# Request for Proposals for Community Development Block Grant-Disaster Recovery Administrator to Develop and Operate a Program to Fund the New Construction of Small Multi-family Affordable Rental Projects

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| Proposal Issuance Date: | January 16, 2015 |
| Proposal Due Date & Time: | February 25, 2015, 5:00 PM EST |
| RFP Number: | 01162014 |

## HOUSING TRUST FUND CORPORATION

NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal

641 Lexington Avenue, 4th Floor, New York, NY 10022

**nyshcr.org**

# HOUSING TRUST FUND CORPORATION

Request for Proposals

For

Community Development Block Grant-Disaster Recovery
Administrator to Develop and Operate
a Program to Fund the New Construction of
Small Multi-family Affordable Rental Projects

January 16, 2015

Responses must be received by:
February 25, 2015, 5:00pm, Eastern Standard Time

## I. Introduction and General Information

New York State Homes and Community Renewal (HCR) consists of all the major housing and community renewal agencies of the State of New York (State), including the Housing Trust Fund Corporation (HTFC or Corporation) and its Affiliates (Division of Housing and Community Renewal, New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation).

HTFC was established in 1985 under Section 45-a of the Private Housing Finance Law (PHFL), as a public benefit corporation. The mission of the Corporation, under the PHFL statute, was to create decent affordable housing for persons of low income by providing loans and grants for the rehabilitation of existing housing or the construction of new housing under the New York State's Low-Income Housing Trust Fund Program. HTFC's mission has been expanded since then by the addition of many State and federal programs to its portfolio, including the HOME Investment Partnerships Program, the Section 8 Project-based Contract Administration Program, and the Community Development Block Grant Program.

The PHFL statute conferred a number of powers on HTFC, including the authority to contract with the State's Division of Housing and Community Renewal (DHCR) to administer the Corporation's activities. HTFC was also authorized, among other things, to create its own by-laws for the management of its affairs, make and execute its own contracts,

engage the services of consultants for professional and technical services, and determine policies for the investment of its funds.

## II. Purpose

HTFC, through its partnership with the Governor's Office of Storm Recovery (GOSR), is issuing this request for proposal (RFP) in connection with its administration of U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant-Disaster Recovery (CDBG-DR) funds appropriated by the Disaster Relief Appropriations Act, (Pub.L.113-2). HTFC/GOSR is seeking proposals from certified Community Development Finance Institutions (CDFIs) qualified to develop and administer the Small Project Affordable Rental Construction program (SPARC), a new program to make project financing available to qualified housing development organizations for the construction of affordable multifamily rental properties of eight (8) to twenty (20) units (Small Projects). Small Projects will be located in areas where housing stock was damaged or lost due to the impact of Superstorm Sandy, Hurricane Irene, and/or Tropical Storm Lee (Covered Storms). HTFC/GOSR will accept proposals from either a single firm or from two or more firms proposing to provide such services as a joint venture.

HTFC/GOSR wants to ensure it stimulates the creation of a broad range of housing options for the residents of State. The Covered Storms highlighted the need in many communities around the State for new rental housing opportunities in markets where Small Projects best meet both demand and neighborhood context. The SPARC program will create an opportunity for storm-affected communities in the State to address affordable housing needs where large scale development is not feasible or practical.

HTFC/GOSR expects to allocate up to $20,000,000 under the New York Rising Rental Buildings Recovery Program Multi-family/Affordable Housing Fund (AHF) for this program. This funding is comprised of federal CDBG-DR funds provided to the State and administered through HTFC for the purpose of providing assistance to recover from the Covered Storms.

The national objectives of the CDBG-DR program are to develop viable communities by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for low- and moderate-income people. All projects receiving CDBG-DR funds through the SPARC program must meet the CDBG-DR National Objective of primarily benefiting low- and moderate-income persons.

SPARC funding may only be applied toward the substantial rehabilitation of buildings damaged by the Covered Storms or vacant buildings in areas affected by the Covered Storms or new construction of Small Projects that are situated in areas affected by the Covered Storms.

This RFP describes the program objectives, submission requirements and selection process for Respondents who wish to develop and administer SPARC in conjunction with HTFC/GOSR.

## III. Diversity Requirements

HTFC/GOSR is committed to awarding a contract(s) to a firm(s) that is dedicated to diversity and provides high-quality services. HTFC/GOSR strongly encourages firms that are certified by the State as minority- and/or women-owned business enterprise ("MWBEs"), as well as firms that are not yet certified, but have applied for certification, to submit responses to this RFP. All certified MWBE firms submitting proposals to this RFP should be registered as such with the New York State Department of Economic Development. For MWBE firms that are not certified but have applied for certification, please provide evidence of filing, including the filing date.

HTFC is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all New York State funded HTFC contracts, as defined therein, with a value in excess of $25,000. The Corporation strongly encourages joint ventures of MWBE firms with majority firms and MWBE firms with other MWBE. For purposes of this RFP, HTFC hereby establishes an overall goal of 30% for MWBE participation, 15% for minority-owned business enterprises (MBEs) and 15% for women-owned business enterprises (WBEs).

## IV. Events/Dates

| Event | Date |
|---|---|
| Issuance of RFP | January 16, 2015, EST |
| Pre-Bid Conference | January 28, 2015, 1:00pm, EST |
| Deadline for RFP Questions | February 11, 2015 1:00pm, EST |
| Deadline for Responses to RFP Questions | February 18, 2015 5:00pm, EST |
| Proposal Submission Deadline | February 25, 2015 5:00pm EST |
| Anticipated Selection Date | March 2015 |
| Anticipated Date for Execution of Contract | April 2015 |

## V. Pre-Bid Conference, Questions and Updates to this RFP

A conference to discuss this RFP, accept questions and provide preliminary responses will be held on January 28, 2015 at 1:00 p.m at two locations:

New York State Homes and Community Renewal
Housing Trust Fund Corporation
25 Beaver Street, Room 510
New York, NY 10004

and

New York State Homes and Community Renewal
Housing Trust Fund Corporation
Hampton Plaza
38-40 State Street, First Floor Ballroom
Albany, NY 12207

The conference will begin promptly at 1:00 p.m. and is scheduled to last approximately two hours. Please RSVP to sparc@nyshcr.org if you plan to attend. Also note that it is not required to RSVP to attend the conference. While it is advisable that prospective bidders attend the pre-bid conference, bidders who do not attend the pre-bid conference will not be precluded from submitting a RFP proposal to HTFC/GOSR.

Interested parties are encouraged to submit questions in writing before the conference; however, all questions regarding this RFP must be submitted electronically, via email, to sparc@nyshcr.org, no later than the deadline for questions set forth in the "Key Event/Dates" section of this RFP. The "Subject" line of the email should indicate "2014 SPARC RFP Questions." Answers to all substantive questions submitted during or outside of the Pre-Bid Conference will be posted on the HCR website at

http://www.nyshcr.org/AboutUs/Procurement/DHCRindex.htm

and

http://stormrecovery.ny.gov/procurement-opportunities

Respondents should note that all clarifications are to be resolved prior to the submission of the proposal.

Responses will be posted on the HCR website as soon as practical following receipt of the question. Questions submitted after the deadline will not receive a response.

The timeline and target dates for this RFP are subject to change. Respondents should check the HCR website "Procurement Opportunities" page for updates to the RFP timeline and other important information.

An electronic version of this RFP will be posted on the HCR website in addition to any subsequent changes, additions or deletions to the RFP. Respondents are encouraged to check the HCR website frequently for notices of any clarifications, changes, additions, or deletions to the RFP.

## VI. Anticipated SPARC Program Parameters

1. All SPARC funds will be committed no later than March 31, 2016 and fully disbursed within two (2) years of the commitment date. CDBG-DR funds will be made available to the Awardee on an as-needed basis.

2. All Small Projects receiving SPARC assistance must comply with the Federal National Environmental Protection Act (NEPA) as implemented through 24 CFR 58, and the New York State Environmental Quality Review Act (SEQRA). Further, all structures located within the 100-year floodplain must conform to the most current floodplain requirements of the New York State Building Code, and with the decision-making process set forth in 24 CFR Part 55. Projects assisted with CDBG-DR funds must also comply with requirements to obtain and maintain flood insurance, where applicable.

3. HTFC/GOSR will seek to award these limited AHF resources in a manner that promotes a statewide geographic distribution of this financing in areas with housing damaged by one or more of the Covered Storms. Priority will be given to projects within the NY Rising Community Reconstruction Program areas (See http://www.stormrecovery.ny.gov/community-reconstruction-program) and other areas highly impacted by Covered Storms.

   Assistance may also be provided to finance Small Projects in the following counties with housing damaged by one or more of the Covered Storms: Albany, Broome, Chemung, Chenango, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Montgomery, Nassau, Oneida, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, and Westchester ("SPARC Area").

4. Small Projects receiving assistance must meet the CDBG-DR National Objective of primarily benefiting low- and moderate-income persons. At least 51% of residential units in any project must be reserved for occupancy by individuals or families with household incomes below 80% of Area Median Income, adjusted for household size.

5. Eligible borrowers will be for-profit and not-for-profit housing development organizations with experience and capacity to undertake substantial rehabilitation or new construction of rental housing.

6. SPARC assistance may be used for site acquisition, demolition, debris removal, site work, construction and soft costs necessary for the substantial rehabilitation, adaptive reuse, or new construction of housing. Projects must result in completed residential units; land banking is not permitted.

7. The maximum amount of SPARC assistance to a project will be the lesser of $3,750,000 per project or $200,000 per affordable unit.

8. SPARC loans will be non-recourse loans with a maximum term of thirty (30) years secured by a recorded mortgage on the Small Project which will also be encumbered by a regulatory agreement. Program income, including principal and interest, generated from repayment of loans will be returned to HTFC.

9. SPARC loan interest rates may not exceed the then Applicable Federal Rate (AFR) and may be reduced to the extent necessary to make a project financially feasible.

10. SPARC financing may be used in conjunction with other State or federal financing resources already committed to projects through HCR.

11. Since SPARC loans will be funded from the federal CDBG-DR program, all financed Small Projects must meet various federal "cross cutting" requirements, including compliance with the Davis-Bacon Act. See federal requirements, including Federal Labor Standards Provisions:

    http://www.nyshcr.org/AboutUs/training/06seminar4_HUD_4010.pdf

    A more detailed partial listing of these requirements are listed in **HUD General Provisions and SPARC RFP Additional Requirements, attached hereto as Appendices I and II, respectively.** Projects must also comply with CDBG-DR green building requirements.

12. Awardee must be willing to indemnify HTFC/GOSR against any liability incurred through actions of administrating SPARC, including any HUD cross-cutting requirements. Such indemnification provision will be detailed in the Awardee's contract.

## VII. Scope of Services

The Awardee will provide program administration services consisting of financial services, including loan origination and related services to assure an effective loan program.

1. Loan Origination: The Awardee will provide the following services related to loan origination responsibilities:

    a. Develop loan underwriting criteria, construction standards, and all other necessary and desirable SPARC program parameters approved by HTFC/GOSR staff;

    b. Develop a Program loan application and marketing materials for the Program;

    c. Operate a toll-free phone number and website for easy processing of loan documentation that serves as an informational resource for borrowers and contractors;

    d. Conduct outreach to potential borrowers;

    e. Obtain consent from borrowers to allow HTFC/GOSR to obtain information from third party sources needed for duplication of benefits review and required Anti-Fraud Waste and Abuse (AFWA) review; and

    f. Secure HTFC/GOSR's approval before communicating loan decisions to applicants.

2. Loan Servicing responsibilities: The Awardee will provide the following services related to loan servicing responsibilities:

    a. Undertake servicing of all loans through the full life of such loans or make arrangements for other qualified parties to service such loans;

    b. Make loan disbursements consistent with industry construction monitoring practices;

    c. Receive loan payments and pursue collection of delinquent debt;

    d. Manage, track, and report financial transactions to HTFC/GOSR using a standardized format approved by HTFC/GOSR. These reports will also need to be easily transferable into annual reports to be presented to HTFC/GOSR; and

    e. In the event that certain loans become uncollectable and are written off by the Awardee as debt, the Awardee may be subject to recapture by HTFC/GOSR of the portion of the CDBG-DR funds that is equivalent to the uncollectable amount.

3. Monitoring: The Awardee will ensure borrowers comply with applicable federal and State requirements including Davis Bacon, HUD Section 3, Fair Housing Act, MWBE participation goals, and the applicable provisions of the Americans with Disabilities Act. The Awardee shall utilize the Elation system to monitor MWBE, Section 3, and Davis Bacon compliance.

4. Reporting responsibilities: The Awardee shall prepare, develop and deliver a detailed accounting of the status of the program in monthly, quarterly and annual reports with the following information:

    a. Number and principal amount of loan applications submitted for consideration and number and principal amount of loans closed during that period and in total since the beginning of the contract. Include loan recipient name and address, name of contractor performing services for each loan, and approved energy efficiency activities funded through each loan and such other information as HTFC/GOSR may specify;

    b. Total amount of outstanding principal and interest of loans closed during that period and in total since the beginning of the contract;

    c. Total amount of principal and interest collected on a loan-by-loan basis and in aggregate, to be submitted to HTFC during that period;

    d. Total number and principal and interest of any uncollectible loans written off during that period and in total since the beginning of the contract;

    e. Respondents must demonstrate they have staff competent to use the Elation system, or must enter into a joint venture with an entity approved in writing by HTFC/GOSR for Davis Bacon monitors; and

    f. Any issues that the Awardee has encountered in implementation of this effort.

The Awardee shall submit an annual report on cumulative program successes, obstacles to program success and recommendations to improve the program and such other information as HTFC/GOSR may specify.

## VIII. [RESERVED]

## IX. Term of Contract

It is anticipated that the term of the engagement covered by this RFP will commence on or about April 2015 and end on or about March 2018. The scope of work, fees, term and other provisions covered by this RFP may be modified by HTFC/GOSR during the term of the agreement, on an as needed basis, with the mutual written consent of both parties. In addition, HTFC, at its discretion, may exercise its option to extend the term of the engagement and revise any provision of the engagement, on an as needed basis, with the mutual written consent of both parties.

The Awardee will be required to execute a contract with HTFC that incorporates HTFC's Appendix I *Standard Clauses for Contracts* and HTFC's Appendix II relating to requirements and procedures for *Participation by Minority Group Members and Women.* These appendices are hyperlinked hereto.

Respondents should be aware that federal law and regulations require that contracts involving CDBG-DR assistance contain certain provisions including, but not limited to, those listed in **Appendix I – HUD General Provisions and Appendix II - SPARC RFP Additional Requirements.** Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

## X. Permissible Contacts

Pursuant to State Finance Law ("SFL") §§139-j and 139-k, this RFP imposes certain restrictions on communications between HTFC/GOSR, including its Affiliates (New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency, Tobacco Settlement Financing Corporation and New York State Division of Housing and Community Renewal), and a potential Respondent during the procurement process. A Respondent is restricted from making contacts that a reasonable person may infer were intended to influence the selection of a firm to perform the proposed professional services, from the date of publication of this RFP until the awarding of a contract(s) by HTFC/GOSR (the "Restricted Period"), with anyone other than the designated staff member named below, unless it is a contact that is included among certain statutory exceptions set forth in SFL §139-j(3)(a). Employees of HTFC, including any employees of the agencies that constitute HCR, are required to obtain certain information when contacted during the Restricted Period and make a determination of responsibility of the Respondent under the SFL. Findings of non-responsibility can result in rejection for contract award and in the event of two (2) findings within a four (4) year period, the Respondent will be debarred from obtaining governmental contracts.

For more information, please refer to the following website:

http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/Faq.htm .

For all Lobbying Law Contacts, please contact:

Felicia Green, Contract Specialist
New York State Homes and Community Renewal
Housing Trust Fund Corporation
Hampton Plaza
38-40 State Street
Albany, New York 12207
Felicia.Green@nyshcr.org

If you have inquiries regarding this RFP or would like to contact HTFC regarding issues not relating to Lobbying Law Contacts, please contact:

New York State Homes & Community Renewal
641 Lexington Avenue
New York, NY 10022

Office of Finance & Development
Mark Flescher
Mark.Flescher@nyshcr.org

and

Office of Finance & Development
Jaye Fox
Jaye.Fox@stormrecovery.ny.gov

and

Procurement Office
Felicia Green
Felicia.Green@nyshcr.org

All inquiries must be in writing. Other than the three contact persons identified above, prospective Respondents shall not approach HTFC/GOSR employees, or any employees of the agencies that constitute HCR, during the Restricted Period about any matters related to the RFP or any proposal(s) submitted pursuant thereto.

## XI. Participation of MWBEs and Equal Employment Opportunities

HTFC/GOSR values affording MWBEs the opportunity to participate in the performance of the contract to be awarded for this project. Accordingly, any contract awarded under this RFP will promote, and assist in, the participation of certified MWBEs as outlined in and in accordance with HTFC's Appendix II relating to requirements and procedures for *Participation by Minority Group Members and Women.* For purposes of this RFP, HTFC hereby establishes an overall goal of 30% for MWBE participation, 15% for minority-owned business enterprises (MBEs) and 15% for women-owned business enterprises (WBEs).

New York State Law

Pursuant to New York State Executive Law Article 15-A ("Article 15-A"), HTFC/GOSR recognizes its obligation to promote opportunities for maximum feasible participation of certified MWBEs, and the employment of minority group members and women in the performance of HTFC/GOSR contracts. HTFC encourages firms that are MWBE certified to submit proposals in response to this RFP.

In 2006, the State commissioned a disparity study to evaluate whether MWBEs had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title "*The State of Minority and Women-Owned Business Enterprises: Evidence from New York*" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of MWBEs in State procurement contracting versus the number of MWBEs that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the MWBE program. The recommendations from the Disparity Study culminated in the enactment and the implementation of Article 15-A, which requires, among other things, that HTFC/GOSR establish goals for maximum feasible participation of State-certified MWBEs and the employment of minority group members and women in the performance of HTFC/GOSR contracts.

Business Participation Opportunities for MWBEs

HTFC/GOSR is committed to achieving significant MWBE participation in its contracts and will use good faith efforts to ensure qualified MWBE firms are included in the selection of a firm to participate in the scope of work under this RFP.

Firms responding to this RFP that are not MWBEs are strongly encouraged to consider partnerships or other joint venture arrangements with certified MWBE firms to provide MWBE firms the opportunity to participate in the provision of services performed under the contract(s) to be awarded to the successful Respondent.

Note that under Article 15-A, Respondents must document good faith efforts to provide meaningful participation by MWBE firms. Willful and/or intentional violation of this

obligation may result in the imposition of liquidated damages or other appropriate sanctions, including, without limitation, suspension of any future contracts with HTFC/GOSR and monetary payments based on the MWBE goal shortfall.

The directory of New York State Certified MWBEs can be viewed at: http://www.esd.ny.gov/MWBE.html.

## XII. Proposal Submission Requirements

Only complete proposals prepared in a format consistent with the instructions provided in this RFP will be considered and evaluated. In all instances, HTFC/GOSR's determination regarding a proposal will be final. Proposals not organized in the manner prescribed in this RFP may be considered non-responsive at HTFC/GOSR's sole discretion. Respondents should not refer to other parts of the proposal, to information that may be publicly available elsewhere, or to the Respondent's or other websites in lieu of answering a specific question.

All proposals must be submitted electronically, in searchable PDF file format, to sparc@nyshcr.org by February 25th, 2015 by 5:00pm, EST. The proposal shall be no more than the equivalent of fifteen (15) pages on eight and one half (8.5) inch by eleven (11) inch paper with minimum margins of one inch on all sides and with type no smaller than twelve (12) points, not including the required attachments listed below in Section XIII.B.1, the annual reports and brochures referenced in XII.B.4, and the forms and requirements required in XIII.D.

The Proposal must be divided into four parts: (i) Part One: Cover Letter; (ii) Part Two: Proposal Narrative; (iii) Part Three: Cost Proposal; and (iv) Part Four: Required Forms and Information. Proposals must be sent in two emails and labeled as follows:

(i) One email to include Parts One and Two and the subject line of the email must be labeled "SPARC: Parts 1 and 2"

(ii) The other email to include Parts Three and Four and the subject line of the email must be labeled "SPARC: Parts 3 and 4"

Responses to this RFP will be accepted from February 4, 2015 until 5:00 p.m. EST on February 25, 2015. Respondent assumes all risk for proposal delivery. The proposal deadline is firm as to date and hour. Responses received after 5:00 p.m. on February 25, 2015 will be deemed ineligible. A proposal may be deemed to be non-responsive because it is materially incomplete. HTFC/GOSR reserves the right to seek clarification or request additional information.

The Respondent is responsible to ensure that emails and attachments are delivered on time in a legible format. Complete proposals must be received by the deadline in order for a proposal to be considered submitted on time. The determination of whether any proposal was received on time is at the sole discretion of HTFC/GOSR.

All submitted proposals shall become the property of HTFC/GOSR.

## XIII. Contents of Proposals

Proposals should demonstrate that the Respondent is qualified to perform the Scope of Services based on prior relevant professional experience, proposed work plan, methodology, timeline, staffing plan, MWBE participation, and budget. An HTFC/GOSR Evaluation Committee will conduct a comprehensive review of each proposal to determine which Respondent will provide the "best value" by optimizing quality, cost, and efficiency.

Each Respondent is required to submit the information and documentation listed below in the order in which it is requested. A proposal that does not include all required information and completed forms may be subject to rejection.

### A. PART ONE: Cover Letter

The Respondent's cover letter should include:

1. A summary of the Respondent's organizational history and legal structure (e.g. individual practitioner, partnership, LLC, corporation, non-profit organization, MWBE, etc.);
2. A summary of the Respondent's qualifications;
3. The Respondent's name, address, telephone number, fax number, email address and web site address, if applicable;
4. The name, title, telephone number, fax number and email address of the individual within the Respondent's organization who will be HTFC/GOSR's primary contact concerning the proposal;
5. The names of the primary personnel who will provide services to HTFC/GOSR;
6. The contact name, telephone number, fax number and email address for the firm(s), if any, with which the Respondent intends to partner in undertaking this project;

7a. Certifications that the information contained in the Proposal is true and accurate and that the person signing the cover letter is authorized to submit the proposal on behalf of the Respondent; and

b. Certification containing the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

> **"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."**
>
> The list noted above is maintained by the New York State Office of General Services. Any proposal that does not include a written and signed certification of compliance with this requirement will be deemed as non-responsive.

B. PART TWO: Proposal Narrative

The proposal must contain the following information:

1. A description of the Respondent including:

   a. Type of legal entity (corporation, partnership, not for profit corporation, etc.);

   b. Evidence of certification as a Community Development Finance Institution;

   c. State of incorporation or organization, if applicable;

   d. Length of time the Respondent has been in business;

   e. Affiliations to other entities as a parent or as a subsidiary;

   f. List of principals (officers, board members, and partners or shareholders with control of more than 25% of the entity);

   g. Number of employees; and

   h. Number and location of offices in the State of New York and the SPARC Area.

2. A concise and complete summary of the following:

    a. Description of Respondent's organization including mission, major programs, staff size, and geographic area served;

    b. Describe Respondent's experience originating and servicing loans for the construction of small (20 or fewer units) multifamily rental housing projects;

    c. Description of Respondent's experience originating and servicing loans for the construction and/or rehabilitation of affordable housing in projects of any size; and

    d. For the period of the last three fiscal years, please provide statistics on the number, dollar amount, default rate and delinquency rate of both new construction and rehabilitation loans that Respondent has originated and serviced.

3. One or more proposed loan program designs, and/or program designs combining loan and grant assistance, including the following:

    a. Description of the market area(s) to be served;

    b. Loan origination goals, including timing of loan closings and project completion;

    c. Number of completed housing units anticipated to result from lending activity;

    d. Amount of funds anticipated to be leveraged from other non-HCR sources for housing construction and related activity, including any proof of committed leverage sources;

    e. Detailed project selection criteria which the Respondent will use to direct SPARC program resources to projects sponsored by capable developers that benefit highly storm-impacted communities. Project selection criteria should also encourage resilient design and construction standards;

    f. Project selection criteria intended to maximize the participation of MWBE firms in construction;

    g. A marketing plan for identifying and conducting outreach to qualified applicants, including description of the scope, materials/media to be used, and methods for identification of eligible borrowers;

h. A description of the Respondent's processes for project design review and construction monitoring, including compliance with the Fair Housing Act, Davis Bacon Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, codified at 29 U.S.C. § 701;

i. A proposed term sheet for SPARC program loans, including:

   i. Underwriting criteria;
   ii. Interest rate of loan;
   iii. Prepayment terms;
   iv. Any fees, charges and reimbursements for expenses to be paid by applicants and/or borrowers;
   v. Design and construction standards; and
   vi. All other relevant loan terms and conditions.

   No fees or interest charges other than those listed in the Term Sheet may be charged to applicants and/or borrowers; and

j. Description of the Respondent's set of internal controls to ensure that the loans are made to eligible projects, SPARC funds are applied and managed properly, loans are serviced properly, and projects comply with federal labor, environmental, green building, fair housing, non-discrimination, accessibility, and equal employment opportunity requirements.

4. Enclose the following attachments and supplemental information:

   a. If applicable, copies of any brochures or annual reports which explain the Respondent's capacities and/or experience; and
   c. Executed originals of anything else required by State or federal procurement guidelines.

C. <u>PART THREE: A Cost Proposal for Program Administration</u>

A Respondent may or may not request compensation for the scope of work proposed. All proposed administrative charges by the Respondent to HTFC/GOSR for costs associated with loan origination, loan servicing, compliance monitoring, and reporting, etc. must be listed on the pricing page in the format listed below. Proposals which allocate all SPARC program resources to direct housing project development costs are preferred. Cost proposals including unit pricing must provide justification for the proposed per-unit cost.

Loan Administration Services Pricing Page
RFP #01162014

The Respondent agrees to provide the materials, personnel and all other resources required to complete the requirements outlined in the Scope of Services.

Financial Administration Services

a) Loan Administration Services $/loan made
b) Compliance Monitoring Services $/loan made
c) Reporting Services $/monthly report submitted
d) Other (specify below with firm, fixed unit prices for each service)

Signature of Authorized Representative:
_____
Title: _____
Company: _____

D. PART FOUR: Required Forms and Information

Respondents must fully complete and submit the documentation described in HTFC's Standard Clauses and Requirements for Solicitations, attached hereto as Exhibit A, and *HTFC's Contractor Solicitation Requirements and Procedures for Business Participation Opportunities for NYS Certified MWBEs and Equal Employment Opportunities for Minority Group Members and Women*, hyperlinked herein as Exhibit B. Such requirements include, but are not limited to, submission of the following information and forms of HTFC: (a) *Lobbying Procurement Law FORM 1* and *Lobbying Procurement Law FORM 2*; (b) *Non-Collusive Bidding Certification FORM* ; (c) Contractor and Vendor Information FORM, attached hereto as Exhibit C; (d) *EEO Staffing Plan*; (e) *MWBE Utilization Form*; (f) *MWBE/EEO Policy Statement form*; (g) *Company Demographic Profile*; (h) *EEOC Statement*, applicable to Respondents with 15 or more employees: and (i) *Vendor Questionnaire, For Profit* or *Vendor Questionnaire, Not For Profit* .

Respondents must also submit the following information:

1. If the Respondent is a State-certified MWBE firm, documentation evidencing registration. For MWBE firms that are not certified but have applied for certification, documentation evidencing the application with the New York State Department of Economic Development, including the filing date.

2. If the Respondent is not a State certified MWBE firm, descriptions of the instances, if any, in which the Respondent has worked with MWBE firms on previous transactions by engaging in joint ventures or other partnering or subcontracting arrangements. Responses should include the nature of the engagement, how such arrangement was structured and a description of how the services and fees were allocated.

3. A statement by the Respondent indicating its willingness, if any, to engage in MWBE partnering or mentoring arrangements with an MWBE firm selected by the Respondent. Such statement should include an explanation of how the Respondent would suggest structuring such an arrangement and allocating services and fees between the firms.

4. Respondents awarded funds under this RFP shall procure and maintain without interruption, at its sole cost and expense, insurance of the type, and with limits and deductibles, as follows:
   (i) Commercial General Liability Insurance. Providing both bodily injury (including death) and property damage insurance in a limit not less than Two Million Dollars ($2,000,000) aggregate and One Million ($1,000,000) per occurrence. Such insurance is to be written on an occurrence basis. HTFC/GOSR shall be named as an additional insured;
   (ii) Professional Errors and Omissions Insurance. Providing coverage for bodily injury (including death), property damage and any other losses arising out of or in connection with any professional services with limits not less than Two Million Dollars ($2,000,000) in the aggregate and One Million Dollars ($1,000,000) per occurrence;
   (iii) Automobile Liability and Property Damage Insurance. In an amount not less than One Million Dollars ($1,000,000) combined single limit for both bodily injury and property damage;
   (iv) Worker's Compensation. Covering employers' liability and disability benefits as required by the State of New York; and
   (v) Excess Liability Insurance. To be included as deemed appropriate by HTFC/GOSR for awardee(s).

5. Respondent's most recent three years of certified audited financial statements or federal tax returns.

6. A statement indicating whether performing services for HTFC would create any potential conflict of interest, or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of HTFC/GOSR. Provide a description of any possible conflicts of interest Respondent might have in administering SPARC. If any conflicts of interest are disclosed, kindly include a proposal to mitigate or eliminate any conflicts. In

addition, indicate what procedures will be followed to detect, notify HTFC/GOSR of, and resolve any such conflicts in the future.

7. A statement by the Respondent disclosing in the affirmative or in the negative whether its entity, or any of its members discussed in the preceding paragraph numbered 6, or its intended partner or any of its intended partner's employees, has been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics (JCOPE) or its predecessor State entities (collectively, "Commission"), and if so, a statement briefly describing how any matter before the Commission was resolved or whether it remains unresolved.

   Note that a statement in the affirmative requires an explanation.

8. Completed and executed copies for the Respondent, and each principal, of HTFC's Authorization to Release Financial Information and Credit Report Information forms.

## XIV. Evaluation Process

### A. Evaluation Process

The evaluation of proposals will be based on the "Best Value" concept as demonstrated by the Respondent's technical proposal (i.e. experience, proposed work plan, methodology, timeline, staffing plan), MWBE participation, and cost proposal. The proposal which "optimizes quality, cost and efficiency" among the responsive and responsible Respondents will be selected for award.

All proposals deemed to be responsive to the requirements of this RFP will be evaluated to determine that the Respondent is a responsible entity that meets minimum qualifications. Proposals failing to meet the minimum qualifications or other requirements of this RFP may be eliminated from consideration.

Proposals must be complete and include all forms, documentation, and information listed in this RFP. HTFC/GOSR may deem a proposal non-responsive and disqualify a Respondent, if any of the required forms, information or other documentation is missing or incomplete. (HTFC/GOSR reserves the right, in its sole judgment, to disregard any apparent errors in a proposal that it deems insignificant, to accept or reject any or all proposals, or to cancel this solicitation and reissue it or another version of it, if HTFC/GOSR deems that doing so is in the best interest of the citizens of the State of New York.)

Upon determination that a proposal is complete and responsive, the proposal will be evaluated by a HTFC/GOSR Evaluation Team. The Evaluation Process will include

separate minimum, technical, MWBE, and cost evaluations and will be scored based upon the criteria outlined in the RFP and as described below.

(a) Minority and Women-Owned Business Enterprises (5 points)

Scored to the degree of meaningful MWBE participation in the Respondent's proposal. Proposals with an MWBE share of the total budget cost exceeding 30%, as more fully described in Sections III and XI of this RFP, will be scored more favorably.

(b) Cost Evaluation (25 points)

Scored to the degree that the cost structure and billing schedule for the services to be provided by the Respondent (i) are deemed relevant and inclusive of the activities described in the Scope of Services of this RFP, (ii) are reasonable in relation to industry standards, (iii) are competitive with the costs structures and billing schedule of other Respondents, and (iv) include cost saving methods.

(c) Technical Evaluation (70 points)

(i) Experience (25 points): Scored on the Respondent's documentation of successful experience in undertaking projects comparable in size, scope and complexity to the scope of work described in this RFP. Respondents who demonstrate experience which is specifically related to the Scope of Services described in this RFP will be evaluated more favorably.

(ii) Methodology (30 points): Scored on the Respondent's presentation of a clear, cogent and concise work plan and timeline for accomplishing, in a timely manner, the Scope of Services described in this RFP. Also scored to the degree the Respondent proposes innovative methods for accomplishing the Scope of Services.

(iii) Staffing Plan, Capacity, and Readiness (15 points): Scored to the degree the Respondent has documented that the necessary qualified staff, technology, policies and procedures and organizational capacity are in place to undertake the scope of work described in this RFP. Respondents who document an ability to begin work in a short time span on the scope of work described in this RFP will be evaluated more favorably.

The Technical Evaluation will be based upon the Respondent's demonstrated ability to perform the Scope of Services outlined in this RFP and to meet the following criteria:

1. Demonstrated capacity to perform the types of services described in this RFP, including successful history of administering federal funds and originating and servicing loans using federal funds;
2. Marketing plan that shows a credible means of committing all SPARC funds by March 31, 2016 and fully disbursing all SPARC funds within 24 months of the last commitment date;
3. Proposed administrative fees to be collected from Small Project Borrowers;
4. Proportion of SPARC program resources allocated to direct housing project development cost;
5. Financial stability of Respondent;
6. Evidence of satisfactory insurance coverage;
7. Number of completed residential units for low- and moderate-income occupancy in storm-damaged communities anticipated to result from lending activity;
8. Total number of completed residential units in storm-damaged communities anticipated to result from lending activity;
9. Amount of non-state funds committed and anticipated to be leveraged for housing and related community development activity;
10. HUD Section 3 compliance and level of MWBE participation in program; and
11. Such others matters as HTFC/GOSR may identify in the course of reviewing submissions.

B. Selection and Notification Process

The Awardee will be issued a Letter of Intent to Contract, via U.S. mail or email. Contract award is subject to HTFC Board approval. Respondents who are not selected will be notified of HTFC/GOSR's determination via U.S. mail or email.

If HTFC/GOSR is unsuccessful in negotiating and entering into a contract with the Awardee, HTFC/GOSR may then invite the next highest rated, qualified Respondent to enter into negotiations for the purposes of executing a contract.

## XV. Miscellaneous Conditions

1. The issuance of this RFP and the submission of a proposal by any Respondent or the acceptance of such proposal by HTFC/GOSR does not obligate HTFC/GOSR in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract by HTFC/GOSR and the Respondent(s) selected by HTFC/GOSR.

2. HTFC/GOSR reserves the right (i) to amend, modify, or withdraw this RFP, (ii) to revise any requirements of this RFP, (iii) to require supplemental statements or information from any responding party, (iv) to accept or reject any or all responses hereto, (v) to extend the deadline for submission of responses hereto, (vi) to negotiate or hold discussions with any Respondent and to correct deficient responses which do not completely conform to the instructions contained herein, and (vii) to cancel, in whole or in part, this RFP, if HTFC/GOSR deems it in its best interest to do so. HTFC/GOSR may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of the responding party.

3. This RFP and any agreement or loan which may result from it are subject to all applicable laws, rules, and regulations promulgated by any federal, State, or local authority having jurisdiction over the subject matter hereof, as the same may be amended from time to time.

4. This RFP does not commit HTFC/GOSR to select any Respondents, to pay the cost incurred in preparation of any proposal or response hereto, or to procure for the services described herein.

5. Nothing stated at any time by any representative of HTFC/GOSR will effect a change in or constitute an addition to this RFP unless confirmed in writing by HTFC/GOSR.

6. Any entity selected as a result hereof will be required to execute a contract prescribed by HTFC/GOSR defining all deliverables and the responsibilities of the respective parties along with agreeing to abide by all relevant laws any policies of HTFC/GOSR with regard to, among other things, conflicts of interest, ethics, policies, etc.

7. Should HTFC/GOSR and the selected Respondent fail to reach agreement on a final form of contract within a reasonable length of time as solely determined by HTFC/GOSR, HTFC/GOSR reserves the right to cancel its selection and begin negotiations with another Respondent in order to implement SPARC and serve the best interests of the State.

8. No contract will be considered final unless and until it is approved by the Board of the Housing Trust Fund Corporation at a regularly scheduled meeting.

9. HTFC/GOSR retains the right to waive any requirement contained in this RFP, subject to the applicable statutes and program regulations. HTFC also retains the right to revise this RFP from time to time, extend the submission due date, to not select any Respondent, to select more than one Respondent, and to issue subsequent

RFPs. All Proposals and subsequent administration of the funds must comply with all federal, State and local laws, including rules and regulations specific to CDBG-DR.

## XVI. Negative Findings

A proposal may be rejected at any time during the evaluation process and thereafter if there are any adverse findings that would prevent HTFC/GOSR from selecting the Respondent. These findings may pertain to: the contractor; any firm listed as a partner, sub-consultant, or subcontractor in the proposal; any owners, primary shareholders, or executive staff of the contractor or any of its partners; or any of the principal staff expected to perform or supervise the work outlined in the Scope of Services. Such adverse findings include, but are not limited to:

- Negative findings from the New York State Inspector General, a federal Inspector General or from the U.S. Government Accountability Office, or from an Inspector General in another state;
- Pending or unresolved legal action from the U.S. Attorney General or from an attorney general in New York State or another state;
- Pending or unresolved litigation with the Federal government, any State government, or a local municipality regarding contract performance;
- Arson conviction or pending case;
- Harassment conviction or pending case;
- Local, State, Federal or private mortgage arrears, default, or foreclosure proceedings;
- In rem foreclosure;
- Sale of tax lien or substantial tax arrears;
- Fair Housing violations or current litigation;
- Defaults under any Federal, State or locally-sponsored program;
- A record of substantial building code violations or litigation against properties owned and / or managed by the Respondent or by any entity or individual that comprises the Respondent;
- Past or pending voluntary or involuntary bankruptcy proceeding;
- Conviction for fraud, bribery or grand larceny; or
- Listing on the federal or State excluded parties lists.

If the Respondent believes that any of the adverse findings listed above may be applicable to their firm, or any person or entity partnering with their firm, they should provide a detailed explanation of the finding on an attached sheet for inclusion in the submitted proposal. Failure to disclose any relevant findings may result in disqualification of the proposal.

## XVII. [RESERVED]

## XVIII. Reserved Rights

HTFC/GOSR reserves the right to:

- Reject any or all proposals received in response to the RFP;
- Withdraw the RFP at any time, at HTFC/GOSR's sole discretion;
- Make an award under the RFP in whole or in part;
- Disqualify any Respondent whose qualifications, conduct and/or proposal fails to conform to the requirements of the RFP;
- Seek clarifications and revisions of proposals;
- Use information obtained through HTFC/GOSR's investigation of a Respondent's qualifications, experience, ability or financial standing, and any material or information submitted by the Respondent in response to HTFC/GOSR's request for clarifying information in the course of evaluation and/or selection under the RFP;
- Prior to the contract award, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the contract award, direct Respondents to submit modifications addressing subsequent RFP amendments;
- Change any part of the scheduled timeline;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Respondents;
- Waive any requirements that HTFC/GOSR deems are not material;
- Negotiate with the successful Respondent within the scope of the RFP in the best interests of the State;
- Conduct contract negotiations with the next responsible Respondent, should HTFC/GOSR be unsuccessful in negotiating with the selected Respondent;
- Utilize any and all ideas submitted in the proposals received;
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the contract award; and
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Respondent's proposal and/or to determine a Respondent's compliance with the requirements of the solicitation.

Depending on the nature of the procurement, there may be additional State and Federal reserved rights beyond those presented here.

## APPENDIX I

## HUD General Provisions

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development ("HUD"). In addition, Contractor shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf.

1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

2. STATUTORY AND REGULATORY COMPLIANCE

Contractor shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

3. BREACH OF CONTRACT TERMS

The State reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Contractor or any of its subcontractors violate or breach any contract term. If the Contractor or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

4. REPORTING REQUIREMENTS

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the State. The Contractor shall cooperate with all State efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and 570.507.

5. ACCESS TO RECORDS

The State, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Contractor which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

6. MAINTENANCE/RETENTION OF RECORDS

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least four (4) years following the date of final payment and close-out of all pending matters related to this contract.

7. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

8. RIGHTS IN DATA

(a) *Definitions.* As used in this clause—

*Computer database* or *database* means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

*Computer software:* (1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled; and (2) Does not include computer databases or computer software documentation.

*Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

*Data* means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

*Form, fit, and function data means data* relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

*Limited rights* means the rights of HTFC in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

*Limited rights data* means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

*Restricted computer software* means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

*Restricted rights*, as used in this clause, means the rights of the HTFC in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

*Technical data*, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

*Unlimited rights* means the rights of HTFC to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.*

(1) Except as provided in paragraph (c) of this clause, HTFC shall have unlimited rights in: (i) Data first produced in the performance of this contract; (ii) Form, fit, and function data delivered under this contract; (iii) Data delivered under this contract (except for restricted

computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to: (i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause; (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause; (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) *Copyright.*

(1) *Data first produced in the performance of this contract.* (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of HTFC, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of HTFC is required to assert copyright in all other data first produced in the performance of this contract; (ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of HTFC sponsorship (including contract number); (iii) For data other than computer software, the Contractor grants to HTFC, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of HTFC. For computer software, the Contractor grants to HTFC, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of HTFC.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of HTFC, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor: (i) Identifies the data; and (ii) Grants to HTFC, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, HTFC shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* HTFC will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the

Contractor in the performance of this contract, except: (1) As prohibited by Federal law or regulation (*e.g.*, export control or national security laws or regulations); (2) As expressly set forth in this contract; or (3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by HTFC.

(e) *Unauthorized marking of data.*

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, HTFC may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings: (i) HTFC will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings; (ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by HTFC for good cause shown), HTFC shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions; (iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, HTFC will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If HTFC determines that the markings are authorized, the Contractor will be so notified in writing. If HTFC determines, with concurrence of the head of the contracting activity, that the markings are not authorized, HTFC will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of HTFC's decision. HTFC will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by HTFC's determination becoming final (in which instance HTFC will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent HTFC's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of HTFC removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings.*

(1) Data delivered to HTFC without any restrictive markings shall be deemed to have been furnished with unlimited rights. HTFC is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside HTFC, the Contractor may request, within 6 months (or a longer time approved by HTFC in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. HTFC may agree to do so if the Contractor: (i) Identifies the data to which the omitted notice is to be applied; (ii) Demonstrates that the omission of the notice was inadvertent; (iii) Establishes that the proposed notice is authorized; and (iv) Acknowledges that HTFC has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, HTFC may: (i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or (ii) Correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.*

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall: (i) Identify the data being withheld; and (ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to HTFC shall be treated as limited rights data and not restricted computer software.

(h) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to HTFC under this contract. If a subcontractor refuses to accept terms affording HTFC those rights, the Contractor shall promptly notify HTFC of the refusal and shall not proceed with the subcontract award without authorization in writing from HTFC.

(i) *Relationship to patents or other rights.* Nothing contained in this clause shall imply a license to HTFC under any patent or be construed as affecting the scope of any license or other right otherwise granted to HTFC.

9. ENERGY EFFICIENCY

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the New York State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be

denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

12. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Contractor shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations.

The Contractor agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

13. AGE DISCRIMINATION ACT OF 1975

The Contractor shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

14. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. part 2424.

15. CONFLICTS OF INTEREST

The Contractor shall notify the State as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as defined at 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 (or 84.42, if applicable)). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the State is able to assess such actual or potential conflict. The Contractor shall provide the State any additional information necessary for the State to fully assess and address such actual or potential conflict of interest. The Contractor shall accept any reasonable conflict mitigation strategy employed by the State, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict.

16. SUBCONTRACTING

When subcontracting, the Contractor shall solicit for and contract with such subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a *brand name* product instead of allowing *an equal* product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

The Contractor represents to the State that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Contractor will include these HUD General Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flowdown such terms to all lower-tiered subcontractors.

17. ASSIGNABILITY

The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the State.

18. INDEMNIFICATION

The Contractor shall indemnify, defend, and hold harmless the State and its agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Contractor in the performance of the services called for in this contract.

19. COPELAND "ANTI-KICKBACK" ACT
(Applicable to all construction or repair contracts)

Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by

the Secretary of Labor pursuant to the Copeland "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
(Applicable to construction contracts exceeding $2,000 and contracts exceeding $2,500 that involve the employment of mechanics or laborers)

The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

21. DAVIS-BACON ACT
(Applicable to construction contracts exceeding $2,000 when required by Federal program legislation)

The Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

22. TERMINATION FOR CAUSE (Applicable to contracts exceeding $10,000)

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the State, become the State's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payments to the Contractor for

the purpose of set-off until such time as the exact amount of damages due the State from the Contractor is determined.

23. TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding $10,000)

The State may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Contractor. If the contract is terminated by the State as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

24. SECTION 503 OF THE REHABILITATION ACT OF 1973
(Applicable to contracts exceeding $10,000)

The Contractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers With Disabilities

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:

   i. Recruitment, advertising, and job application procedures;

   ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

   iii. Rates of pay or any other form of compensation and changes in compensation;

   iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

   v. Leaves of absence, sick leave, or any other leave;

   vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;

   vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

   viii. Activities sponsored by the contractor including social or recreational programs; and

   ix. Any other term, condition, or privilege of employment.

2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).

5. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

6. The Contractor will include the provisions of this clause in every subcontract or purchase order in excess of $10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, 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 Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

25. <u>EXECUTIVE ORDER 11246</u>
(Applicable to construction contracts and subcontracts exceeding $10,000)

The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

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

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment 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.

B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

C. 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 consideration for employment without regard to race, color, religion, sex or national origin.

D. 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 by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. 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.

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

G. In the event of the Contractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as 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.

H. Contractor shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such subcontractor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

26. <u>CERTIFICATION OF NONSEGREGATED FACILITIES</u>
(Applicable to construction contracts exceeding $10,000)

The Contractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

27. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS
(Applicable to contracts exceeding $100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.

B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

C. A stipulation that as a condition for the award of the contract, prompt notice will be given of

any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.

D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (A) through (D) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. LOBBYING (Applicable to contracts exceeding $100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

29. BONDING REQUIREMENTS
(Applicable to construction and facility improvement contracts exceeding $100,000)

The Contractor shall comply with New York state bonding requirements, unless they have not been approved by HUD, in which case the Contractor shall comply with the following minimum bonding requirements:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other

negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the Contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.

(3) *A payment bond on the part of the Contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

30. <u>SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968</u>
(As required by applicable thresholds)

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

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

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

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

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2)

with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. part 135.

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

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

# APPENDIX II

## SPARC Request for Proposals Additional Requirements

New York Rising Rental Buildings Recovery Program Multi-family/Affordable Housing Fund (AHF) provides funding for new construction and substantial rehabilitation of site-specific, affordable, multi-family rental housing in communities impacted by Superstorm Sandy, Tropical Storm Lee, or Hurricane Irene (the "Covered Storms"). AHF utilizes federal Community Development Block Grant – Disaster Recovery (CDBG-DR) funds provided to New York State and administered through the Housing Trust Fund Corporation (HTFC). New York State Homes and Community Renewal (HCR) and the Governor's Office of Storm Recovery (GOSR) expect to make available up to $20,000,000 for loans to eligible Projects made by a loan administrator to be selected under this Request for Proposals (RFP).

AHF financing may only be utilized to finance the development of residential properties where the majority of units are affordable to households with incomes up to 80% of area median income (AMI), as adjusted for family size. However, if AHF funds are used in conjunction with other income-targeted subsidies, the more restrictive regulations and requirements will apply.

To be eligible for AHF assistance, a project must be located in the one of the following counties and address an unmet need for housing resulting from a Covered Storm:

- Superstorm Sandy: Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester

- Hurricane Irene: Albany, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Greene, Hamilton, Herkimer, Montgomery, Nassau, Orange, Otsego Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, Ulster, Warren, Washington, and Westchester
- Tropical Storm Lee: Broome, Chemung, Chenango, Delaware, Fulton, Herkimer, Oneida, Orange, Otsego, Schenectady, Schoharie, Tioga, Tompkins and Ulster

## Federal Requirements

All Projects must comply with all Federal, State and local laws, including rules and regulations specific to CDBG-DR. CDBG-DR rules and regulations include but are not limited to labor, environmental, green building standards, accessibility, and equal employment opportunity.

Development activity involving the temporary or permanent displacement of qualified rental tenants may create obligations under the Uniform Acquisition and Relocation Act (URA).

Please refer to **APPENDIX I – HUD General Provisions**, whose terms and conditions apply to any contract awarded under this RFP.

## Contract Requirements

Respondents should be aware that federal law and regulations require that GOSR contracts providing CDBG-DR assistance contain certain provisions. Please refer to **APPENDIX I – HUD General Provisions**.

Respondents are advised to review "Appendices for Contracts," which describes AHF contract requirements in detail. The document is available at: www.nyshcr.org/Topics/Developers/MultifamilyDevelopment/CDBG-DR/AHFRFP.htm "Appendices for Contracts" is made available for information purposes and is subject to revision. Applicants are further advised that GOSR may impose additional requirements at its sole discretion.

**Duplication of Benefits (DOB)**

In accordance with the Stafford Act, CDBG-DR program funds may not be used for any costs for which other disaster recovery assistance was previously provided or available.

Any Governmental and Non-Governmental assistance provided to the property owner(s) for structural repair or replacement of the rental unit(s) could potentially be considered a Duplication of Benefit (DOB). DOB occurs when a beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. Section 312 of the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which an owner has received financial assistance under any other program or from insurance or any other source. Common sources of disaster recovery assistance include insurance, FEMA, SBA, non-profit organizations, faith-based organizations, other disaster relief organizations, and other

governmental entities. New construction, where there were no rental units previously in existence, will not be reviewed for potential DOB.

Project sponsors seeking CDBG-DR assistance made available under this RFP are required to disclose and document all sources of disaster recovery assistance received in response to Hurricane Sandy, Hurricane Irene and Tropical Storm Lee. The State is required to verify sources and amounts of such disaster aid received.

ANDREW M. CUOMO
GOVERNOR

DARRYL C. TOWNS
CHAIRMAN/CEO

**Exhibit A**

# Standard Clauses and Requirements for Solicitations


*New York State Housing Finance Agency*
*State of New York Mortgage Agency*
*New York State Affordable Housing Corporation*
*State of New York Municipal Bond Bank Agency*
*Tobacco Settlement Financing Corporation*
*641 Lexington Avenue*
*New York, NY 10022*
*212-688-4000*
*www.nyshcr.org*

*Housing Trust Fund Corporation*
*Hampton Plaza*
*38-40 State Street*
*Albany, NY 12207*
*www.nyshcr.org*


*April 2014*

# I. AGENCY AND STATE-MANDATED REQUIREMENTS

## 1.1 Equal Employment Opportunity

It is the goal of the New York State Housing Finance Agency, Housing Trust Fund Corporation, New York State Affordable Housing Corporation, State of New York Mortgage Agency, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (individually, "Agency" and collectively, "Agencies") to award contracts to contractors and vendors that evidence compliance with the laws of the State of New York ("State") prohibiting discrimination in employment.

## 1.2 Procurement Lobbying Law

a. All Offerers/Proposers/Respondents/Bidders ("Offerers")[1] are required to make a written statement affirming that they understand and will abide by the provisions of the New York State Finance Law ("SFL") relating to the persons who may be contacted during this Agency solicitation process.

b. Pursuant to SFL §139-j and §139-k[2], this Agency solicitation includes and imposes certain restrictions on communications between any Agency and any Offerer during the solicitation process. These restrictions apply during the period which commences from the earliest written notice, advertisement or

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[1] "Offerer" means any person or entity that responds to this Agency solicitation. It also means, for purposes of applying the Procurement Lobbying Law, an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts an Agency about an Agency solicitation process during the Restricted Period of such Agency's solicitation process. The Procurement Lobbying Law applies to solicitations involving estimated annualized expenditures in excess of $15,000.

[2] Please click on the following link to view the statutes http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html .

solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerers intending to result in a procurement contract with any Agency and ends with the final contract award and approval by any Agency (the "Restricted Period"). During the Restricted Period, Offerers are not permitted to make Contacts[3] with anyone other than the Agencies' Designated Contact Officer, unless such communication falls within certain statutory exceptions set forth in SFL §139-j(3)(a).

c. Employees of the Agencies are required to obtain certain information when a Contact is received from an Offerer during the Restricted Period and include it in the procurement record for the contract. In addition, the Agencies are required to make a Determination of Responsibility of the Offerer pursuant to SFL §139-j and §139-k prior to the award of any contract. Certain findings of non-responsibility can result in denial of a contract award, and, in the event of two (2) findings within a four (4) year period, an Offerer will be debarred from obtaining governmental contracts for a four-year period. This Agency solicitation requires Offerers to disclose prior findings of non-responsibility to the Agencies.

## 1.3 Freedom of Information Law

All information and materials provided in response to this Agency solicitation is subject to disclosure pursuant to the Freedom of Information Law.

## 1.4 Reservation of Rights

a. The issuance of this Agency solicitation, the submission of a proposal[4] by any Offerer, and/or the acceptance of such proposal by any Agency, does not obligate the Agencies in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract by any Agency and the selected Offerer.

b. The Agencies reserve the right to:

(i) amend, modify, or withdraw this solicitation;
(ii) revise any requirements of this solicitation;
(iii) require supplemental statements or information from any Offerer;
(iv) accept or reject any or all proposals;
(v) extend the deadline for submission of proposals;

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[3] "Contact" means, for purposes of applying the Procurement Lobbying Law, any oral, written, or electronic communication from an Offerer, under circumstances where a reasonable person would infer that the communication was intended to influence any Agency solicitation process.

[4] The term "proposal" means any bid, quotation, offer, or response to this solicitation.

(vi) negotiate or hold discussions with any Offerer and correct deficient proposals that do not completely conform to the instructions contained herein;
(vii) cancel or reissue this solicitation, in whole or in part, if any Agency deems it in its best interest to do so;
(viii) hold a pre-bid conference with all Offerers, to answer questions and provide applicable information as necessary;
(ix) accept a proposal and any subsequent proposal for the contract award from someone other than the lowest cost Offerer consistent with the criteria for the evaluation of proposals;
(x) make an award in whole or in part;
(xi) disqualify any Offerer whose conduct and/or proposal fails to conform to the requirements of this solicitation;
(xii) seek clarification and revisions of proposals;
(xiii) change any of the solicitation's scheduled dates;
(xiv) utilize any and all ideas submitted in the proposals received;
(xv) request best and final offers;
(xvi) require clarification at any time during the procurement process and correction of arithmetic or other apparent errors to assure a full and complete understanding of a proposal or to determine an Offerer's compliance with the requirements of the solicitation;
(xvii) re-issue this solicitation, or a similar version, annually or as needed to solicit additional proposals;
(xviii) interview an Offerer prior to selection; and
(xix) aive any requirements that are not material.

The Agencies may exercise the foregoing rights at any time without notice and without liability to any Offerer or any other party for expenses incurred in connection with the proposals. All proposals and submissions will be made at the sole cost and expense of the Offerer.

c. This Agency solicitation and any agreement which may result from it are subject to all applicable laws, rules, and regulations promulgated by any federal, state, or local authority having jurisdiction over the subject matter hereof, as the same may be amended from time to time.

d. The Agencies shall be the sole judge of whether a proposal complies with the requirements of this solicitation and the merits of such proposal. This solicitation does not commit the Agencies to select a contract awardee, or to procure or contract for the services described herein.

e. Nothing stated at any time by any representative of the Agencies will effect a change in or constitute an addition to this solicitation unless confirmed in writing by the Agencies.

f. Offerers responding hereto must agree to keep confidential their proposals and any information received from the Agencies.

g. Any selected Offerer will be required to execute a contract prescribed by the Agencies, and to abide by all relevant laws and policies of the Agencies with regard to, among other things, conflicts of interest, ethics, lobbying law directives, minority and/or women owned business enterprise participation requirements, equal employment opportunity programs, etc.

h. The Agencies believe the information set forth in this solicitation is accurate. However, the Agencies, their Directors and/or Members, Officers, agents and employees assume no responsibility for errors and omissions contained therein.

i. Under no circumstances (including withdrawal of this Agency solicitation before or after proposals are received) will any Offerer have any recourse against the State of New York or any Agency, their Directors, Members, Officers, agents or employees for any expenses incurred or damages sustained as a result of this Agency solicitation process.

j. The Agencies reserve the right to select qualified proposals for further review and negotiation. Further negotiation may include, but shall not be limited to, bid amounts for contract award on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.

k. The Agencies reserve the right to make one or more awards based on the proposals that the Agencies deem best in their sole discretion.

l. Offerers shall not make public announcements or issue news releases pertaining to selection or contract execution without prior written consent of the Agencies.

m. Any contract subject to approval by an Agency's Board will be awarded only after approval by the Board of the Agency issuing this solicitation.

## 1.5 Grounds for Disqualification

A proposal may be rejected at any time during the evaluation process and at any point thereafter if there are any adverse findings that would prevent any Agency from selecting the Offerer or any person or entity associated or partnering with the Offerer. Such adverse findings include, but are not limited to:

a. Negative findings from the New York State Inspector General, a federal Inspector General, the U.S. Government Accountability Office, or an Inspector General in another state;
b. Pending or unresolved legal action from the U.S. Attorney General or from an attorney general in New York or another state;

c. Pending litigation with New York State or any other state, or a municipality located in New York or another state;
d. Arson conviction or pending case;
e. Harassment conviction or pending case;
f. Federal, state, local, or private mortgage arrears, default, or foreclosure proceedings;
g. In rem foreclosure;
h. Sale of tax lien or substantial tax arrears;
i. Fair housing violation or current litigation;
j. Defaults under any Federal, State or locally sponsored program;
k. A record of substantial building code violations or litigation against properties owned and/or managed by the Offerer or by any entity or individual that comprises the Offerer;
l. Past or pending voluntary or involuntary bankruptcy proceeding;
m. Conviction for fraud, bribery, or grand larceny;
n. Listing on Federal or State excluded parties lists; and
o. Allegations or findings of plagiarism in research activity, and/or theft of intellectual property.

**REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY**

**NEW YORK STATE HOUSING FINANCE AGENCY**
**HOUSING TRUST FUND CORPORATION**
**NEW YORK STATE AFFORDABLE HOUSING CORPORATION**
**STATE OF NEW YORK MORTGAGE AGENCY**
**STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY**
**TOBACCO SETTLEMENT FINANCING CORPORATION**
**DIVISION OF HOUSING AND COMMUNITY RENEWAL**

**(individually, "Agency" and collectively, "Agencies")**

# Contractor or Vendor Information Form

**Vendor/Contractor Name:** _____

**Address:** _____

_____

**Telephone Number:** (_____) _____

**Fax Number:** (_____) _____

**Email:** _____

**Name & Title of Principal(s):** _____

_____

**Name & Title of Authorized Signer(s):** _____

**Federal Employer Identification Number:** _____

**Charities Bureau Registration #:** _____
(Only applies to not-for-profits.)

**Legal Status:** _____ **Corporation** _____ **Partnership**

_____ **Not-for-Profit** _____ **Other**_____

**(Note: If conducting business under an assumed name (d/b/a), please include evidence of filing of certificate.)**

## Minority Owned Business Enterprises

1. Is your company a Minority-Owned Business Enterprise as defined below pursuant to Section 2879 of the Public Authorities Law?

   (Please circle) Yes No

2. If yes, has your company been certified as a Minority-Owned Business Enterprise?

   (Please circle) Yes No

3. Is your company certified with New York State's Empire State Development Corporation (ESD)?

   (Please circle) Yes No

   If yes, please submit a copy of your company's most recent certification letter from ESD.

**Minority-Owned Business Enterprise**: Any business enterprise, including a sole proprietorship, a partnership, or a corporation that is:

(i) At least 51% percent owned by one or more minority group members;
(ii) An enterprise in which the minority ownership is real, substantial and continuing;
(iii) An enterprise in which the minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
(iv) An enterprise authorized to do business in New York State and is independently owned and operated;
(v) An enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certifications, with a person net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
(vi) An enterprise that is a small business[1]

***Minority Group Member***: Any person that is a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

(i) Black persons having origins in any of the Black African racial groups;

(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

(iii) Native American or Alaskan native persons having origins in any of the original peoples of North America.

(iv) Asian and Pacific Islander persons having origins in any of the Far East countries, Southeast Asia, the Indian sub-continent or the Pacific Islands.

[1]"Small Business" means, unless otherwise indicated, a business which has a significant business presence in the State of New York, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the Director of division of minority and women's business development in the department of economic development, but not to exceed 300, taking into consideration factors which include, but are not limited to, Federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto. The Director may issue regulations on the construction of the terms in this definition.

## Women Owned Business Enterprises

1. Is your company a Women-Owned Business Enterprise as defined below pursuant to Section 2879 of the Public Authorities Law?

   (Please circle) Yes No

2. If yes, has your company been certified as a Women-Owned Business Enterprise?

   (Please circle) Yes No

3. Is your company certified with New York State's Empire State Development Corporation (ESD)?

   (Please circle) Yes No

   If yes, please submit a copy of your company's most recent certification letter from ESD.

**Women-Owned Business Enterprise**: Any business enterprise, including a sole proprietorship, a partnership, or a corporation that is:

(i) At least 51% percent owned by one or more United States citizens or permanent resident aliens who are women;
(ii) An enterprise in which the ownership interest of such women is real, substantial and continuing;
(iii) An enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
(iv) An enterprise authorized to do business in the State of New York and is independently owned and operated;
(v) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certifications, with a personal net worth that does not exceed $3.5 million dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
(vi) An enterprise that is a small business[2]

**Vendor/Contractor Certification:**
*Proposer/bidder certifies that to the best of his/her knowledge and belief, all information contained in this application is true and correct.*

**Name of Contractor or Vendor:** _____

**Authorized Signature:** _____

**Print Name and Title:** _____

**Date:** _____

[2]"Small Business" means, unless otherwise indicated, a business which has a significant business presence in the State of New York, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the Director of division of minority and women's business development in the department of economic development, but not to exceed 300, taking into consideration factors which include, but are not limited to, Federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto. The Director may issue regulations on the construction of the terms in this definition.