

**City of New Orleans, Louisiana**  
**Request for Proposals**  
**“Municipal Auditorium Adaptive Use Developer and Operator”**  
**September 3, 2009**  
**RFP No. 2285-00784**

Request for Proposals: The City of New Orleans Capital Projects Administration Office desires to obtain a Proposal from Developers for an alternate adaptive use of this historic structure and the operation of that facility as an long term economic commercial business enterprise. Eligible entities must qualify as community based property development institutions that are either for-profit or non-profit in nature or private developers with a proven record of accomplishment in community improvement with a proven financial capability of developing, constructing, and operating such a facility. As provided below, and incident to City Charter Section 6-308(5) and Executive Order CRN 09-01, the City of New Orleans requests qualifications from experienced developers capable of providing the requested services.

Goals Of The City Of New Orleans: The City of New Orleans goals in the development of the Municipal Auditorium into an alternate adaptive facility are to maximize the "Best Value" to the City which is defined generally as the value of economic benefits received by the City or on behalf of its citizens that in the sole judgment of the City are bona fide, legitimate and reasonable while further establishing New Orleans as an international tourist destination, maintaining the historical significance of the Morris FX Jeff Auditorium and the surrounding Armstrong Park through excellence in architecture and sustainability, and promoting the use of small business and employment of City residents while meeting specific and measurable milestones.

Development Guidelines: These guidelines establish overall planning principals to provide general programmatic, functional, and aesthetic direction for the development of the Morris FX Jeff Auditorium into an alternate adaptive use facility:

1. Establish a world class state of the art multi use sound and video production facility for use by the creative media industry and other traditional uses while creating an incubator for the next generation digital media entrepreneurs. The facility should incorporate a vibrant mix of uses that are sensitive to and fully integrated into the surrounding historic Armstrong Park and Treme Community.
2. Create high quality cohesive interior spaces with a range of uses and activities that leverages the facility's location in Armstrong Park directly adjacent to the French Quarter
3. Provide integrated infrastructure improvements without significant impact upon Armstrong Park and the surrounding Treme Community
4. Construct improvements in a manner that contribute to a sustainable "green "environment

**Instructions:** Applicants shall submit the following to the *Capital Projects Administration Director Attention: Bill Chrisman, 1300 Perdido St., Suite 6E15, New Orleans, LA 70112, (504) 658-8670, Email: wmchrisman@cityofno.com*, not later than **4:00 p.m.(CST) on October 30, 2009**

- a) **One (1)** electronic copy in Microsoft Word format or as a PDF file, labeled “***Municipal Auditorium Developer and Operator***”.
- b) **Three (3)** hard copies of the proposal enclosed in a sealed envelope, labeled “***Municipal Auditorium Developer and Operator***”

Proposals should clearly demonstrate the applicant’s qualifications to perform the needed services and attend all factors applicable in a professional relationship relevant to the renovation, lease, and business operation of an alternate use project of the Morris FX Jeff Auditorium that formerly housed a 6,500-seat arena hosting concerts, trade shows, dances, carnival balls, and conventions. Proposals should include a complete business plan that incorporates city appropriated FEMA funding as well as utilization of New Markets Tax Credits, Historic Tax Credits, private equity investment, and short/long-term loans for the proposed renovation and business operation of the Municipal Auditorium into an alternate use economic development serving the City of New Orleans. **Please note:** The City will host a pre-submittal conference to answer all questions regarding this solicitation on September 14, 2009 at 1PM at Capital projects office 6th floor of City Hall. Questions and answers from the pre-submittal conference, copies of the solicitation and related information will be available at <http://www.purchasing.cityofno.com/bsol/login.jsp>.

The City will not accept proposals submitted by fax. All proposals **must be received** by the City on or before the Delivery Deadline as conclusively evidenced by the City’s e-mail server. The City will not accept proposals delivered after the deadline. The City will not credit delivery claims not clearly documented by original receipt. The respondents shall submit a completed Tax Clearance Certificate with the proposal (see Attachment “D”).

If the City identifies a likely developer/operator, it may negotiate a final agreement with the operator and fix the relationship by Professional Services contract generally according to CAO Policy Memorandum 8R. The contract will contain the standard City provisions shown in Attachment “B” and the “Disadvantaged Business Enterprise” (“DBE”) provisions shown in Attachment “C.”

Proposals **MUST** contain the following statement signed by the applicant or its authorized representative, “**By responding to this RFP, respondent agrees to the City’s Required Contract Provisions as provided in Attachment “B” and therefore waives any future right to contest the required provisions.**”

1. DBE Program Compliance: Proposals **MUST** contain the following statement signed by the applicant or its authorized representative, “**The Proposer agrees to use its Best Efforts to fully comply with the DBE Program, including all reporting requirements and any specific contract goals for DBE participation.**”

The requirements of the City’s DBE Program apply to this solicitation. It is policy of the City of New Orleans to practice nondiscrimination based on social and economic disadvantage, race, color, sex, gender, disability or national origin. All firms qualifying under this solicitation must submit with proposals a statement as to how they intend to meet this requirement. Award of this solicitation shall not be considered unless the respondent indicates how they will satisfy the

requirements of the DBE Program. A DBE contract goal of 35 percent has been established for this solicitation. The respondent shall agree to use its best efforts, as determined by the DBE Compliance Officer to assure that all respondents comply with the factors set forth in the DBE Program, to meet the contract goal for DBE participation in the performance of this solicitation.

The following information must be contained with supporting documentation as outlined in Attachment “E” in the respondent’s proposal.

- i. The names and addresses of all DBE firms that will participate in the contract;
- ii. The dollar amount commitment of the participation of each DBE firm participating in the contract;
- iii. Written confirmation from the named DBE(s), verifying their participation in the contract as provided in the commitments made under (i) and (ii) above; and
- iv. If the contract goal is not met, evidence of best efforts.

The City participates in the State and Local Disadvantaged Business Enterprise Program (“SLDBE”) which also includes the Sewerage & Water Board (“S&WB”) and New Orleans Aviation Board (“NOAB”). These agencies have agreed to grant one another reciprocity with respect to the businesses certified as DBEs.

The respondent must select a DBE(s) from one of the following lists to be compliant with the City’s DBE contract goal: [www.cityofno.com](http://www.cityofno.com), [www.swbno.org](http://www.swbno.org) and [www.flymsy.com](http://www.flymsy.com). If respondent selects a DBE(s) from any of the above lists, it can be safely assumed that the business is certified with all three agencies.

Please direct all questions related to DBE compliance prior to submission of the proposal to Alvin Porter, Office of Supplier Diversity, 1300 Perdido Street, Room 9E06, New Orleans, LA 70112, telephone: 658-4235, email: [agporter@cityofno.com](mailto:agporter@cityofno.com).

2. Services Needed: Attachment “A” describes the needed services.

3. Selection: The City will select an applicant generally according to the procedures described in Executive Order CRN 09-01 and Chief Administrative Officer (“CAO”) Policy Memorandum 8R. The City will apply the following selection criteria and weighting factors to evaluate proposals:

- a) Quality of Proposal – Relevant rationale of the overall methodology in accomplishing the services needed in Attachment “A”; the relevance of each of the elements of the proposal in completing these services and the manner in which the objectives cited in Attachment A of this RFP are addressed (20%)
- b) Relevant Experience – The proposer has demonstrable experience in the following: (1) prior business management and/or development experiences, particularly involving commercial renovations, adaptive redevelopment and/or construction; (2) successful completion of a similar development in New Orleans area or other similar development communities; and (3) contractor can demonstrate necessary experience with all applicable program requirements for project activities inclusive of build-out,

- development monitoring, timely reporting and feedback on jobs that keep track of schedule and budgets, use of materials and construction standards that are appropriate for the project and its community, environmental clearance and incorporation of green building standards in projects. (20%)
- c) Financial Model and Leveraging of Private Capital and Other Incentives – The proposer must demonstrate an ability to a.) Obtain private financing, inclusive of subsidies and private grants. b.) Knowledge and/or use of CDBG funding should it become available in the support of low income or urban commercial development, Historic Tax Credits, New Market Tax Credits, and or other innovative financing. The degree to which City of New Orleans funds are used to leverage other funding sources will be a key criterion in the final decision-making. Financial Projections must be realistic and include reasonable assumptions. Projects with strong reserves and reliable sources of capital will also be preferred. See Attachment “A” for the “Municipal Auditorium Public Investment Overview” (20%).
  - d) DBE – Willingness to promote full and equal business opportunities in accordance with the City’s Disadvantaged Business Enterprise Program (10%) *See Attachment*
  - e) Historic Preservation– Given the history of the Morris FX Jeff Auditorium and the surrounding Armstrong Park, The City of New Orleans is especially interested in sensitive historic renovation and preservation efforts, particularly those that combine historic preservation and sustainable design in an alternate use adaptation of the existing facility. Applicants should produce a thoughtful urban design concept that creates a vibrant design. Designs must be consistent with, and complimentary to the surrounding community, cultural characteristics, neighborhood history, and all historical or preservation requirements. Additional credit will be given for concepts relative to establishment of an Interactive Jazz museum that compliments the Roots of Music sculpture in Armstrong Park (10%)
  - f) Community Support – It is important that the proposed development nurtures and promotes a vision supported by the community. Applicants should also demonstrate a commitment to incorporate workforce development and training into their business proposal (seniors, out-of-school youth and ex-felons will receive greater consideration). Applicants must include their proposed labor model for hiring target groups, and describe whether certified apprentice or training programs will be targeted and used during development and/or business operations. Respondents must demonstrate their effort to engage and coordinate with community organizations to explain how the project contributes to the City of New Orleans. Community support letters must be obtained and documented prior to or after awarding of the contract. Community support is a condition of the contract . (10%)
  - g) Affordability and Timeliness – Ability of the Applicant to complete the commercial and economic development goals – renovation of Morris FX Jeff Auditorium that compliments and supports Armstrong Park and the residential neighborhood and commercial corridor –within a budget and time frame that is reasonable and responsive to the specifics, standards and requirements of this RFP. (10%)

4. Ownership: All proposals and all documentation submitted therewith are City of New Orleans property for all purposes. Applicants will clearly mark documents or information claimed exempt from public records disclosure and specifically justify the exemption. The City will not credit any blanket exemption claims lacking specific justification. The City does not guarantee the confidentiality of submissions.

5. Fees and Costs: None.

6. Effect: This Request for Proposals and any related discussions or evaluations by anyone create no rights or obligations whatsoever. The City of New Orleans may cancel or modify this solicitation at any time at will, with or without notice. Anything to the contrary notwithstanding, the Professional Services contract executed by the City of New Orleans and the selected applicant, if any, is the exclusive statement of rights and obligations extending from this solicitation.

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**Attachment “A”**

**NEEDED SERVICES**

The City of New Orleans, through this RFP, will contract with a qualified entity with demonstrable successes in the development and the operation of adaptive use commercial business enterprise properties and that demonstrates financial capacity utilizing private capital, New Market tax credits, Historic tax credits, and leveraging available federal funding to develop and operate the Morris FX Jeff Auditorium.

**Please Note:** The City’s development and operational goals and objectives for the Morris FX Jeff Auditorium are to aid our efforts to revitalize economic corridors through sustainable development. The City of New Orleans will ask the awarded Developer to sign agreements that require development to be completed in a timely fashion and allows the City of New Orleans to end lease agreements on the property if operator is found unable to make substantial progress to meet scheduled benchmarks. If the City of New Orleans has to exercise its reversionary rights, awarded Developer will forfeit all funds already paid to develop the property.

**1. Contact Information and Personal/Organization Background:** Please indicate whether you are an individual, small entrepreneur, business, developer, or community development organization.

Please indicate whether you or your organization is a minority or women-owned business enterprise or other similar status (i.e. M/WBE).

**2. Operational Business and Financial Plan:** Please provide a business plan and narrative description of the project, including a financial model that describes the expected costs and profits of the construction and business operation. Models should include all tax credits, government subsidies, and internal capital. Applicants must show that they have adequate capital and resources to successfully develop and operate their business in a rapid fashion and cover all operational and predevelopment expenses. All applicants must clearly indicate the method of financing for their proposed business venture, including construction and permanent financing.

Ideally, applicants will present a Letter of Intent/Commitment from any proposed sources of funds including banks and equity investors. For financing sources other than recognized financial institutions, applicants should provide verification of that party’s financial ability. Potential developers should also demonstrate significant loss and contingency reserves. Entities must demonstrate they are responsible developers and have the ability to successfully operate and sustain a business venture. Developers should provide any photographs or documentation of prior projects. All responders should indicate how they would meet the evaluation criteria described below.

3. **Cost:** If the City of New Orleans has multiple proposers, it may ask for lowest and best bids following the RFP. Price will be one factor in the City of New Orleans evaluation; however, it reserves the right to consider higher bids based on the strength and qualification of a RFP response.

### **Evaluation Process**

All proposals submitted in response to this RFP will be reviewed for their relative strengths and weaknesses. Selections will be based on the completeness and quality of responses to this solicitation. Proposers must provide accurate contact information and attest to the veracity of the information supplied. At its discretion, the City of New Orleans Capital Project's staff may contact references and industry sources, investigate previous projects and current commitments, interview some or all of the proposed development team members, and consider any other information in its evaluation of the responses. The City of New Orleans reserves the right to request clarification or additional information.

### **SUGGESTED DOCUMENTATION FOR EVALUATION CRITERIA**

The City of New Orleans requires that potential developer/operator demonstrate that they are qualified to develop and operate an alternate adaptive use for the Morris FX Jeff Auditorium as a economic business enterprise. Set forth below are suggested documentation that will help ensure that a respondent complies with RFP.

- \_ Description of applicant's experience in commercial/business development
- \_ Description of applicant's vision of their proposed adaptive use of the Memorial Auditorium and commitments or letters of interest from viable separate commercial enterprises for use of any rental space if applicable
- \_ Description of the applicant's management and business operational experience
- \_ Certificate of Good Standing (within last 30 days), if applicable
- \_ Financing commitment letters (dated within the last 30 days)
- \_ Copy of Business Plan and all applicable licenses
- \_ Copy of preliminary specifications and draft sketch of interior architectural plans
- \_ Construction schedule
- \_ Marketing plan

**Publication and Promotion:** This RFP shall be posted on the City of New Orleans website, advertised in the Times-Picayune and will be available upon request. The winning proposer agrees to participate in any reasonable promotional activity and to prominently display City of New Orleans signage on the site of development. Such signage shall be provided by the City of New Orleans. Winning proposer also agrees to participate in community meetings scheduled by the City of New Orleans and to make information about their plans available to the community.

### **CITY OF NEW ORLEANS COOPERATION**

To the extent feasible, the City of New Orleans will support winning proposer in their effort to secure additional funding, public and private incentives and permits, licenses, approvals or variances.

### **Additional Requirements**

The City of New Orleans reserves the right to amend the instructions, requirements, general and special conditions, scope of work and specifications of this RFP. Copies of such amendments shall be furnished to all prospective proposers that have submitted proposals and shall be posted to the City's website. Where such amendments require significant changes in the scope of the program, the date set for proposals may be postponed by such number of days as in the opinion of the City of New Orleans shall enable prospective proposers to revise their proposals.

### **Proposed Schedule**

Issuance of RFP September 3, 2009

Proposals due October 30, 2009 at 4:00PM

Evaluation of Proposals November 1- November 15, 2009

*This schedule is subject to change, and all respondents will be provided the earliest possible notice of changes.*

**Environmental Cleanup and Materials of Construction:** Respondents should indicate what materials would be used in the construction or build-out. Respondents should certify that all materials used in build-out are safe, environmentally friendly and do not produce noxious off-gassing. Currently the Auditorium has been deemed to require environmental protective clothing and respirators until such time as a complete environmental cleanup of mold is performed throughout the entire facility. It is the responsibility of the winning proposer to perform all hazardous material and mold remediation of the facility in total.

**Alternative Energy and Green Building:** Respondents should indicate whether their products utilize alternative energy and sustainable building features .

**Municipal Auditorium Public Investment Overview:** Currently the City of New Orleans has \$3,615,749.00 in encumbered FEMA funds allotted to the reconstruction of the Municipal Auditorium. That level of funding is expected to grow substantially as FEMA further investigates the level of damages in the facility and versions the Project Worksheet accordingly.



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**Attachment “B”**

**REQUIRED CONTRACT PROVISIONS**

1. **EQUAL EMPLOYMENT OPPORTUNITY:** In all hiring or employment made possible by, or resulting from this contract, there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, affirmative action will be taken to ensure that the Contractors employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, 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. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

2. **ASSIGNABILITY:** The Contractor shall not assign any interest in this agreement and shall not transfer any interest in the same without prior written consent of the City of New Orleans.

**CONFLICT OF INTEREST:** All proposers agree to disclose any, direct or indirect, current or future, conflict of interest between themselves and the City of New Orleans, and the employees of said entity. In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the City, and in recognition of the Contractor’s responsibility to the City, the Contractor agrees to decline any offer of employment if its independent work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Contractor. It is incumbent upon the Contractor to notify the City and provide full disclosure of the possible effects of such employment on the Contractor's independent work in behalf of the City. Final decision on any disputed offers of other employment for the Contractor shall rest with the City Attorney.

3. **INDEMNIFICATION:** The Contractor shall indemnify and save the City harmless against any and all claims, demands, suits, judgments of sums of money to any party accruing against the City for loss of life or injury or damage to persons or property growing out of, resulting from, or by reason of any act or omission or the operation of the Contractor, its agents, servants or employees while engaged in or about or in connection with the discharge or performance of the services to be done or performed by the Contractor hereunder and shall also hold the City harmless from any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of its obligation under this Agreement.

4. **ACKNOWLEDGMENT OF EXCLUSION OF WORKER’S COMPENSATION COVERAGE:** Contractor herein expressly agrees and acknowledges that it is an independent contractor as defined in R.S. 23:1021 (6) and as such, it is expressly agreed and understood between the parties hereto, in entering

5. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE: Contractor herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this agreement for hire as noted and defined in R.S. 23:1472 (E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this services agreement, or agreement for hire, and in connection with unemployment compensation only, that:

a. Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; and

b. Services to be performed by Contractor are outside the normal course and scope of the City's usual business; and

c. Contractor has been independently engaged in performing the services listed herein prior to the date of this agreement.

Consequently, neither Contractor nor anyone employed by Contractor shall be considered an employee of the City for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

6. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS: It is expressly agreed and understood between the parties entering into this services agreement that the Contractor, acting as an independent agent, shall not receive any sick and annual leave benefits from the City of New Orleans.

7. JURISDICTION & CHOICE OF LAW: The Contractor hereby consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans, and does hereby formally waive any pleas of jurisdiction on account of the residence elsewhere of the Contractor. This agreement shall be construed and enforced according to the laws of the state of Louisiana, excepting its conflict of law's provisions.

8. DURATION: This Agreement shall commence on the Effective Date of the agreement and shall continue for a period of thirty years.

8. APPROPRIATION AND/ OR EXTENSION: This agreement may be extended at the option of the City and the extension of the agreement facilitates the continuity of services provided herein. This agreement may be extended by the City for no longer than two ten year periods.

9. SOLICITATION: The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject contract.

10. CANCELLATION:. Either party to this agreement may terminate the agreement at any time during the term of the agreement by giving the other party written notice of said intention to terminate at

13. AUDIT AND OTHER OVERSIGHT: The Contractor understands and will abide by all provisions of the Code of the City of New Orleans, Chapter 2, Art. XIII, Sect. 9-1120, as adopted by City Ordinance No. 22,888 M.C.S., (relative to the operations and authority of the City Inspector General), incorporated herein by reference.

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**REQUIRED CONTRACT DBE PROVISIONS**

“DBE Program Compliance. Contractor agrees to use its best efforts to fully and completely carry out the applicable requirements of the City’s DBE Program in the award and administration of this Agreement, including, without limitation, all reporting requirements and specific DBE participation goals. Contractor’s failure to carry out these requirements, as determined in good faith by the DBE Compliance Officer, shall be deemed a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as set forth in the City’s Policy Memorandum for the DBE Program.”

“DBE Compliance Reporting. Contractor agrees to provide quarterly written reports to the DBE Compliance Officer on all expenditures made to achieve compliance with the DBE participation goals for this Agreement. The report shall, at a minimum, include the following:

- i. The name and business address of each DBE involved in the contract;
- ii. A description of the work performed and/or the product or service supplied by each DBE;
- iii. The date and amount of each expenditure made to a DBE; and
- iv. Such other information as may assist the DBE Compliance Officer in determining Contractor’s compliance with the DBE Program and the status of any DBE performing any portion of the contract.”

“Access to Books and Records. Contractor agrees to grant DBE Compliance Officer reasonable access to its books and records for purposes of verifying compliance with the DBE Program.”

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**TAX CLEARANCE CERTIFICATE**

**See attachment**

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**FORM DBE-1 and EVIDENCE OF BEST EFFORTS**

**See attachment**

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**CDBG COMPLIANCE PROVISIONS FOR**  
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1. **EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)**  
(Applicable to contracts and subcontracts above \$10,000)

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

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. 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 without regard to race, color, religion, sex, or national origin.
- C. 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 Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said 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 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, 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 Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a

contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

2. **CERTIFICATION OF NONSEGREGATED FACILITIES**  
(Applicable to contracts and subcontracts over \$10,000)

By the submission of this bid, the proposer, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The proposer, offeror, applicant or subcontractor 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.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she 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 he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

3. **CIVIL RIGHTS**

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.

4. **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.

5. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES**

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR

part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

**6. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)**

(Applicable to contracts and subcontracts over \$10,000)

- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. 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.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

- E. The Contractor will notify each labor union 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, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, 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 Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**7. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED**

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

**8. AGE DISCRIMINATION ACT OF 1975**

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. 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.

**9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS**

(Applicable to contracts and subcontracts exceeding \$100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

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 List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 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 USC 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 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 there under.
- 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 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 (1) through (4) 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.

**10. FLOOD DISASTER PROTECTION**

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

**11. ACCESS TO RECORDS - MAINTENANCE OF RECORDS**

The State of Louisiana, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which

are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the State's final closeout of the grant.

**12. INSPECTION**

The authorized representative and agents of the State of Louisiana and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

**13. REPORTING REQUIREMENTS**

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

**14. CONFLICT OF INTEREST**

A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

**15. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED**

(Applicable to contracts and subcontracts of \$10,000 and under)

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. Contractors shall incorporate foregoing requirements in all subcontracts.

**16. PATENTS**

- A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

**17. COPYRIGHT**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might

be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

**18. TERMINATION FOR CAUSE**

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 Owner 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 Owner, become the Owner'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 Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

**19. TERMINATION FOR CONVENIENCE**

The Owner 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 Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

**20. ENERGY EFFICIENCY**

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

**21. SUBCONTRACTS**

- A. The Contractor shall not enter into any subcontract with any subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of Louisiana.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.

- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

**22. DEBARMENT, SUSPENSION, AND INELIGIBILITY**

The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

**23. BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**24. 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.

**25. CHANGES**

The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

**26. PERSONNEL**

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

**27. ANTI-KICKBACK RULES**

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 "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 insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors there under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

**28. ASSIGNABILITY**

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or notation) without prior written approval of the Owner provided that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

**29. INTEREST OF CONTRACTOR**

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

**30. POLITICAL ACTIVITY**

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

**31. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET**

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this contract.

**32. DISCRIMINATION DUE TO BELIEFS**

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

**33. CONFIDENTIAL FINDINGS**

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

**34. LOBBYING**

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

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the contractor, 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 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 federally 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 contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.