor performance management and project closeout.

M. Public relations - The Offeror shall assist the City in gaining approval of projects through public meetings and with public involvement and relations during the project. This work may include assisting City staff, or providing the lead in making presentations to City Council, other city officials, other governmental agencies and to the general public in various forums as necessary. This would also include responding to citizens and media outlets.

N. Retaining Wall Design/Consulting – The Offer shall demonstrate experience with designing retaining walls in parks and along trails. Public safety is a critical concern when designing these retaining walls due to the soil characteristics, groundwater conditions and on-site

drainage. Designs shall be directed by AASHTO Load and Resistance Factor Design requirements.

- O. Site Security Design/Consulting** – The Offeror shall demonstrate experience with designing and/or consulting for site security.
- P. Sports Lighting Design/Consulting** – The Offeror shall demonstrate the knowledge of different sports field lighting requirements (including: basketball, baseball, football, soccer, tennis and other specific individual and team sports) so that proper designs of sport lighting systems can be provided. The City’s Parks and Recreation Department operates many different types of outdoor sporting facilities throughout the City. Designs and/or consulting may be needed on both the installation of new lighting and/or retrofitting existing systems to meet the City’s requirements.
- Q. Walking Bridge Design** – Throughout the City’s parks and trail system, there are multiple pedestrian walking bridges along the Blackwater Creek and James River. The Offeror shall demonstrate experience designing walking bridges over waterways and have knowledge of the environmental permitting and regulatory compliance needed for such projects.
- R. Wi-Fi Infrastructure Design/Consulting** – Providing consistent wi-fi access to designated public areas is a goal of the City’s Parks and Recreation Department. Offerors shall demonstrate experience with designing Wi-Fi infrastructure to include signal transmitters, towers or poles along with equipment recommendations to reduce weak signal zones.

V. GENERAL REQUIREMENTS AND PROJECT COORDINATION

During the Design Services Phase, the Consultant shall be responsible for providing the services set forth below on a continuous basis.

A. General:

1. For all services pursuant to this Contract, the Consultant shall be required to submit a Staffing Plan in accordance with the Contract. Such Staffing Plan must indicate the personnel who will perform the services specified in the Contract. The Staffing Plan is subject to review and approval by the City. Such approval must be obtained prior to the commencement of services hereunder.
2. The design shall provide for the continuation of vehicular and pedestrian traffic in the vicinity of the project area, as directed by the City. Access to private properties must be maintained at all times during construction.

B. Progress Reports:

1. The Consultant shall prepare and submit a progress report that is in accordance with the Contract Schedule set forth in the Task Order. The progress report shall include, but not be limited to, the following: target dates for completion of inspections, field surveys, condition reports, preliminary and approved drawings, advanced plans, specifications, cost estimates and construction documents. A detailed listing of all tasks, sub-tasks and milestones; the time necessary to complete the various tasks, sub-tasks and milestones; the interrelationship of milestones; the interrelationship and dependency of the various elements of the progress report; and the critical path for the projects under a resulting contract.

C. Meetings and Coordination:

1. The Consultant shall schedule, coordinate and participate/function as Chairperson at all meetings held during the progress of the contract, including any/all required follow-up meetings and/or actions.
2. The Consultant shall prepare draft and final minutes for all required meetings and conferences. The draft minutes shall be prepared and distributed to the City Project Manager, Architect and/or Engineer and affected parties within two (2) business days of the meeting. Upon receiving comments on the draft minutes, the Consultant shall revise the minutes, as appropriate, and shall distribute final minutes of meeting within five (5) business days.
3. The Consultant shall prepare and distribute all necessary correspondence as directed by the City.

D. Deliverables:

Where deliverables are required as a part of the scope of work, all documents shall be delivered in the following formats, and shall become property of the City of Lynchburg:

1. Reports and Text Documents – Submit in Microsoft Word format and pdf format.
2. Design Drawings – Submit in 2020 AutoCAD format and pdf format
3. As-Built Survey – Submit in 2020 AutoCAD format

E. Public and Private Utilities Coordination:

1. Any utility owned and/or maintained by the City (e.g. water main, sewer line, traffic signals) is defined as Public Utility.
2. Any utility, which is not owned and/or maintained by the City (e.g. gas main, electric lines, telephone lines, fiber-optic lines, cable services, pipelines, etc.), is defined as Private Utility.
3. The consultant shall clearly identify the location and ownership of all utilities, public as well as private, existing or proposed, within the project limits.
4. Public Utilities: The Consultant shall provide design services for all items of work required by the Public Utility. At the onset of the Project, the Consultant shall meet with Public Utility to identify the items of work to be included in the design. At a minimum, the work shall include the following items:
 - (1) maintenance of existing utility services during construction,
 - (2) relocation of existing utilities,
 - (3) installation of new utilities and support.

For all items of work required by the Public Utility, the Consultant shall provide all required design services at each stage of the design (preparation of plans, specifications, construction details, cost estimates, etc.).

5. The Consultant shall obtain timely approval letters from all affected public and private utilities prior to the finalization of the Construction Documents.

F. Permits:

1. Permits may be required from the impacted agencies during the design and/or the construction. The impacted agencies include, without limitation: Railroad, Army Corps Engineers,

Department of Environmental Quality (DEQ), Department of Conservation and Recreation (DCR), Virginia Marine Resources Commission (VMRC) and the City of Lynchburg VA, etc.

2. The Consultant shall obtain all permits necessary for completion of the design. The Consultant shall start the permit application process as early as possible in the design phase to ensure that all required permits are obtained in a timely fashion.
3. The Consultant shall include language in the Construction Documents requiring the contractor to obtain all necessary permits. The Consultant shall clearly identify all the permits the contractor is required to obtain for construction of the project.
4. The application fees and permit fees shall be paid by the City.

G. City's Responsibilities:

The City shall:

1. Provide all information in possession of the City, including Geographic Information System (GIS) data such as:
planometrics, topography, utilities, aerials and property lines, as needed for individual projects.
2. Assist in obtaining permission to enter upon public and private property as required for the engineer to perform services. The City will acquire the necessary easements and property.
3. Examine all studies, test results, reports, sketches, drawings and proposals and any other documents presented by the engineer.
4. Pay all necessary advertising costs for public hearings and construction bids.
5. Conduct all bidding, addenda issuance and administer the construction contract.
6. Provide a designated City representative with respect to the work to be performed for each assignment.

H. Professional Standard:

Offerors should demonstrate their ability to:

1. Perform all tasks in accordance with generally accepted professional standards.
2. Provide to the City the best possible advice and consultation within the engineer's authority and capacity as a professional architect/engineer.
3. Comply with all applicable regulations, laws, ordinances and requirements of all applicable governmental agencies and authorities.
4. Assign work to be performed to qualified personnel in sufficient numbers to meet negotiated performance schedules.

VI. PROJECT ASSIGNMENT, COMPENSATION AND PERFORMANCE SCHEDULES

Selection of Architect and/or Engineer

The City reserves the right to negotiate with multiple Offerors on any specific project for which they are pre-qualified. Individual work assignments will be negotiated for each specific project on an as-needed basis. It shall be the sole decision of the City regarding which architect/engineer the assignment is awarded to if contracts are awarded to multiple firms; selection may be based on qualifications, quickness of response, proximity to the City and/or project team availability. The City reserves the right to perform work in-house or to award large projects through a separate procurement action. Pre-qualification does not guarantee any future contract.

Once a pre-qualified Offeror has been selected, they shall coordinate with the City to develop the scope of work, fee schedule, and schedule for the proposed services. Task Orders shall be negotiated and prepared between the City and the Offeror on a project-by-project basis and shall be signed by both parties for approval. The first Task Order assigned will be the basis for the initial pre-qualification contract.

Compensation and Method of Payment

As full payment and compensation for the performance and completion of work acceptable to the City for each project or Task Order, the City will pay the architect/engineer in accordance with the sum determined for the individual project assignment. All work shall be performed for each project and shall be done on a lump-sum, not-to-exceed basis or the fee shall be negotiated prior to assignment by incorporating a maximum hourly fee charge. Total fee shall include all expenses for performing the necessary work, including professional fees and reimbursable expenses.

Reimbursable expenses, which shall be the actual expenses incurred in connection with the work performed for transportation, and sustenance incidental thereto, toll telephone calls and telegrams, reproduction of reports, drawings and specifications and computer time shall be estimated at the time of negotiation with actual expenses added to invoices. When assignments are negotiated on a lump-sum or not-to-exceed basis, the cost of attending the number of meetings as required by the City, shall be included in the fee.

Performance Schedule

The architect/engineer shall perform work in accordance with a performance schedule negotiated at the time of project assignment. The architect/engineer shall assign the work to qualified personnel in sufficient numbers to complete the work according to the performance schedule. They shall designate one employee to oversee each project. The designated employee shall work continuously on the project until final reports are accepted by the City.

Changes in Performance Schedule

The City may make changes to the work previously negotiated for an individual assignment. If any such change increases or decreases the time required to perform the work, the performance schedule will be adjusted accordingly. The architect/engineer shall not be entitled to adjustments for changes in work that in the opinion of the City do not result in an increase in the engineer's cost of performing the work. Any

changes in the scope of work for project assignments and performance of any additional services shall proceed only with express written authorization of the City.

VII. PROPOSAL PREPARATION

Proposals must address the items included in Sections IV-VI and the Criteria for Proposal Evaluation.

Proposals should be prepared simply, providing straightforward and concise responses to requests for information and descriptions of qualifications and capabilities. Responses shall be limited to no more than 30 double-sided pages, (excluding the cover, section dividers, Table of Contents and Title pages 1 & 2). Each copy of the proposal must be bound (comb, spiral thermal binding or 3-hole punched and inserted into a slim binder) with all documentation in a single volume where practical. Failure to do so will result in a lowered evaluation. Incomplete proposals may be determined nonresponsive.

Offerors should organize their proposals using the format described below and include a Table of Contents:

Section 1- Title Page & Front End Documents

1. Title Page:

Furnish the **REQUEST FOR PROPOSALS TITLE PAGE (pages 1 & 2)** and include them as the first two pages of the proposal. The name stated on the Title Sheet must be the full legal name of the Offeror and the address must be that of the office which will have the responsibility for the services provided. Offers should acknowledge receipt of addenda on the title page. Failure to do so may result the proposal being deemed non-responsive.

2. Executive Summary:

Provide a brief summary of the reasons that the Offeror believe themselves to be the most qualified for this project. Include the name, address, phone number for the main office and any branch office(s) that would be involved in any way with a resulting contract. Also include the project manager's contact information and e-mail address.

3. Virginia State Corporation Status:

Include a qualifying statement as to your firm's registry status with the Virginia State Corporation Commission.

Section 2 – Offeror Experience

Describe the Offeror's background, history of the business and experience; include the following:

- a. Years in business as an established firm
- b. Firm principals
- c. Size of firm (denote partnerships or subcontractors necessary to facilitate full service scope)
- d. The name, position and telephone number of contact person authorized to conduct negotiations and authorize final contracts or otherwise bind the firm to a contractual relationship
- e. Provide a listing of services the firm is uniquely qualified to provide as detailed in Section IV- Scope of Services. Detail relevant experience for each proposed service, to aid in the evaluation of pre-qualifying firms in each proposed category.

Section 3 – Staff Experience

Provide specific staff experience for providing professional services. Include a resume for the project manager and each key member of the team that will have a proposed role in providing services. For each individual involved include the following details:

- a. Indicate their educational background and specific area of expertise, include any certifications
- b. Relevant experience, especially with local government agencies
- c. Emphasize their role on the proposed project and provide a description of the responsibilities the individual will assume; also provide their corporate affiliation
- d. List the individual's physical location- (city/state)

Resumes of individuals who will not be directly involved with the proposed project should not be included. Resumes for staff of sub-consultants should be included in the same format as listed above. Also include a project team organizational chart for available staff, as related to this project.

Section 4 – References

List current and past work assignments of similar nature that the firm has directly contracted to provide within the last five years. Furnish at least three (3) similar contracts either completed or currently underway to be used as references and include the following information:

- a. Name of client
- b. Name, telephone number and e-mail address of reference
- c. Contract description
- d. Duration of each contract & dates when the service was provided

VIII. CRITERIA FOR PROPOSAL EVALUATION

The following criteria are to be utilized in the evaluation of qualifications for development of a pre-qualified shortlist of firms who may be considered for "on-call" services:

1. Demonstrated understanding of the proposed projects a firm is pre-qualifying for and ability to perform proposed engineering services. (20%)
2. Demonstrated competency of the firm's ability to; identify all disciplines available within the firm and those that will be subcontracted to others which are relevant to the project scope. (25 %)
3. Demonstrated competency and qualifications of personnel including the depth of experience, expertise and performance on projects of similar nature. Evaluate the qualifications and education of all personnel, including sub-consultants, who will be assigned to work on projects. (25%)
4. Demonstrate a minimum of three years of experience in the areas which the firm is proposing, plus any alternative approaches they provide; documented performance on 3 projects of similar nature. (20 %)
5. Conciseness and clarity of proposal; ability to adhere to terms and conditions. (10 %)

IX. METHOD OF AWARD

Following evaluation of the written proposals, the City may choose to pre-qualify any number of Offerors, at its discretion. When requiring Professional Services, the City reserves the right to negotiate with multiple Offerors on any specific project for which they are pre-qualified. At the City's discretion, selection may be based on qualifications, quickness of response, proximity to the City, and project team availability. It shall be the sole decision of City regarding which Architect and/or Engineer the assignment is awarded to, if contracts are awarded to multiple firms. **Pre-qualification does not guarantee any future contract.**

Projects which are projected by the City to exceed a State designated contract value will not be considered for negotiation with pre-qualified Offerors. These projects will be posted by the City for open submittal under State procurement law and will be open for submittals from pre-qualified Offerors and other Offerors.

All pre-qualified firms will receive a Notice of Award that will be posted on the City's website (www.lyncburgva.gov/notices-award) and on the bulletin board located outside of the Procurement Office, 3rd floor City Hall, 900 Church Street, Lynchburg, Virginia, 24504.

X. CONTRACT AND RENEWAL TERM

The initial term of the resulting contract shall be for a period of one (1) year effective at the time of award. At the time of contract expiration, the engineer shall complete, at the discretion of the City, any assignment undertaken, but not yet completed. The engineer will be compensated for all such work undertaken and completed to the satisfaction of the City.

The resulting contract may be renewed by the City for four (4) successive one (1) year periods under the terms and conditions of the original contract except as stated in A and B below. Price increases may be negotiated only per individual Task Order. Upon a determination by the City to renew this contract for an additional term, written notification will be given to the Contractor.

- A. If the City elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased by more than the percentage increase/decrease of Table 4 "Other Services" category of the Consumer Price Index (CPI) of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available. The source for this index shall be <http://www.bls.gov/cpi>.
- B. If during any subsequent renewal periods, the City elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased by more than the percentage increase/decrease of Table 4 "Other Services" category of the Consumer Price Index (CPI) of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available. The source for this index shall be <http://www.bls.gov/cpi>.

XI. GENERAL TERMS AND CONDITIONS

A. Subcontracting and Assignment of Work

The successful firm shall not subcontract or assign portions of the work, other than those specifically defined in the CONTRACT, without the express written consent of the City. A description of any work the Offeror proposes to subcontract shall be submitted to the City for review and approval along with the name and address of the individual, firm, or corporation that is the proposed subcontracting firm. This submittal shall also include a list of the key personnel that the subcontractor firm will assign to the project. All work performed by any subcontractor firm shall be coordinated by the successful firm and the successful firm will be responsible to the City for all work performed by any subcontracting firm or special consultant.

B. Payment for Services

Payments to the successful firm shall be made within 30 days after receipt of an approved invoice for services provided in the previous month. Backup documentation for each invoice shall be provided in detail satisfactory to the City. The successful firm's records and documentation supporting such invoices shall be made available to the City upon reasonable request. The successful firm agrees to retain all records, documents and support materials relevant to the CONTRACT for a period of five years following final payment.

C. Independent Successful firm

The successful firm is an independent successful firm and nothing contained in a subsequent CONTRACT shall constitute or designate such firm or any of its agents or employees as employees of the City.

D. Notification

Any notice required by the Contract shall be effective if given by registered mail, return receipt requested, to the Successful firm in the name and at the address given in its proposal submission; provided that change of address shall be effective if given in accordance with this paragraph. Unless otherwise specified, any notice to the City shall be given to the City of Lynchburg, Procurement Administrator, 900 Church Street, Lynchburg, VA 24504. The Successful firm agrees to notify the City immediately of any change of legal status or of address. Any notice provided in accordance with this paragraph shall be deemed to have been completed five calendar days after the date of mailing.

E. Termination and Ownership of Documents

The City reserves the right to terminate the contract upon written notice to the Successful firm. In the event of termination pursuant to this paragraph which is not the fault of the Successful firm, the Successful firm shall be paid for all services provided through the date of termination. The contract will terminate immediately upon failure of the City of Lynchburg, City Council to appropriate funds for its continuance.

The Successful firm agrees that all information and materials gathered and/or prepared by or for it under the terms of the CONTRACT shall be delivered to, become and remain the property of the City upon completion of the work or termination of the CONTRACT. The City shall have the right to use and reproduce the data and reports submitted hereunder, without additional compensation to the Successful firm.

F. Insurance

The selected firm shall be required to maintain in force such insurance, in amounts acceptable to the City, as will protect himself and the City from claims which may arise out of or result from the execution of the work, whether such execution be by himself, his employees, agents, subcontractor firms or by anyone for whose acts any of them may be liable. This coverage should include, at a minimum, Worker's Compensation, General Liability (including premises/operations, independent successful firms, products and completed operations, contractual liability and personal injury liability) and Professional Liability. All insurance shall be provided by companies authorized to conduct business in the Commonwealth. The selected firm shall furnish the City with an original Certificate of Insurance upon request. The Certificate should name the City as additional insured. The selected firm shall notify the City at least 30 days prior to policy cancellation, non-renewal or reduction of coverage.

G. Laws and Regulations

The Successful firm shall abide by all Federal, State and Local laws and regulations governing the provision of the services called for in the contract. The Successful firm shall give notice and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work. Any legal proceedings arising out of or related to this agreement shall be filed by the parties in the City of Lynchburg General District Court or the Lynchburg Circuit Court.

H. Additional Services

The City may add to the Scope of Services or make changes in the Scope of Services any services of a similar nature to those specified in the Scope of Services of this Request for Proposals as mutually agreed to at a price mutually agreed upon.

I. Severability

Each paragraph and provision of the resultant contract will be severable from the entire agreement and if any provision is declared invalid, the remaining provisions shall remain in effect.

J. Licenses and Permits

The Successful firm shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the work which are legally required prior to and during the work. The City will not charge for any permits required by the City of Lynchburg.

K. Nondiscrimination

If the resultant contract exceeds \$10,000, during the performance of the contract, the Successful firm agrees as follows:

- a. The Successful firm will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Successful firm. The Successful firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Successful firm, in all solicitations or advertisements for employees placed by or on behalf of the Successful firm, will state that such Successful firm is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation

shall be deemed sufficient for the purpose of meeting the requirements of this section.

- d. The Successful firm will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontracted firm or vendor.

L. Payments to Successful Firms

In accordance with Virginia Code Section 2.2-4354 the Successful firm agrees that:

1. Should any contractor be employed by the Successful firm for the provision of any goods or services under this Contract, the Successful firm agrees to the following:
 - (a) The Successful firm shall, within seven days after receipt of any payments from the City pursuant to this Contract, either:
 - (1) Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the goods or services provided by the subcontractor; or
 - (2) Notify the City, as applicable, and the subcontractor, in writing, of the intention to withhold all or a part of the subcontractors firm's payment with the reason for nonpayment. Written notice to the City shall be given to: City of Lynchburg, Procurement Administrator, 900 Church Street, Lynchburg, VA 24504.
 - (b) The Successful firm shall pay interest to the subcontractors firm, at the rate of one percent per month on all amounts owed to the subcontractors firm that remain unpaid after seven days following receipt of payment from the City for goods or services provided under this Contract, except for amounts withheld under subparagraph (a)(2) above.
 - (c) The Successful firm shall include in each of its subcontracts a provision requiring each subcontractors firm to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractors firm.
 - (d) The Successful firm's obligation to pay an interest charge to a subcontractors firm shall not be an obligation of the City.
 - (e) No contract modification shall be allowed for the purpose of providing reimbursement for these interest charges. No cost reimbursement claim shall include any amount for reimbursement of these interest charges.
2. Invoice processing is to be in strict accordance with the rules and regulations set forth by the applicable Jurisdiction and the *Code of Virginia* Section 2.2-4352, requiring payment of invoices within 30 days of receipt of a proper invoice. No promises or commitments on the part of any employee of the Public Body shall bind the Jurisdiction to any other terms and/or conditions other than those set forth in procedures issued by the Public Body.
 - (a) Invoices shall be submitted to the City on a monthly basis. The City shall pay the amount of the invoice within thirty (30) days. However, the City shall have the right to verify information contained on an invoice and extend the time of payment until information is received to correct any errors found therein. The invoices submitted shall include, at a minimum, the following information:
 - (1) Project name, city and state project number;

- (2) City Project Manager;
- (3) City assigned Contract Number;
- (4) Not to exceed amount or lump sum amount;
- (5) Total payments requested to date;
- (6) Payments received;
- (7) Balance due;
- (8) Invoice number;
- (9) Period during which services were performed; and
- (10) Brief description of work covered by invoice.

- (b) Payments shall not be considered as evidence of satisfactory performance of the work either in whole or in part, nor shall any payment be construed as acceptance by the City of any defective work. The City reserves the right to withhold payment in the event the City believes that the work is unsatisfactory.

M. Contractual Claims

Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment; however, written notice of the Successful firm's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Any notice or claim shall be delivered to the City's Procurement Administrator, Third Floor City Hall, 900 Church Street, Lynchburg Virginia 24504 and shall include a description of the factual basis for the claim and a statement of the amounts claimed or other relief requested.

The City's Procurement Administrator shall render a decision on the claim and shall notify the Successful firm within 30 days of receipt of the claim. The Successful firm may appeal the decision of the City's Procurement Administrator by providing written notice to the City Manager, within 15 days of the date of the decision. The City Manager shall render a decision on the claim within 60 days of the date of receipt of the appeal notice and such decision shall be final unless the Successful firm appeals the decision in accordance with the Virginia Public Procurement Act. Invoices for all services or goods provided by the Successful firm shall be delivered to the City no later than 30 days following the conclusion of the work or delivery of the goods.

N. Taxes

The Successful firm shall pay all City, State and Federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price as the taxes shall be an obligation of the Successful firm and not of the City and the City shall be held harmless for same by the Successful firm.

O. Indemnification

To the fullest extent permitted by law, the Successful firm, for itself, heirs, representatives, successors and assigns agrees to save, defend, keep harmless and indemnify the City and all of its officials, agents and employees (collectively, the "City") from and against any and all claims, loss, damage, injury, costs (including court costs and attorney's fees), charges, liability or exposure, however caused, resulting from, arising out of or in any way connected with the Successful firm's performance (or nonperformance) of the agreement terms or its obligations under this agreement.

P. Contract Assignment

The resultant contract may not be assigned, in whole or part, without the written consent of the City.

Q. Royalty and License Fees and Copyright, Trademark and Patent Protection

The Successful firm shall pay all royalty and license fees relating to the items covered by the contract. In the event any third party shall claim that the manufacture, use and sales of these goods offered hereby constitutes an infringement of any copyright, trademark, or patent, the Offeror shall indemnify and hold harmless the City from any cost, expense, damage or loss incurred in any manner by the City on account of such alleged infringement.

R. Responsibility for Property

The Successful firm shall be responsible for damages to property caused by work performed under the CONTRACT. Property damage to surrounding or adjoining areas caused directly or indirectly by actions or omissions of the Successful firm shall be repaired or replaced by the Successful firm, to the satisfaction of the Owner, at the Successful firm's expense.

S. Precedence of Documents

The precedence of documents shall be as follows: the CONTRACT, the Request for Proposals and the Offeror's response to the Request for Proposals.

T. Administrative Appeals Procedure

(a) The following are the exclusive procedures for a bidder or offeror to protest the City's award or decision to award a contract.

- (1) Any protest to award a contract shall be in writing and shall be delivered so that it is received by the City Manager not later than five (5) business days after announcement of the award or decision to award, whichever comes first. Otherwise any such protest shall be deemed to be waived.
- (2) Except for a protest of an emergency or sole source procurement, a protest of a City award or decision to award a contract may only be made by a person who submitted a bid or proposal for the procurement at issue and who was reasonably likely to have its proposal accepted but for the city's decision. In the case of an emergency or sole source procurement, a protest may only be made by a person who can show that he was reasonably likely to have submitted a successful bid or proposal if the procurement had been other than emergency or sole source.
- (3) Protests shall only be granted if (1) the protester has complied fully with this Sec. 18.1-6 and there has been a violation of law, the Lynchburg public procurement code, or mandatory terms of the solicitation that clearly prejudiced the protestor in a material way, or (2) a statute requires voiding of the decision.
- (4) The City Manager shall issue a written decision on a protest within ten (10) days of its receipt by the City Manager.
- (5) If the protest is denied, the protestor may only appeal the denial or otherwise contest or challenge procurement by then filing suit in the Lynchburg Circuit Court, Lynchburg, Virginia, and serving the City with such suit within ten (10) days of such denial. Otherwise, the City Manager's decision shall be final and conclusive, and the protestor's right to appeal the denial or to otherwise contest or challenge the procurement shall be deemed to be waived.
- (6) The City should defer award of a contract where the decision to award has been protested unless there is a written determination by the City Manager that proceeding without delay is

necessary to protect the public interest or unless the bid or offer of the prospective awardee would expire.

- (7) The validity of a contract awarded and accepted in good faith shall not be affected by the fact that a protest or appeal is filed.
- (8) The exclusive relief allowed if a protest is granted is to void the decision being protested. If a contract has already been awarded and performance under the contract has begun, the contract need not be voided if not in the public interest to do so. Under no circumstances will any monetary amount be allowed to the protestor as part of any relief granted.
- (9) Strictly following these procedures shall be a mandatory prerequisite for protest of the City's award or decision to award a contract. Failure by a bidder to follow these procedures strictly shall preclude that bidder's protest and be deemed to constitute a waiver of any protest.

(b) A protest may not be based upon the alleged non-responsibility of a person to whom the City awards or makes a decision to award a contract.

U. Drug Free Workplace

In accordance with Sec 2.2-4312 of the Virginia Code, during the performance of this contract, the Consultant agrees to (i) provide a drug-free workplace for the consultant's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the consultant that such consultant maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each sub-Consultant or vendor.

Successful consultant shall not use, possess, manufacture, or distribute alcohol or illegal drugs during the performance of the contract or while on City premises or distribute it to City employees. Successful Consultant understands that a violation of these prohibitions constitutes a breach of the contract and that the City has the right cancel the contract.

For the purpose of this section, "Drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Consultant, the employees whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

V. Termination for Convenience

The performance of work under contract may be terminated by the Public Body upon written notice to the successful firm without cause, for any reason in whole or in part; whenever it is determined that such termination is in the Public Body's best interest. In the event of such termination, the rights and obligations of the parties, which by their nature survive termination of services covered by a contract, shall remain in full force and effect after termination. In the event of such termination, the successful firm shall be paid for services rendered and approved up to the date of termination. The successful firm may submit any termination claim within 60 days after receipt of the notice of termination.

W. Termination for Nonpayment

In the event the Public Body fails to make payment in accordance with applicable standard payment terms, the successful firm may declare the Public Body in default and exercise any right to cure such default. If the Public Body fails to cure such default within 30 days of receiving such written notice, the successful firm may, by giving written notice to the Jurisdiction, terminate the contract and/or the applicable Scope of Work as of the end of such 30-day period on such date as is specified in such notice of termination.

X. Notice of Cure

A cure letter is used when a successful firm has failed to perform or deliver in accordance with the provisions of contract. Such notice provides the Contractor a period of time to correct or “cure” the deficiency and places successful firm on notice as to the consequences for failure to take the required corrective action. Such notice may be given orally or in writing. Notice of Cure informs the successful firm that non-conformance is a breach of contract and if the deficiency is not corrected within a stated number of days, the Public Body will terminate the contract for default and hold the successful firm liable for any excess costs.

END OF GENERAL TERMS AND CONDITIONS

PART II:

FEDERAL REQUIREMENTS CDBG CONTRACT INSERT

The following document includes special provisions required for contracts either wholly or partially funded with CDBG funds.

The contract insert contains six subparts and attachments as follows:

- Subpart A – Federal/State Nondiscrimination Provisions for Equal Employment Opportunities applicable to all construction and service contracts.
- Subpart B - Notice to the prime contractor relative to certification on non-segregational facilities.
- Subpart C - Use of local businesses; Contracting with small, minority, and/or women-owned businesses
- Subpart D - Civil Rights Act of 1964 requirements.
- Subpart E - Provides that a contractor and subcontractors maintain a drug-free workplace.
- Subpart F - Requirements of Davis-Bacon Act for contracts and subcontracts in excess of \$2,000, and the Contract Work Hours and Safety Standards Act (OSHA) for contracts and subcontracts in excess of \$100,000.

Attachment No. 1 – Davis-Bacon Wage Determinations for Building

Attachment No. 2 – Davis-Bacon Payroll Certification - WHD Form 347

Attachment No. 3 – HUD Form 4010 (To be attached to all construction projects)

Attachment No. 4 – Section 3 Plan – See Labor Hours Worked for Compliance

Attachment No. 5 – Labor Compliance Posters (To be posted at all work sites- Photo to be submitted to Project Manager)

SUBPART A
EQUAL EMPLOYMENT OPPORTUNITY

1. Executive Order 11246 (Contracts/subcontracts above \$10,000)

(a) During the performance of this contract, the contractor and all subcontractors agree as follows:

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

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

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

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractors' noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SUBPART B

NOTICE TO PRIME CONTRACTOR OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

Bidders and offerors are cautioned as follows: By signing this bid or offer, the bidder or offeror will be deemed to have signed and agreed to the provisions of the "Certification of Non-segregated Facilities" in this solicitation. The certification provides that the bidder or offeror does not maintain or provide for his employee's facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de factor basis. The certification also provides that he will not maintain such segregated facilities.

SUBPART C

USE OF LOCAL BUSINESSES; CONTRACTING WITH SMALL, MINORITY, AND/OR WOMEN-OWNED BUSINESSES

Federal regulations, both CDBG and non-CDBG, make it very clear that subrecipients should make every effort to use local business firms and contract with small, minority-owned and/or women-owned businesses in the procurement process. Specifically,

- A subrecipient must take **affirmative steps to use small firms, minority-owned firms, women-owned firms, or labor surplus area firms** in its CDBG-financed activities (24 CFR 85.36(e) or 84.44(b)). The efforts which a subrecipient should make include:
 - Incorporating such businesses in **solicitation lists** whenever they are potential sources.
 - Ensuring that **such businesses are solicited** when identified as potential sources.
 - **Dividing procurement requirements**, when economically feasible, to permit maximum participation of such businesses.
 - Requiring prime contractors, when **subcontracts** are let, to take affirmative steps to select such firms.

- In conformance with the requirements of *Section 3 of the Housing and Community Development Act of 1968*, to the greatest extent feasible, subrecipients must award contracts for work to be performed to eligible **business concerns located in or owned by residents of the target area** to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of governmental assistance for housing (see 24 CFR 570.607(b)).

Subrecipients should note, however, that the desire to award contracts to local firms is *not* a legitimate excuse for avoiding an open and competitive procurement process.

SUBPART D

CIVIL RIGHTS ACT OF 1964

The Contractor and any subcontractors shall not, on the grounds of race, color, or national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination, any person under any program or activity receiving federal financial assistance.

SUBPART E

Title 2.2, SECTION 2.2-4312, to CHAPTER 43 RELATING TO THE PROCUREMENT PRACTICES OF ALL PUBLIC BODIES

For every contract over \$10,000 the contractor must maintain a drug-free workplace. During the performance of this contract, the contractor agrees to @ provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

SUBPART F

COMPLIANCE WITH DAVIS-BACON ACT PAYROLL REVIEW

The contractor and its subcontractors shall comply with provisions of the Davis-Bacon Act and Related Acts. Federal minimum wage laws are applicable to all construction contracts in excess of \$2,000. The Davis-Bacon Act stipulates that all laborers and mechanics employed by the contractor or subcontractors on federally assisted projects shall be paid wages at rates not less than those prevailing on similar construction in the area as determined by the Secretary of Labor. The contractor and its subcontractors shall comply with provisions of the Contract Work Hours and Safety Standards Act generally applicable to any contracts in excess of \$100,000.

Wage rates specified in the applicable wage determination for this construction trade and geographic area are included in Attachment 1. The wage determination must be posted at the site of the work in a prominent and accessible place. The contractor or subcontractor shall insert in any subcontract the clauses included in 29 CFR 5.5 (a) (1) through (12) (Contract Provisions and Related Matters) including the applicable wage rates and a clause requiring the subcontractor include these clauses in any lower tier subcontract. The prime contractor will be responsible for compliance by any subcontractor or lower tier subcontractor with all contract clauses in 29 CFR 5.5 (see Department of Labor website or a Federal regulation website).

By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm which has an interest in the contractor's firm is disbarred or suspended from bidding or working on a federally funded project. No part of this contract will be subcontracted to any person or *firm* who has been debarred or suspended from bidding or working on a federally funded project.

Any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage decision. Additional classifications shall be requested from the Department of Labor as specified in 29 CFR 5.5 or as amended (see Department of Labor Website for forms and instructions). Upon issuance of an additional classification the new wage rate including fringe benefits where appropriate shall be paid to all workers performing the work in the additional classification from the first day on which work is performed in the classification. The Department of Labor shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

1) Payroll(s)

All mechanics and laborers employed upon the site of the work will be paid unconditionally and not less than once a week without subsequent deduction or rebate on any account the full amounts of wages and bona fide fringe benefits or cash equivalents thereof except as provided for by Department of Labor regulations issued in accordance with provisions of the Copeland Act. The payment shall be computed at wage rates not less than those contained in the "wage determination" included in these specifications regardless of any contractual relationship alleged to exist between the contractor or its subcontractors and such laborers and mechanics.

Each contractor and subcontractor shall furnish each week, in which any contract work is performed, to the subrecipient (owner) a payroll of wages paid to each of its employees engaged on work during the preceding weekly payroll period. The payroll submitted shall set out accurately and completely all of the information required to be maintained in the Records section below. Each payroll* submitted shall be accompanied by a Statement of Compliance* signed by the contractor or subcontractor or his/her agent who pays and supervises the payment of persons employed under the contract and shall certify the following:

- 1) That the payroll for the payroll period contains the information noted above and that such information is true and complete,
- 2) That such laborer or mechanic employed on the contract during the payroll period has been paid the full weekly wage earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in federal regulation(s), and
- 3) That each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

*DOL WHD Form 347 (Attachment 2) is included as an example payroll and certification statement

Laborers and mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the actual time worked therein, provided, that the employee's payroll records accurately set forth the time spent in each classification in which work is performed.

Whenever the minimum rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination classification or pay another bona fide fringe benefit or an hourly cash equivalent thereof. If the contractor does not make payment to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program. Contributions made or cost reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions above as well as regular contributions made or costs incurred for more than a weekly period (but not less than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

2) Records

Payrolls and basic records shall be maintained by the contractor and each subcontractor for a period covering three years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work. Payrolls will include the name; his or her correct classification; hourly rates paid as wages paid including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b) (2) (B) of the Davis-Bacon Act; daily and weekly number of hours worked; deductions made; and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5 (a) (1) (iv) that wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b) (2) (B) of the Davis-Bacon Act, the contractor shall maintain records which show the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, **that the plan or program has been communicated in writing to the laborers or mechanics affected**, and records show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

3) Penalties and Withholding

Falsification of a payroll certification may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States code. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or delegated agent may after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guaranteed of funds.

The contractor or subcontractor shall make the payroll records required available for inspection, copying, or transcription by authorized representatives of the owner, DOE, or the Department of Labor and shall permit such representatives to interview employees during working

hours on the job. Failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CR 5.12.

A breach of these contract clauses or the clauses continued in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

The governing body, shall upon its own actions or upon written request of an authorized representative of the Department of Labor withhold from the contractor under this contract or any other federal contract with the same prime contractor, or any other contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics including apprentices, trainees, and helpers employed by the contractor and subcontractor, the full amount of wages required by the contract. In the event of failure to pay any laborer or a mechanic including any apprentice, trainee, or helper, employed or working on the site of the work all or part of the wages required by the contract, the State or the Department of Labor may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guaranteed of funds.

PAYROLL

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



Rev. Dec. 2008

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

OMB No.: 1235-0008
Expires: 04/30/2021

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>				ADDRESS															
PAYROLL NO.		FOR WEEK ENDING			PROJECT AND LOCATION				PROJECT OR CONTRACT NO.										
(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS		
			O										/						
			S																
			O										/						
			S																
			O										/						
			S																
			O										/						
			S																
			O										/						
			S																
			O										/						
			S																

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

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

NAME AND TITLE	SIGNATURE
----------------	-----------

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

Wage and Hour Division (WHD)

Instructions for Completing Payroll Form, WH-347

- [WH-347](#) (PDF)
OMB Control No. 1235-0008, Expires 04/30/2021.

General: Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Payroll No.: Beginning with the number "1", list the payroll number for the submission.

For Week Ending: List the workweek ending date.

Project and Location: Self-explanatory.

Project or Contract No.: Self-explanatory.

Column 1 - Name and Individual Identifying Number of Worker: Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

Column 2 - No. of Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

Column 3 - Work Classifications: List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown or hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

Column 4 - Hours worked: List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

Column 5 - Total: Self-explanatory

Column 6 - Rate of Pay (Including Fringe Benefits): In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "\$12.25/.40" would reflect a \$12.25 base hourly rate plus \$0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds \$100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "\$163.00/\$420.00" would reflect

the earnings of a worker who earned \$163.00 on a Federally assisted construction project during a week in which \$420.00 was earned on all work.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deduction are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory.

Totals - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

Items 1and 2: Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "*See* Deductions column in this payroll." *See* "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits: If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

Contractors who pay no fringe benefits: If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4(b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

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

Note: In order to view, fill out, and print PDF forms, you need Adobe® Acrobat® Reader® version 5 or later, which you may download for free at www.adobe.com/products/acrobat/readstep2.html.

Applicability

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

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Apprentices and Trainees.

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U. S. C. 1001. Additionally, U. S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

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

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

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

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

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

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

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

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

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

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



CONTRACTOR: HIGHLIGHTED SECTION MUST BE CALCULATED AND DOCUMENTATION SUBMITTED TO CITY FOR COMPLIANCE (INCLUDING SUBCONTRACTORS)- EXCEL WORKSHEET TO BE SUBMITTED TO CITY'S PROJECT MANAGER – CITY PROJECT MANAGER TO SUBMIT TO GRANTS MANAGER FOR ENTRY INTO HUD DATA SYSTEM PRIOR TO FINAL PAYMENT FOR CONSTRUCTION CONTRACT

City of Lynchburg, VA Section 3 Plan

Policy Statement

The City of Lynchburg supports the Department of Housing and Urban Development's (HUD's) legislative efforts to provide preference to low- and very low-income residents of the local community and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD funded projects.

What is Section 3 -Purpose

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, effective November 30, 2020, requires the City of Lynchburg to comply with the requirements of Section 3. Section 3 contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible and consistent with existing Federal, state, and local laws and regulations, directed toward low- and very low-income persons. Section 3 applies to training or employment arising in connection with HUD funded housing rehabilitation, housing construction, or other public construction projects, and any contracting opportunities arising in connection with both public housing and other Section 3 projects. These opportunities are, to the greatest extent feasible, required to be given to low- and very low-income persons and business concerns that provide economic opportunities to low- or very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

As a recipient of HUD Community Planning and Development assistance, the City of Lynchburg certifies it will comply with the requirements of Section 3. HUD Community Planning and Development programs include the Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) Program.

HUD's regulations on Section 3 can be found in the Code of Federal Regulations, 24 CFR Part 75: <https://ecfr.federalregister.gov/current/title-24/subtitle-A/part-75>

Implementing Procedures to Ensure Section 3 Requirements

The following Bid Specifications & Contract clause will be included in all City of Lynchburg bid specifications and contracts whose funding is derived from HUD and involves housing construction, demolition, rehabilitation, or other public construction, i.e., infrastructure, roads, sewers, community centers, etc.

The work to be performed under this bid specification / contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (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.

Compliance with Section 3:

To ensure compliance with Section 3 requirements, the City of Lynchburg will document actions taken to comply, including but not limited to:

1. Including Section 3 requirements in all construction contracts that exceed \$200,000 for housing rehabilitation, housing construction, and public facilities and improvements projects.
2. Assisting and actively cooperating with HUD in ensuring contractors and subcontractors comply with Section 3;
3. Refraining from entering into contracts with contractors that are in violation of Section 3 regulations; and
4. Documenting actions taken to comply with Section 3 and submitting Section 3 Integrated Disbursement Information System (IDIS) Summary reports.

Funding Threshold

The requirements of Section 3 apply to contractors or subcontractors that receive contracts in excess of \$200,000 from either of these Federally-funded programs.

Per 24 CFR 75.3, the Section 3 requirements apply based on the amount of housing and community development funding provided by one or a combination of two or more different applicable HUD programs exceeding the \$200,000 threshold. For example, if a project is funded with \$101,000 of HOME funds and \$100,000 of CDBG funds, then it exceeds the applicability threshold of \$200,000 and the Section 3 requirements apply.

Per 24 CFR 75.3(a)(iii), Section 3 requirements apply to the entire project, not just the HUD-financed portion. If a housing rehabilitation, housing construction, or other public construction project receives more than \$200,000 of HUD funding, then Section 3 requirements are triggered and apply to all employment and training opportunities and contracts for work arising in connection with the project (subject to section III.B. below), including efforts that are financed by other, non-HUD sources of funds. Contractors must make all recipients, contractors, and subcontractors aware of the need to comply with Section 3 requirements.

The Section 3 requirements also apply when a project receives less than \$200,000 in HUD housing and community development financial assistance but receives public housing financial assistance, as defined in 24 CFR 75.3(a)(1), or more than \$100,000 of Lead Hazard Control and Healthy Homes program funding, as defined in 24 CFR 75.3(a)(2)(i). For example, if a project is funded with \$75,000 of CDBG funds and \$10,000 of public housing financial assistance funds, then Section 3 requirements apply because public housing financial assistance is provided. See 24 CFR part 75 Subpart D for requirements that apply to projects with multiple funding sources. Also see Section V.B. below.

Eligible Projects

All projects / activities involving housing rehabilitation, housing construction, and other public construction, (e.g., roads, sewers, community centers, etc.,) that are completed with HUD Community Planning and Development funding are subject to the requirement of Section 3 no matter which portion of the project receives the CDBG and HOME Program financial assistance.

Labor Hours

“Labor hours” means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance (24 CFR 75.5).

Contractors and subcontractors are to report the total labor hours for three categories of workers on the project: all workers, Section 3 workers, and Targeted Section 3 workers. The definitions for these types of workers are found in Section 24 CFR Part 75.5.

SECTION 3 WORKER - The new definition of Section 3 worker, at 24 CFR 75.5, implements the statutory requirement that Contractors ensure that job and contracting opportunities arising in connection with a HUD- funded housing rehabilitation, housing construction, or other public construction project are provided to Section 3 workers or Section 3 business concerns to the greatest extent feasible. In accordance with the regulation, a Section 3 worker is a worker who currently fits or when hired within the past five years fits at least one of the following categories:

1. Is a low- or very low-income worker that fell below HUD income limits for the previous or annualized calendar year. Low- and very-low-household income limits may be obtained from: <http://www.huduser.org/portal/datasets/il.html>
2. Is employed by a Section 3 business concern (defined in Section C).
3. Is a Youth Build participant? Youth Build is a community-based pre-apprenticeship program administered by the U.S. Department of Labor that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school.

Contractors may count Section 3 workers’ labor hours for five years from when their status as a Section 3 worker is established, pursuant to 24 CFR 75.31. For purposes of reporting the labor

hours for Section 3 workers, an employer may choose whether to define the workers as Section 3 workers for a five-year period at the time of the workers' hire, or when the workers are first certified as meeting the Section 3 worker definition. The five-year period for a worker cannot begin before November 30, 2020; therefore, Section 3 workers hired prior to November 30, 2020 may be certified for a five-year period beginning November 30, 2020.

Pursuant to 24 CFR 75.5, a prior arrest or conviction cannot negatively affect the status of a Section 3 worker. Furthermore, Section 3 workers are not exempt from meeting position qualification requirements nor do the regulations require the employment of an individual meeting the definition of a Section 3 worker.

A worker may qualify as a Section 3 worker through one of the following certifications, in accordance with 24 CFR 75.31:

1. A worker's self-certification that their income is below HUD's income limit from the prior calendar year.
2. A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing.
3. Certification from a public housing authority (PHA), or an owner or property manager of project-based Section 8-assisted housing, or an administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs.
4. An employer's certification that a worker's income from that employer is below HUD's income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis.
5. An employer's certification that the worker is employed by a Section 3 business concern.

Pursuant to 24 CFR 75.31, for a worker to qualify as a Section 3 worker, the Contractor must maintain (or ensure that the subrecipient, contractor, or subcontractor that employs the worker maintains) one of the listed records above from the time the worker is certified as meeting the Section 3 worker definition for the five-year period or from the time of hire (if hired within the last five years). Pursuant to 24 CFR 75.31(c), the documentation described above must be maintained for the time period required for record retention in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200.

TARGETED SECTION 3 WORKER

The Section 3 statute requires certain recipients to prioritize their efforts to direct employment and economic opportunities to specific groups of low- and very low-income individuals. The new definition of Targeted Section 3 worker reflects both statutory and policy priorities that HUD wishes to specifically track. Pursuant to 24 CFR 75.21, a Targeted Section 3 worker for

housing and community development financial assistance is a worker who meets the definition of a Section 3 worker, plus one of the following:

1. A worker employed by a Section 3 business concern (defined below), or
4. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. Living within the service area or the neighborhood of the project (defined below).
 - b. A Youth Build participant.

The regulation defines the service area or the neighborhood of the project in 24 CFR 75.5 as “an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.”

For a worker to qualify as a Targeted Section 3 worker under housing and community development assisted Section 3 projects (pursuant to 24 CFR 75 Subpart C), the Contractor and/or its recipients must maintain source documentation that the worker meets the definition of a Section 3 worker and at least one of the following (per 24 CFR 75.31(b)(2)(ii)):

1. An employer’s confirmation that a worker’s residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census,
2. An employer’s certification that the worker is employed by a Section 3 business concern, or
3. A worker’s self-certification that the worker is a Youth Build participant.

However, per 24 CFR 75.29, if a CDBG or HOME Program-assisted Section 3 project receives also public housing financial assistance, the Contractor may instead choose to follow the public housing definition of Targeted Section 3 worker at 24 CFR 75.11 to simplify project reporting.

Per 24 CFR 75.11, a Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

1. A worker employed by a Section 3 business concern, or
2. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. A resident of public housing or Section 8-assisted housing.

- b. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance.
- c. A Youth Build participant.

For a worker to qualify as a Targeted Section 3 worker under the public housing financial assistance definition, the Contractor and/or its recipients must maintain documentation that the worker meets at least one of the categories in the definition. Therefore, in addition to the documentation certifying that the worker meets the definitions of a Section 3 worker, a Contractor and/or its recipients must maintain documentation for at least one of the following (per 24 CFR 75.31(b)(2)(i)):

1. A worker's self-certification of participation in public housing or Section 8-assisted housing programs,
2. A certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs,
3. An employer's certification that the worker is employed by a Section 3 business concern, or
4. A worker's self-certification that the worker is a Youth Build participant.

In accordance with 24 CFR 75.29, for projects with multiple sources of funding, the recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients.

In all cases, as with a Section 3 worker, a prior arrest of conviction cannot negatively affect the status of a Targeted Section 3 worker (24 CFR 75.5). Additionally, Contractors must certify that they are making efforts to prioritize training and opportunities for Targeted Section 3 workers (see Subsection D below).

SECTION 3 BUSINESS CONCERN

The statute creates a contracting priority for businesses that provide economic opportunities for low- and very low-income workers. To implement this priority, the regulation includes labor hours worked by Section 3 business concern employees to count towards benchmarks for Section 3 workers and Targeted Section 3 workers. HUD also created a new Section 3 business concern definition that incorporates the change to labor hours and increases the threshold of work performed by a business by low- and very low-income workers. Contractors must certify that they are making efforts to prioritize contracting with Section 3 business concerns (see Subsection D below) and are responsible for verifying that businesses meet the definition of a Section 3 business concern.

A Section 3 business concern is defined in 24 CFR 75.5 as a business that meets at least one of the following criteria, documented within the last six-month period:

5. At least 51 percent owned and controlled by low- or very low-income persons,
6. More than 75 percent of the labor hours performed for the business over the previous 3-month period are performed by Section 3 workers, or
7. At least 51 percent owned and controlled by current residents of public housing or Section 8-assisted housing.

Additionally, pursuant to 24 CFR 75.5, the status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees. Furthermore, Section 3 business concerns are not exempt from meeting contract specifications nor do the regulations require the contracting or subcontracting of a Section 3 business concern.

HUD's Section 3 Business Registry is a searchable online database of firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business concern. Agencies that receive HUD funds, developers, contractors, and others can use this registry to facilitate the award of certain HUD-funded contracts. While the Department maintains the Business Registry database, it has not verified the information submitted by the businesses and does not endorse the services they provide. Accordingly, Contractors must verify that each business meets the definition of a Section 3 business concern before awarding contracts to any firm that has self-certified on this registry.

EMPLOYMENT, TRAINING, AND CONTRACTING PRIORITIZATION

Pursuant to 24 CFR 75.19(a), Contractors must, to the greatest extent feasible, ensure Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the Section 3 project is located are provided with employment and training opportunities arising in connection with the project. Where feasible, a Contractor and its recipients should give priority for opportunities and training to:

1. Section 3 workers residing within the service area or the neighborhood of the project, and
2. Participants in Youth Build programs.

Pursuant to 24 CFR 75.19(b), Contractors must, to the greatest extent feasible, ensure business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the Section 3 projects are located are provided with contracts for work awarded in connection with Section 3 projects. Where feasible, a Contractor and its recipients should give priority for contracting opportunities to:

1. Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and

2. Youth Build programs.

All employment and training opportunities, and contracting awards provided in accordance with 24 CFR 75.19 must be consistent with Federal, state, and local laws and regulations. Ultimately, in addition to meeting prescribed benchmarks, Contractors and recipients will need to certify that they have followed the prioritization of effort in 24 CFR 75.19 to demonstrate compliance (see Section VI).

DOCUMENTING COMPLIANCE

Contractors must maintain or ensure that a subrecipient, contractor, or subcontractor maintains adequate records demonstrating Section 3 compliance. The regulation requires HUD to establish Section 3 benchmarks by publishing a notification, subject to public comment, in the *Federal Register* (see 24 CFR 75.23(b)). The notice must include proposed benchmarks and the methodology for determining the benchmarks. These benchmarks provide Contractors a “safe harbor” by defining the percentage of labor hours worked by Section 3 workers and Targeted Section 3 workers on a project to comply with Section 3 requirements.

HUD will consider the Contractor to have complied with the requirements in the regulation, by meeting the safe harbor, in the absence of evidence to the contrary, if a Contractor certifies to the prioritization of effort in 24 CFR 75.19 and meets or exceeds the applicable Section 3 benchmarks referenced in 24 CFR 75.23(b). This “Section 3 Safe Harbor” is codified at 24 CFR 75.23. If a Contractor does not meet requirements of 24 CFR 75.23’s Section 3 safe harbor, HUD will require additional qualitative reporting to demonstrate compliance with the regulation (see Subsection below).

LABOR HOURS AND BENCHMARKS

The regulation requires Contractors to track and report the labor hours worked on Section 3 projects (see 24 CFR 75.25).

In accordance with 24 CFR 75.25(a), Contractors must report the following labor hours (including total hours worked by all contractors and subcontractors) for Section 3 projects:

1. The total number of labor hours worked by all workers,
2. The total number of labor hours worked by Section 3 workers, and
3. The total number of labor hours worked by Targeted Section 3 workers.

If the project does not require time and attendance reporting, Contractors may report to HUD using a good faith assessment. Contractors can report their own labor hours or that of a subrecipient, contractor or subcontractor based on the employer’s good faith assessment of the labor hours of a full-time or part-time employee, informed by the employer’s existing salary or time and attendance-based payroll systems.

Per the Benchmark Notice, the current benchmarks that apply for a Section 3 project (assisted under HUD programs that provide housing and community development financial assistance where the amount of assistance to the project exceeds a threshold of \$200,000) are:

a. **Benchmark 1:** Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Section 3 workers

$$\text{Section 3 Labor Hours/Total Labor Hours} = 25 \text{ and}$$

b. **Benchmark 2:** Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Targeted Section 3 workers

$$\text{Targeted Section 3 Labor Hours/Total Labor Hours} = 5\%$$

Example

Springfield commits \$300,000 of CDBG funds to ABC Developers to rehabilitate a multifamily rental building. By committing an amount above the \$200,000 threshold, the Section 3 requirements apply to this project. To comply with 24 CFR 75.25(a), Springfield must require ABC Developers to report the following accomplishments to Springfield within the applicable reporting cycles: (1) the total *Labor Hours*, (2) the total *Section 3 Labor Hours*, and (3) the total *Targeted Section 3 Labor Hours* on the Section 3 project.

Springfield is responsible for reporting labor hour data from all contractors and subcontractors hired by ABC Developers to rehabilitate the multifamily rental building. During the first quarter (July – September), ABC Developers reports to Springfield a total of 5,000 labor hours worked on the project. Of that total, 1,300 were worked by employees who self-certified as Section 3 workers. Additionally, 300 of those 1,300 hours were performed by workers who lived within a one-mile radius of the work site. Springfield has met the project-level Section 3 Benchmarks and reports the following data in DRGR at the next reporting cycle:

Total Labor Hours	5,000	
Section 3 Labor Hours	1,300	26%
Targeted Section 3 Labor Hours	300	6%

As stated above, per 24 CFR 75.23, HUD will consider Contractors to have complied with Section 3 benchmarks, in the absence of evidence to the contrary, if they certify to the prioritization of effort in 24 CFR 75.19 and meet or exceed the applicable Section 3 benchmarks. See below for details on how to report qualitative efforts if the benchmarks are not met.

QUALITATIVE EFFORTS (WRITTEN DOCUMENTATION MUST BE SUBMITTED TO PROJECT MANAGER IF ABOVE BENCHMARKS ARE NOT MET – LISTING ALL QUANTATIVE EFFORTS TAKEN FROM THE LIST BELOW).

If an activity does not meet the benchmarks, but the contractor can provide evidence that it

has made qualitative efforts to provide low- and very low-income persons with employment and training opportunities, then HUD will consider the contractor/grantee compliant with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

The Section 3 regulations at 24 CFR 75.25 provide a list of qualitative efforts that demonstrate what HUD considers to be efforts to comply with the Section 3 benchmarks. If a contractor did not meet benchmarks for a CDBG or HOME Program project the contractor must select at least one option from the list below that best describes their efforts, and/or describe their efforts in a narrative attached to the report. Contractors must provide documentation to the City documenting the efforts to comply with the Section 3 requirements.

The checklist for qualitative efforts includes the following options:

- Outreach efforts to generate job applicants who are Public Housing Targeted Workers.
- Outreach efforts to generate job applicants who are Other Funding Targeted Workers.
- Direct, on-the job training (including apprenticeships).
- Indirect training such as arranging for, contracting for, or paying tuition for, off-site training.
- Technical training such as arranging for, contracting for, or paying tuition for, off-site training.
- Outreach efforts to identify and secure bids from Section 3 business concerns.
- Technical assistance to help Section 3 business concerns understand and bid on contracts.
- Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided or connected residents with assistance in seeking employment, including drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services.
- Held one or more job fairs.
- Provided or connected residents with supportive services that can provide direct services or referrals.
- Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation.
- Assisted residents with finding childcare.

- Assisted residents to apply for/or attend community college or a four-year educational institution.
- Assisted residents to apply for or attend vocational/technical training.
- Assisted residents to obtain financial literacy training and/or coaching.
- Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Provided or connected residents with training on computer use or online technologies.
- Other. Specify: (Contractor is to provide narrative and documentation to support the efforts made to comply): Examples of qualitative efforts not included in the checklist are:
 - Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching)
 - Promoted the use of a business registry designed to create opportunities for disadvantaged and small business.
 - Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

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

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

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

OVERTIME

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

ENFORCEMENT

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

APPRENTICES

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

PROPER PAY

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

MELVA C. WALKER
GRANTS MANAGER
CITY OF LYNCHBURG
GRANTS ADMINISTRATION OFFICE
CITY HALL
900 CHURCH STREET
LYNCHBURG, VA 24504
(434)455-3916

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



For additional information:

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



WWW.WAGEHOUR.DOL.GOV

DERECHOS DEL EMPLEADO BAJO LA LEY DAVIS-BACON

PARA OBREROS Y MECÁNICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCIÓN FEDERAL O CON ASISTENCIA FEDERAL

LA SECCIÓN DE HORAS Y SUELDOS DEL DEPARTAMENTO DE TRABAJO DE EEUU

SALARIOS PREVALECIENTES

No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Davis-Bacon fijada con este Aviso para el trabajo que Ud. desempeña.

SOBRETIEMPO

Se le ha de pagar no menos de tiempo y medio de su tasa básica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

CUMPLIMIENTO

Se pueden retener pagos por contratos para asegurarse que los obreros reciban los salarios y el pago de sobretiempo debidos, y se podría aplicar daños y perjuicios si no se cumple con las exigencias del pago de sobretiempo. Las cláusulas contractuales de Davis-Bacon permiten la terminación y exclusión de contratistas para efectuar futuros contratos federales hasta tres años. El contratista que falsifique los registros certificados de las nóminas de pago o induzca devoluciones de salarios puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.

APRENDICES

Las tasas de aprendices sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.

PAGO APROPIADO

Si Ud. no recibe el pago apropiado, o precisa de información adicional sobre los salarios aplicables, póngase en contacto con el Contratista Oficial que aparece abajo:

MELVA C. WALKER OTORGA MANAGER CIUDAD DE LYNCHBURG
SUBVENCIONES ADMINISTRACIÓN OFICINA AYUNTAMIENTO 900 IGLESIA
CALLE LYNCHBURG, VA 24504 TELÉFONO #: (434)455-3916

o póngase en contacto con la Sección de Horas y Sueldos del Departamento de Trabajo de EEUU.



Para obtener información adicional:

1-866-4-USWAGE

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



WWW.WAGEHOUR.DOL.GOV