



DEPARTMENT OF FAMILY AND COMMUNITY SERVICES

Date: December 10, 2009

To: Delia Briones, County Clerk

From: Rosemary V. Neill

Re: Commissioners Court Agenda

Please place the following item on the Commissioners Court agenda for December 14, 2009:

Approve and authorize the County Judge to sign a Contract with the El Paso Coalition for the Homeless to receive data collection services using the Homeless Management Information System (HMIS) to support the Homelessness Prevention and Rapid Re-Housing Program (HPRP) funds awarded to the County for a period beginning October 1, 2009 and ending September 30, 2012.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Rosemary V. Neill", with a long horizontal flourish extending to the right.

Rosemary V. Neill

Director

Memorandum

To: County Judge Anthony Cobos, Commissioner Anna Perez,
Commissioner Veronica Escobar, Commissioner Willie Gandara, and
Commissioner Daniel Haggerty

From: Rosemary Neill

Date: 12/10/2009

Re: Approve and Authorize a Homeless Prevention and Rapid Re-Housing
Contract with the Opportunity Center for the Homeless

Action Item

Approve and authorize the County Judge to sign a Contract with the El Paso Coalition for the Homeless to receive data collection services using the Homeless Management Information System (HMIS) to support the Homelessness Prevention and Rapid Re-Housing Program (HPRP) funds awarded to the County for a period beginning October 1, 2009 and ending September 30, 2012.

Fiscal Impact

The City of El Paso awarded the El Paso Coalition for the Homeless \$132,000 for data collection for HPRP grant recipients. El Paso County is one of these recipients.

Background Information

The City of El Paso received \$3,492,976 from American Recovery and Reinvestment Act (ARRA) of 2009 funds. It set aside \$2,186,976 for Homelessness Prevention Services in three geographic planning areas.

The County successfully competed for these funds. The City awarded the County these homelessness prevention dollars to serve eligible families in the Central/Northwest, Lower Valley, Northeast/East areas of the City.

In a parallel process, the City solicited proposals for the data collection and evaluation of this program. On September 15, 2009, the City approved a contract for \$132,000 with the El Paso Coalition for the Homeless as the contractor for the HPRP data collection.

The Coalition will be the supporting agent for the collection of all HPRP data for the County and the TVP Non-Profit Corporation, the grantee for the Rapid Re-housing portion of the overall program. The City's contract with the Coalition pays for these services.

The Coalition has operated El Paso's HMIS since its inception in 2004. The Coalition receives HUD Continuum of Care funding to operate HMIS for all participating programs. The HMIS uses MetSys software, hosting and storage of data.

Since the Coalition has all the licenses necessary to support HPRP data collection, the City will use HMIS to collect its HPRP data. The Coalition is required to assist the County in customizing any data screens to capture HPRP data, certify any computers used for data collection, identify, and train persons to use this data collection system.

The County receives this service as a grantee of HPRP funds. Approval of this contract allows the Coalition to provide these services to the County, at no cost to the County, under the terms and conditions of the Coalition's contract with the City.

Contract for HMIS Data Collection Services

Whereas the City of El Paso has awarded Homeless Prevention and Rapid Rehousing (HPRP) contracts (KK-09-394, KK-09-395, KK-09-396) dated October 1, 2009, to the El Paso Coalition for the Homeless (the “Coalition” and the “Coalition Data Grant”) and also to El Paso County – General Assistance as grantee (the “County” and the “County HPRP Grants”);

Whereas under the County HPRP Grants, the County is required to obtain and track in the Homeless Management Information System (“HMIS”) all data for its HPRP program participants and HPRP funding expenditures as required by HUD regulations;

Whereas the Coalition Data Grant provides that the Coalition will use funding to pay for certain HPRP software costs, certain HMIS staff costs, and reimburse the County and the County’s subgrantees for certain costs they incur for data collection and data entry into HMIS;

Now therefore, in consideration of the terms, conditions and covenants contained herein, the Coalition and the County agree to the following:

1. The Coalition will use the Coalition Data Grant to obtain, setup, provide and maintain Metsys software licenses for the County to use in entering HMIS data into the HMIS system for HPRP programs. The Coalition will provide security training, user training, and help desk support to County staff responsible for entering HMIS data.
2. For all HPRP activity and expenditures relating to a given month, County will enter all required HMIS data no later than the 5th day or the 10th day of the following month, as follows: October 5th, November 10th, December 10th, January 5th, February 10th, March 10th, April 5th, May 10th, June 10th, July 5th, August 10th, September 10th
3. To compensate the County for entry of HPRP data, the Coalition will reimburse the County an amount equal to a percentage of the HPRP financial assistance paid out by County General Assistance for those clients for which the County entered HMIS data during the subject month: Year 1 = 3.3% of financial assistance; Year 2 = 2.5% of financial assistance; Year 3 = 2.5% of financial assistance. Unless otherwise agreed to in writing, the Coalition will reimburse the County only after receiving payment from the City. The maximum the Coalition shall be obligated to pay the County and the County Subgrantees combined is \$62,160.
4. To obtain reimbursement of costs of data entry incurred for a subject month, the County must have timely submitted HMIS data and must provide to the Coalition the information and source documentation shown on Attachment 1. The Coalition reserves the right to require whatever documentation is necessary under the Coalition Data Grant.

This agreement shall be effective and coterminous with the County HPRP Grants.

El Paso Coalition for the Homeless

El Paso County

by Susan F. Austin, Executive Director
email saustin.epch@att.net

by Hon. Anthony Cobos, County Judge
email acobos@epcounty.com

CONTRACT

STATE OF TEXAS)
)
COUNTY OF EL PASO) **KNOW ALL MEN BY THESE PRESENTS**

This Contract is entered into by and between THE CITY OF EL PASO, a home-rule municipal corporation of El Paso County, Texas, hereinafter referred to as "CITY", and **El Paso Coalition for the Homeless**, a non-profit agency established under the laws of the State of Texas, hereinafter referred to as "CONTRACTOR". This Contract shall be effective from October 1, 2009, and it shall terminate on June 30, 2012, unless terminated sooner as provided herein.

WHEREAS, the Homelessness Prevention Fund, hereafter referred to as the "Homelessness Prevention and Rapid Re-Housing Program (HPRP)," was established under Title XII of the American Recovery and Reinvestment Act of 2009 ("Recovery Act").Reinvestment Act of 2009; for the purpose of providing financial assistance and services to either prevent individuals and families from becoming homeless or help those who are experiencing homelessness to be quickly re-housed and stabilized.

WHEREAS, on July 16, 2009 the U.S. Department of Housing and Urban Development (HUD) awarded a grant of \$3,492,976 to the CITY for the purpose of administering an HPRP program;

WHEREAS, the CITY has set aside **\$132,000** of the total HUD grant award to administer a Homelessness Prevention program for a period of three years;

WHEREAS, the El Paso City Council has approved the CONTRACTOR to administer the HPRP Data Collection and Evaluation for the purpose of ensuring collection and reporting data that is required by HUD for HPRP; and,

WHEREAS, the HPRP Grant is to be administered by the CITY in accordance with the City Council adoption and HUD approval of the HPRP Budget and in fulfilling the above national objectives, the City Council has authorized the City Manager to execute a Contract with CONTRACTOR to administer the **Data Collection and Evaluation project** in the CITY as further described herein:

NOW, THEREFORE, the CITY and the CONTRACTOR in consideration of the terms, conditions, and covenants contained herein, hereby agree as follows:

Section A. Program Scope

~~_____ CONTRACTOR expressly agrees to comply with all of the terms, conditions and provisions of the Program Scope (Attachment 1).~~

Beneficiaries of the services to be provided hereunder must reside in the City of El Paso and the CONTRACTOR shall provide data collection and compilation services to the HPRP Homelessness Prevention Program and the HPRP Rapid Re-Housing Initiative, in accordance with the regulations of the Department of Housing and Urban Development, hereinafter referred to as "HUD," for the HPRP. The City's Department of Community and Human Development shall make the determination on whether or not services are being satisfactorily provided, as stipulated in the Program Scope of Services of this contract.

The CONTRACTOR shall conduct, in a satisfactory manner as determined by CITY and HUD, pursuant to CFR Title 24, and Part 91 of the Recovery Act. CONTRACTOR shall perform all activities in accordance with the terms of the Program Scope, hereinafter referred to as Attachment 1; the Budget hereinafter referred to as Attachment 2; the applicable Assurances and Certifications, hereinafter referred to as Addendums A and B (Attachment 1, Attachment 2, and Addendums A and B are attached hereto and incorporated by reference herein); and with all other terms, provisions and requirements set forth in this Contract.

Section B. Compensation, Reporting, and Program Income:

1. The CONTRACTOR shall perform its services within the monetary limits contained in Attachment 2. In no event shall compensation to the CONTRACTOR exceed the lesser of the CONTRACTOR'S costs attributable to the work performed ~~as stated in Section A~~, or the monetary limits described in Attachment 1, nor shall the CITY pay for expenses or services which are or will be reimbursed by another funding source or for services which are not performed. However, the CONTRACTOR may make transfers of funds between or among budget categories as contained in Attachment 2,

subject to the approval of the Director of Community and Human Development, hereinafter referred to as "Director", provided that:

- a. The dollar amount of all transfers among existing categories is equal to or less than ten percent (10%) of the total amount of this Contract;
- b. The transfer will not change the scope or objective of the program funded under this Contract;
- c. CONTRACTOR submits a Budget Revision Report to CITY, Attachment 3E, hereto, simultaneously with the submission of the CONTRACTOR'S Reimbursement Request Report, Attachment 3A, hereto.

In special circumstances, subject to the approval of the Director and HUD, the CITY may advance funds to the CONTRACTOR for project expenses to be incurred in the immediate future. Budget revisions and fund advancements must contain a complete explanation and justification of changes made and reasons for the necessity of fund advancements.

The CITY will, at least quarterly, review the financial status of the CONTRACTOR program under this Contract. Upon determination that unexpended funds are present, the Contract budget may be adjusted to remove such amounts at the discretion of the Director.

2. The CITY agrees to reimburse the CONTRACTOR on a monthly basis for actual allowable expenditures.

Reimbursements will follow receipt of a request for reimbursement. Only those costs which are allowable under the terms of this Contract and the approved Budget shall be reimbursed. Budget line items (Attachment 2) represent the maximum amount which may be billed under each line item. A lesser amount may be billed by CONTRACTOR.

All reimbursement requests submitted by the CONTRACTOR must be supported by valid invoices or other supporting documentation of financial liability in the CONTRACTOR'S files or other documentation acceptable to the CITY. All line items reported and requested for reimbursement on Attachment 3A must reconcile with the corresponding line item in the CONTRACTOR'S general ledger accounts, on a current basis, and with year-to-date balances. Accounting records required to be maintained in

the CONTRACTOR'S files in relation to a requisition for payment under this Contract include, but are not limited to:

- a. Balance Sheet (both monthly and year to date);
- b. Income Statement;
- c. General Ledger;
- d. Payroll Check Register, as applicable; and
- e. Spreadsheet that details the amounts requested for reimbursement which are summarized on Attachment 3A.

The following documents may be required to be submitted on a semiannual basis to the Financial Services Department if the CONTRACTOR does not expend over \$500,000 in Federal Funds during the course of this Contract. If the CONTRACTOR expends over \$500,000 in Federal Funds, the audit requirement under Section E of this Contract will supersede the semiannual report ~~requirement~~.

- f. A combined income statement reporting all resources and uses of funds, and an income statement.
- g. A Detailed General Ledger for the period. Individual general ledger transactions must be in agreement with line item amounts requested for payment during the period.

~~The semiannual report for the period of September through February is due March 20th; the semiannual report for the period of March through August is due September 20th.~~

3. CONTRACTOR shall provide the CITY the following verified reports: on a monthly basis:

Attachment 3A: Reimbursement Request Report (monthly) - An accurate financial account of the use of the funds requested for reimbursement under this Contract, and a status report of matching funds provided to date;

Attachment 3B: Employee Monthly Time Report - An accounting of the hours worked by CONTRACTOR'S personnel being paid with the funds provided in this Contract, as applicable;

Attachment 3C: Budget Revision Report – A request for alteration of budget line items, only within categories (as needed), and;

Attachment 3D: Outcomes Report – Specifying program outcome information (submitted when requested by the CITY).

Additional informative materials may be attached to the above reports by the CONTRACTORS.

4. CONTRACTOR further understands that any payment or contribution by beneficiaries for services supported or subsidized by this Contract shall be used for payment of operating costs of the program.

5. Revenue remaining after payment of all program expenses shall be considered Program Income subject to all the requirements of this Contract and OMB Circular A-110 of Federal Regulations. The CITY shall be entitled to a pro rata share of Program Income generated proportionate to the contribution of HPRP funds to the CONTRACTOR'S overall program budget.

Program Income shall only be used by CONTRACTOR to provide payment for eligible program expenses for services in accordance with this Contract, unless otherwise instructed in writing by the CITY. The CITY's share of Program Income shall be reported as it is generated and shall be shown on the monthly Reimbursement Request Report as a deduction from the CONTRACTOR'S reimbursable expenses for the month.

Section C. Suspension or Termination:

1. In accordance with Title 24 CFR Section 85.43, the CITY may suspend or terminate this Contract should CONTRACTOR materially fail to comply with the terms of this Contract. ~~The CITY may also, in accordance with Title 24 CFR Section 85.44, terminate this Contract for the CITY's convenience.~~ The CITY shall give the CONTRACTOR ten (10) days' written notice of the suspension or termination with the understanding that all services being performed under this Contract shall cease upon the date specified in such notice. CONTRACTOR shall invoice CITY for all services completed and shall be compensated in accordance with the terms of this Contract for all services performed prior to the date specified in such notice.

~~The CITY and CONTRACTOR may also, in accordance with Title 24 CFR Section 85.44, terminate this Contract for convenience.~~

2. If CONTRACTOR breaches any term or condition of this Contract, or if any change of circumstances renders it unlikely that the CONTRACTOR will perform the services required hereunder, the CITY may take one or more of the following actions:

- a. Withhold further cash payments, either pending corrective action by the CONTRACTOR or permanently, if there is inadequate or no corrective action by the CONTRACTOR, ~~(The CITY shall establish a reasonable time period for the corrective action to take place.)~~
- b. Disallow costs for all or part of the activity or action not in compliance;
- c. Wholly or partly suspend or terminate this Contract; or
- d. Withhold further Contracts to the CONTRACTOR;
- e. Pursue any other remedies that are available at law or equity.

Section D. Reversion of Assets:

Upon the expiration or termination of this Contract, the CONTRACTOR shall promptly transfer to the CITY (1) any HPRP funds on hand at the time of the expiration or termination; (2) all the accounts receivable attributable to the use of HPRP funds; (3) the share of unexpended Program Income generated during the term of the Contract proportionate to the contribution of HPRP funds to the CONTRACTOR overall Budget; (4) any claims against third parties based upon HPRP funds; and (5) any funds which CITY determines have not been expended in accordance with the terms of this Contract. Such refund shall be made by the CONTRACTOR to CITY within ten (10) working days after such refund is requested by CITY.

Section E. Form, Access to and Retention of Records

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1. CONTRACTOR shall prepare and maintain proper files, books, and records in accordance with all applicable United States Department of Housing and Urban Development, herein after referred to as "HUD", requirements including OMB Circulars A-87, A-110, A-122, and A-133, as applicable; Title 24 CFR Section 570.502(b); as it pertains to costs incurred, audits, program income, administration,

activities and functions, and all of the relevant matters contained in said publications. These records shall be maintained for a period of four (4) years after the termination or expiration of this Contract.

2. The CITY, HUD and/or their designees shall have a right of access to make copies of and a right to audit all of the CONTRACTOR'S files, books and records which are deemed pertinent to the performance of this Contract, as determined solely in the reasonable exercise of the CITY's, HUD's, and/or their designee's discretion. Copying and auditing will be performed at a reasonable time and place, such as during the CONTRACTOR usual business hours, and at the CONTRACTOR'S principal place of business or office. This right shall continue for four (4) years after termination or expiration of this Contract. The CITY, HUD and/or their designees may additionally request the copying, mailing and/or electronic transmission of records by the CONTRACTOR.

CONTRACTOR agrees that at all times prior to and after termination of this Contract, all papers, books, files, correspondence and records relative to the performance of services under this Contract are owned by and are the sole property of the CITY. The CONTRACTOR will hold and possess the papers, books, files, correspondence and records as the property of the CITY and shall relinquish them to the CITY upon its request during the term of this Contract and at any time during the four (4) years immediately following the term of this Contract. The CONTRACTOR will not be required to relinquish those documents which are deemed confidential by Federal, State or local law.

3. The CONTRACTOR shall conduct, through an independent auditor acceptable to the CITY, a single audit of its activities hereunder when CONTRACTOR expends \$500,000 or more in a year in Federal awards, in compliance with OMB Circular A-133. CONTRACTOR'S auditor shall prepare a Certificate of Audit to be provided to the CITY. This form will be provided to CONTRACTOR upon CONTRACTOR'S request. Such Certificate of Audit, along with the corresponding management letter and CONTRACTOR'S responses thereto, must be submitted within nine months after the end of the CONTRACTOR'S fiscal year. Failure of CONTRACTOR to provide the required Certificate of Audit to the CITY within the time

period required herein shall constitute a breach of this Contract and cause for termination of this Contract by the CITY.

4. If the CONTRACTOR expends less than \$500,000 in a year in Federal awards, no single audit of the CONTRACTOR'S activities hereunder shall be required by the CITY, and the funds received under this Contract shall not be utilized for this purpose. However, the CONTRACTOR must still have an external audit of their financial statements conducted to ensure ability to demonstrate fiscal responsibility to the CITY.

Section F. Monitoring

1. CITY reserves the right on its behalf, and on behalf of HUD, to perform, or have their designees perform, a periodic on-site and desk audit monitoring of the CONTRACTOR'S compliance with the provisions of this Contract. The monitoring shall be conducted in a reasonable time, place and manner by the CITY. The CONTRACTOR shall provide the assistance and information needed by the CITY in monitoring and evaluating the performance of the above-mentioned areas of accountability. It is understood that the CITY, or its designee, will perform periodic fiscal and programmatic monitoring reviews, including a review of the audit conducted by the CONTRACTOR. The CITY, HUD, and/or their designees may request the copying, mailing, and/or electronic transmission of the CONTRACTOR'S records in connection with an on-site or desk audit monitoring.

2. Monitoring reviews will include a written report to the CONTRACTOR documenting findings and concerns that will require a written response to the CITY. An acceptable response must be received by the CITY within ~~345~~ days from the CONTRACTOR'S receipt of the monitoring report or audit review letter, or otherwise future payments will be withheld under this Contract.

3. Failure of the CONTRACTOR to take all actions necessary to resolve and close monitoring or audit findings within 60 days of receipt of the monitoring report or audit review letter shall be considered a breach of this Contract and cause for termination of this Contract by the CITY.

The Director shall have the discretion to extend the ~~60-75~~-day period for reasons the Director may judge to be extenuating circumstances.

Section G. **Compliance with Laws**

1. The CONTRACTOR understands that it will be reimbursed under this Contract with HPRP funds received from HUD and agrees to comply with all applicable local, State, and Federal Laws, HPRP regulations, and all other regulations of HUD and other federal agencies, including but not limited to: OMB Circulars A-87, A-110, A-122, and A-133, as applicable; and, Title 24 CFR Section 570.602, and Title 24 CFR Part 576.

2. The CONTRACTOR understands and agrees that:

a. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

b. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Addendum A, attached hereto and made a part hereof, that the person has not made, and will not make, any payment prohibited by subparagraph (a) of this Section.

c. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a disclosure form, set forth in Addendum A, attached hereto and made a part hereof, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (a) of this section if paid for with appropriated funds.

d. It is understood and agreed by the parties hereto that performances under this Contract must be rendered in accordance with the Act, the regulations promulgated under the Act, the assurances and certifications made to CITY by the CONTRACTOR, and the assurances and certifications made to HUD by the CITY with

regard to the operation of the HPRP program. Based on these considerations, and in order to ensure the legal and effective performance of this Contract by both parties, it is agreed by the parties hereto that the performances under this contract also may be amended in the following manner: HUD may from time to time during the period of performance of this contract, issue policy directives which serve to establish, interpret, or clarify performance requirements under this Contract. Such policy directives shall have the effect of qualifying the terms of this Contract and shall be binding upon the CONTRACTOR, as if written herein, provided however that said policy directives shall not alter the terms of this Contract so as to release CITY of any obligation specified in part II, Additional CONTRACTOR Obligations, Section A (1) of this Contract to reimburse costs incurred by the CONTRACTOR, according to the procedures specified herein, prior to the effective date of said policy directives.

e. The CONTRACTOR understands that capital expenditures for special purpose equipment that are allowable as direct costs for items with a unit cost of five thousand dollars (\$5,000) or more require prior approval by the CITY, and shall ensure compliance with this requirement in accordance with OMB Circular A-122 Section 15b(2).

Section H. Non-Religious Activities:

1. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the program. Neither the Federal government nor a State or local government receiving funds under the program shall discriminate against an organization on the basis of the organization's religious character or affiliation.

2. Organizations that are directly funded under the program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under the applicable Code sections for this program. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under the applicable Code sections for this program, and participation must be voluntary for the beneficiaries of the assistance provided.

3. A religious organization that participates in the program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. An organization that participates in the program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

5. Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. To the extent allowed by applicable Code sections for the program, and to the extent allowed by this Contract, Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the applicable Code sections for this program. Where a structure is used for both eligible and inherently religious activities, program funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to program funds under the Code. Sanctuaries, chapels, or other rooms that a program-funded religious congregation uses as its principal place of worship, however, are ineligible for program-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85). Nothing contained in this section authorizes a Contractor to use program funds under the HPRP program for acquisition or construction activities.

6. If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, these requirements apply to all of the commingled funds.

II. ADDITIONAL CONTRACTOR'S OBLIGATIONS

Section A. Indemnification and Insurance

1. THE CITY SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF CONTRACTOR IN THE PERFORMANCE OF THIS CONTRACT. THE CONTRACTOR, AND/OR ITS INSURER, EXPRESSLY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, DEMANDS, LIABILITIES AND OBLIGATIONS OF ANY KIND AND NATURE, INCLUDING INJURY OR DEATH OR PROPERTY DAMAGE MADE UPON THE CITY, INCIDENT TO, OR ARISING OUT OF, OR IN CONNECTION WITH THE CONTRACTOR'S PERFORMANCE UNDER THIS CONTRACT, INCURRED DUE TO CONTRACTOR'S NEGLIGENCE, ANY OF CONTRACTOR'S NEGLIGENT ACTS, OR ANY OMISSION TO ACT, ANY BREACH OF CONTRACT, OR ANY ACTIONS OF THE CONTRACTOR OUTSIDE THE SCOPE OF THIS CONTRACT, INCLUDING ANY ACT OR OMISSION OR NEGLIGENCE BY THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS WHILE THIS CONTRACT, ALL WITHOUT HOWEVER WAIVING ANY GOVERNMENT IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW. THIS INDEMNITY SHALL COVER ATTORNEY'S FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS, INCLUDING AWARDS AND SETTLEMENTS AND ANY INTEREST THEREON.

2. The CONTRACTOR agrees to maintain for the life of this Contract, a liability insurance policy in the minimum amounts of \$250,000.00 for each person and \$500,000.00 for each single occurrence covering bodily injury or death and \$100,000.00 for each single occurrence of damage to or destruction of property. Such insurance shall name the CITY as an additional insured on the policy with regard to all suits, actions, demands, claims and liabilities arising out of, occasioned by or relating to this Contract or the activities carried out hereunder. It shall also contain a provision that it may not be canceled or lapse without 30-days' prior written notice to CITY. The CONTRACTOR shall produce a copy of its liability insurance policy, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage

limits, and terms and provisions shown thereon, incorporating the above requirements, to CITY -prior to the effective date of this Contract.

a. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE DIRECTOR, AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.

b. The CITY reserves the right to review the insurance requirements of this section during the effective term of this Contract and to adjust insurance coverages and their limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or the claims history of the industry, if applicable, as well as the claims history of the CONTRACTOR.

c. CITY shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). Upon such request by CITY, the CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. The CONTRACTOR remains responsible for procuring any other types of insurance not listed above, but required by law, necessary for performing its duties.

3. Notwithstanding any suspension or termination hereof, the CONTRACTOR shall not be relieved of any liability to CITY for damages or indemnification due to CITY by virtue of breach of this Contract by the CONTRACTOR or by virtue of this Section. CITY may withhold payments to the CONTRACTOR until such time as the exact amount of damages due to the CITY from the CONTRACTOR is agreed upon or is otherwise determined.

Section B. Independent Contractor:

CITY and CONTRACTOR understand that the CONTRACTOR is an independent contractor and that no term or provision hereof or act of the CONTRACTOR in performance of this Contract shall be construed as making the CONTRACTOR an agent or employee of the CITY. All officers and employees of the CONTRACTOR shall

be solely responsible to the CONTRACTOR, and the CITY shall not have any authority, responsibility, or liability with respect thereto.

Section C. Authority to Contract:

The CONTRACTOR represents and warrants that the person executing this Contract and all documents related hereto has the authority to commit the CONTRACTOR to the obligations, financial and otherwise, required by this Contract.

Section D. Discrimination Prohibited:

1. No person in the United States shall, on the grounds of race, color, national origin (including immigration status where an alien holds proper work authorization), religion, sex, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to the CONTRACTOR pursuant to this Contract, as set forth in Title 24 CFR Section 570.602. Furthermore, CONTRACTOR shall comply with all the equal opportunity requirements attached to this Contract and incorporated by reference as Attachment 3.

2. The CONTRACTOR must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner which impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a breach of this Contract.

Section E. Conflict of Interest:

1. CONTRACTOR covenants that during the term of this Contract, CONTRACTOR, its associates, officers and employees shall have no interest, direct or indirect, which will conflict in any manner with the performance of the services under this Contract and that none of its paid personnel shall be employees of the CITY or have any Contractual relationship with the CITY.

2. In the procurement of supplies, equipment, construction and services by The CONTRACTOR, the conflict of interest provisions in Title 24 CFR Section 85.36 and OMB Circular A-110 respectively, shall apply.

3. In all cases not governed by Title 24 CFR Section 85.36 and OMB Circular A-110, the provisions of Title 24 CFR Section 570.611 shall apply.

4. Under Title 24 CFR Section 576.57(D), the general rule is that no persons described in paragraph (5) below who exercise or have exercised any functions or responsibilities with respect to HPRP activities assisted under this part or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from an HPRP assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect thereto, or the proceeds hereunder, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter. Furthermore, HPRP shall comply with all conflict of interest requirements attached to this Contract and incorporated by reference as Addendum A.

5. The conflict of interest provisions of paragraph (4) above apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the CITY, or of any designated public agencies, or subrecipients (CONTRACTOR) which are receiving HPRP funds.

Section F. Hatch Act:

Neither the funds advanced pursuant to this Contract, nor any personnel that may be employed by the CONTRACTOR with funds advanced pursuant to this Contract shall be in any way or to any extent engaged in any conduct or political activity in contravention of Chapter 15 of Title 5 of the United States Code

Section G. Interest of Certain Federal Officials:

No member of or delegate to the Congress of the United States, and no Resident Commissioners, shall be entitled to any share or part of this Contract between CITY and the CONTRACTOR or to any benefits arising there from.

Section H. Political and Lobbying Activities Prohibited:

1. None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or for publicity, lobbying, and/or

propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, or the City Council of the City of El Paso.

2. Employees of the CONTRACTOR connected with any activity which is financed in whole or in part by funds provided to CONTRACTOR under this Contract may not during the term of this Contract:

- a. uses their official position or influence to affect the outcome of an election or nomination;
- b. solicit contributions for political purposes; or
- c. takes an active part in political management or in political campaigns.

3. CONTRACTOR hereby agrees to sign the Certification Regarding Lobbying, attached hereto and made a part of this Contract as Addendum A, and if necessary, the Disclosure of Lobbying Activities, attached hereto and made a part of the Certification Regarding Lobbying as Addendum A, and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to CITY. CONTRACTOR require the language of the Certification and Disclosure be included in all subcontracts and that all subcontractors shall certify and disclose accordingly.

Section I. CONTRACTOR'S COMPOSITION:

CONTRACTOR shall notify the CITY in writing within thirty (30) days in the event of any change in CONTRACTOR'S ownership, organization, control, and management and non-profit or tax status. CONTRACTOR shall periodically, at least annually, submit to the CITY a list of its current membership and board of directors with their appropriate titles.

Section J. Assignment:

CONTRACTOR may not assign or otherwise transfer this Contract either as to obligations or benefit without the prior written consent of the CITY.

Section K. **Required Documentation:**

CONTRACTOR hereby agrees to provide any and all documentation necessary to fulfill any and all grants (federal, state, or local) requirements pertaining hereto.

Section L. **Warranty:**

CONTRACTOR represents that the information furnished to the CITY, upon which CITY relied to make this grant, is correct and true.

Section M. **Liability:**

CONTRACTOR shall be liable to the CITY for the full amount of any funds received pursuant to the terms of this Contract which CONTRACTOR knowingly accepts or disburses in violation of the terms and conditions herein.

Section N. **Acknowledgment in Printed Materials:**

CONTRACTOR is encouraged to acknowledge the CITY for its support of the provision of services under this Contract in all appropriate printed materials. However, the CITY reserves the right to approve, in whole or in part, the form of such acknowledgments which CONTRACTOR proposes to include in any printed materials.

Section O. **Copyrights and Patents:**

1. If this Contract results in a book or other copyrightable material, the City's approval must be obtained to copyright the work. Additionally, the CITY reserves a royalty fee along with a nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes.

2. Any discovery or invention arising out of or developed in the course of the services aided by this Contract shall be promptly and fully reported to the CITY for a determination as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

III. GENERAL PROVISIONS

Section P. **Texas Corporation and Venue**

CONTRACTOR warrants that it is incorporated in and otherwise entitled to do business in the State of Texas as a non-profit corporation. If CONTRACTOR is doing business under an assumed name, a copy of the "Assumed Name Certificate" filed with the El Paso County Clerk must be provided to the CITY. This Contract is entered into in the City and County of El Paso, Texas, and shall be governed and construed under the laws of Texas. Venue shall be in El Paso County, Texas.

Section Q. **Waiver**

Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.

Section R. **Severability**

All agreements, covenants or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this Contract shall be interpreted as though such invalid agreement, covenant or provision was not contained herein.

Section S. **Captions**

The captions of various sections of the Contract are for convenience of reference only, and shall not alter the terms and conditions of this Contract.

Section T. **Notices**

All notices, communications and reports under this Contract shall be either hand delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is notified in writing:

CITY: City of El Paso
Department of Community and Human Development
Attention: CD Administration Division
2 Civic Center Plaza, 8th Floor
El Paso, Texas 79901-1196

GRANTEE: EL PASO COALITION FOR THE HOMELESS
810 San Antonio, Suite B
El Paso, Texas 79901

Section U. Entire Contract:

This Contract reflects the final, complete and exclusive understandings of the parties hereto, and may not be waived, altered or modified except by written agreement of both parties.

THE CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

William L. Lilly, Director
Community and Human Development

CONTRACTOR

By: _____

(Printed Name/Title)

(The foregoing representative of CONTRACTOR expressly represents that execution of this Contract has been lawfully authorized by the CONTRACTOR).

ATTACHMENT 1: Program Scope

Legal Name and Address: EL PASO COALITION FOR THE HOMELESS
810 San Antonio, Suite
El Paso, Texas 79901

SECTION A **BACKGROUND**

On September 15, 2009, El Paso City Council approved the El Paso Coalition for the Homeless as the CONTRACTOR for the Data Collection and Evaluation project funded under the Homelessness Prevention and Rapid Re-Housing Program (HPRP). City Council awarded the CONTRACTOR \$132,000 of HPRP funds to administer the Project for a 3-Year period. The CONTRACTOR will be the supporting agent for the HPRP Homelessness Prevention program administered by the General Assistance Office of El Paso County, Texas and the HPRP Rapid Re-Housing Initiative administered by TVP Non-Profit Corporation. The two HPRP programs, in conjunction with the CONTRACTOR, will compile and analyze data related to the clients being served that may be required by the U.S. Department of Housing and Urban Development (HUD). Data obtained from the HPRP programs will be used by the CITY to report to HUD on the progress of the HPRP.

SECTION B. **AGENCY CAPACITY**

The CONTRACTOR is a non-profit organization initially established in 1994. It launched and has operated El Paso's HMIS since its inception in 2004. The CONTRACTOR receives HUD Continuum of Care funding of \$107,902 to operate the HMIS, plus collects a participation fee from the participating programs. There are 39 programs that participate and enter or view data in HMIS and 100 active users authorized to enter or view data. The CONTRACTOR provides training and support to HMIS users.

SECTION C. **THE HMIS PROCESS**

The HMIS uses MetSys software, hosting and storage of data. All programs and data for HMIS reside on servers located at Metsys in California and offsite backup

locations. El Paso agencies using HMIS access the software and data through the Internet. Every program using HMIS is set up and authorized by the CONTRACTOR'S staff and data collection screens are customized as needed to match the program. Every user with every program undergoes security training and user training by the CONTRACTOR'S staff. The CONTRACTOR hosts monthly HMIS Steering Committee meetings which users and administrators attend to ensure that HMIS operations are smooth, standardized, and complete. The CONTRACTOR maintains the pool of licenses needed to allow users to access the Metsys system. CONTRACTOR'S staff works regularly with Metsys staff to address training, technical questions, reports, and plans for upgrading or changing the system.

The CONTRACTOR will pursue the following tasks in order to prepare for serving the HPRP:

- Obtain authorization for and setting up the staff of the Rapid Re-housing Initiative and the Homelessness Prevention program who will be operators of the HMIS.
- Negotiate with the administrators of the Rapid Re-Housing and Homelessness Prevention programs to determine the financial support that may be provided by the CONTRACTOR in order to facilitate the operation of the HMIS
- Acquire from Metsys additional MetLite and Enterprise licenses as needed to support the HPRP programs.
- Assist program administrators in customizing any data screens to capture HPRP data particular to their program and in designing any applications, forms or guides to be used that will streamline HMIS data entry.
- Examine and certify any computers to be used for HMIS purposes, as required by HUD.
- Identify and train those persons designated as authorized HMIS users under each program. Many users will already be trained on the upgraded Metsys system, but will need to be trained on entering data specific to HPRP.
- Work with all HPRP staff to begin entering HMIS data in "real time" – entering data directly on the computer while the client is present, instead of completing paper forms and entering the data in the computer hours, days or weeks later.
- Once users are entering HPRP data, CONTRACTOR'S staff will be available as "help desk" support when users encounter technical difficulties, are not sure how to

capture certain data, or want to make more complete use of HMIS as a tool for learning more about their clients or improving management and performance of their programs.

- On a monthly basis, CONTRACTOR'S staff will work with HPRP administrators to run reports needed to crosscheck the number of clients entering and exiting programs (assistance) and their ethnicity.
- CONTRACTOR'S staff will ensure that HMIS mechanisms are working to remind programs to re-certify clients for HPRP assistance every 3 months, to update other data after 1 year, and to exit clients from HMIS when HPRP assistance ends.
- CONTRACTOR'S staff will receive, check, and submit to the City and/or HUD such annual reports or Annual Performance Reports ("APR") as are due
- CONTRACTOR'S staff will work with the HMIS Steering Committee and the CITY to update as needed El Paso's HMIS Participation Standards, so that the CONTRACTOR can represent that agencies are participating in HMIS as required.
- Because certain Domestic Violence service providers are not required or allowed at this time to enter client data in HMIS, the CONTRACTOR will work with any such programs and users to receive their aggregate data and include it in CITY and HUD reports.

SECTION D. REPORTING REQUIREMENTS

The first program report is a monthly status report which will be comprised of a brief narrative describing the successes and/or problem areas encountered in operating the program. If problem areas are identified, what would be the potential solutions to resolving the problems? The monthly status report must be submitted along with the monthly reimbursement requests report submitted by the CONTRACTOR to the CITY.

The second program report is the quarterly progress report comprised of performance data compiled through the HMIS regarding characteristics of persons served that will be submitted by the CONTRACTOR to the CITY on behalf of the two HPRP programs. The CITY will in turn submit the findings of the report to HUD utilizing the Integrated Disbursement and Information System (IDIS). The third program report is the final program report which is the compilation of all the quarterly reports. The

report format to be used will be provided by the CITY. The CONTRACTOR submits the final report to the CITY who in turn reports the findings of the report to HUD through the Consolidated Annual Performance and Evaluation Report (CAPER).

Reimbursements reports must be submitted monthly to the CITY by the 20th of the proceeding month, except for the report for the last month of the program year which must be submitted by September 10th of the reporting year. The last reimbursement for Year 3 must be submitted to the CITY by July 10, 2012.

SECTION E. PROJECT TIMETABLE

TASK SCHEDULE. The project task schedule is as follows:

<u>TASK DATE</u>	<u>TASK COMPLETION</u>
<ul style="list-style-type: none"> • Pre-implementation conference between CITY, CONTRACTOR and partners, if applicable. 	Within the first 2 weeks of October 2009
<ul style="list-style-type: none"> • Reimbursement Reports 	Monthly by the 20 th of proceeding month or otherwise noted in Section D. above.
<ul style="list-style-type: none"> • Program Status report (narrative Form) 	Submitted with Reimbursement Reports.
<ul style="list-style-type: none"> • Quarterly Progress Reports 	December 15, 2009 March 15, 2010 July 15, 2010 September 15, 2010 December 15, 2010 March 15, 2011 July 15, 2011 September 15, 2011 December 15, 2011 March 15, 2012
<ul style="list-style-type: none"> • Final Program Report 	July 10, 2012

**SCHEDULE A
DATA COLLECTION AND EVALUATION--3-YEAR BUDGET SUMMARY**

Cost Component	HPRP Funds Requested	% of Total Award
<i>DATA COLLECTION & EVALUATION</i>		
Personnel costs of Contractor	\$ 56,980.00	43%
Licenses	\$ 10,860.00	8%
Equipment Purchase	\$ 2,000.00	2%
Contractual – Data Collection	\$ 62,160.00	47%
)	
Total HPRP Budget	\$132,000.00	100%

**SCHEDULE A
DATA COLLECTION AND EVALUATION—YEAR 1 BUDGET**

Cost Component	HPRP Funds Requested	% of Total Award
<i>DATA COLLECTION & EVALUATION</i>		
Personnel costs of Contractor	\$15,260.00	34%
Licenses	\$ 3,620.00	8%
Equipment Purchase	\$ 2,000.00	4%
Contractual – Data Collection	\$24,080.00	54%
Total HPRP Budget	\$44,960.00	100%

**SCHEDULE A
DATA COLLECTION AND EVALUATION—YEAR 2 BUDGET**

Cost Component	HPRP Funds Requested	% of Total Award
<i>DATA COLLECTION & EVALUATION</i>		
Personnel costs of Contractor	\$20,860.00	48%
Licenses	\$ 3,620.00	8%
Equipment Purchase		
Contractual – Data Collection	\$19,040.00	44%
Total HPRP Budget	\$43,520.00	100%

**SCHEDULE A
DATA COLLECTION AND EVALUATION—YEAR 3 BUDGET**

Cost Component	HPRP Funds Requested	% of Total Award
<i>DATA COLLECTION & EVALUATION</i>		
Personnel costs of Contractor	\$20,860.00	48%
Licenses	\$ 3,620.00	8%
Equipment Purchase		
Contractual – Data Collection	\$19,040.00	44%
)	
Total HPRP Budget	\$43,520.00	100%

ADDENDUM A
CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 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 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 Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "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 sub awards at all tiers (including subcontractors, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients 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 the 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.

GRANTEE

TITLE

ADDENDUM B

(Taken from) §130.15 Equal Opportunity clause.

- (a) *Government contracts.* Except as otherwise provided, the following equal opportunity clause contained in section 202 of the Order shall be included in each Government contract entered into by the Department (and modification thereof if not included in the original contract):

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees place 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.
- (3) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's 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
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the 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 orders.
- (6) In the event of the contractor's non-compliance with the nondiscrimination clauses of the contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor

or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance: *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 Department, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(sic)

- (c) *Subcontracts.* Each nonexempt prime *contractor* or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.
- (d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than \$50,000 and such other contracts as the Director may designate.
- (e) *Incorporation by operation of the order and departmental regulations.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order, the "rules and regulations" and these regulations to include such a clause whether or not it is physically incorporated in such contracts. The clause is applicable to every nonexempt contract where there is no written contract between the Department and the contractor.
- (f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clauses as shall be appropriate to identify properly the parties and their undertakings.