



The mission of the Muncie Housing Authority is to provide quality choices of affordable housing and to foster self-sufficiency and homeownership

partnership | strategy | management | vision

### MUNCIE HOUSING AUTHORITY TABLE OF CONTENTS

#### **Building Restoration at Southern Pines**

Project # CFP 19-008-22-6-D-C

#### SECTION 1 – CONTRACT DOCUMENTS

- a. Notice to Bidders
- b. Contract With Independent Contractor (information purposes only, do not submit)

#### SECTION 2 - CONTRACT CONDITIONS

- c. Instructions to Bidders for Contracts: HUD Form 5369
- d. General Conditions of the Contract: HUD Form 5370
- e. Special Conditions
- f. Supplemental Instructions to Bidders Concerning Section 3 Requirements
- g. Contractors Certification Concerning Labor Standards and Prevailing Wage Requirements
- h. U.S. Department of Labor Payroll Certification Form: WHD 347
- i. Davis Bacon Wage Determination
- j. Affirmative Action/Equal Opportunity Policy Statement

#### SECTION 3 – SPECIFICATIONS

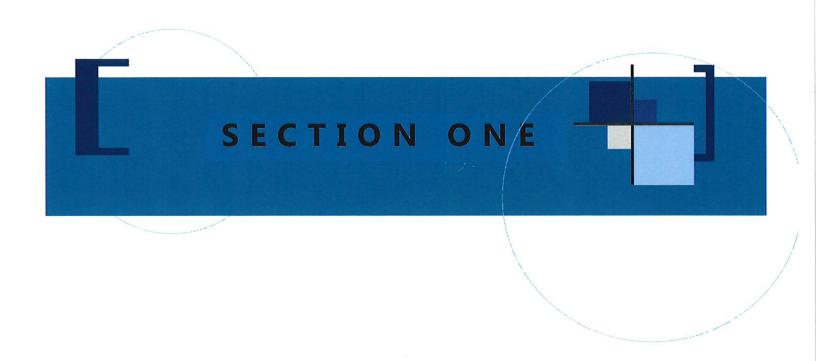
k. Scope of Work

#### **SECTION 4-BID SUBMITTAL DOCUMENTS**

- 1. Representations, Certifications, and Other Statements: HUD Form 5369-a
- m. Proposal
- n. Non-Collusive Affidavit
- o. Statement of Contractors Qualifications
- p. Construction Contractor Identification Data
- q. Specific Affirmative Action and Equal Opportunity
- r. Affidavit: Compliance with Affirmative Action, Equal Opportunity & Section 3 of the HUD Act.
- s. Request for Approval of Subcontractors
- t. Contractors Certification of Subcontractors for AA/EEO
- u. Certification of Acknowledgement
- v. Bid Bond
- w. Performance Bond
- x. Labor and Material Payment Bond
- y. Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employee
- z. Debarment Certification HUD Form 2992

#### **SECTION 5-INSURANCE REQUIREMENTS**

aa. Insurance requirements



# CONTRACT DOCUMENTS

## INVITATION FOR BID Building Restoration at Southern Pines Project Number CFP19-008-22-6-D-C

This is an official notice that Invitation for Bids will be received by the Muncie Housing Authority up to the hour of 3:00 p.m. on Tuesday, November 22, 2022

The Project Manual is available at <a href="www.muncieha.com">www.muncieha.com</a> under businesses. Any questions should be submitted to Mindy Kirby at <a href="mkirby@muncieha.com">mkirby@muncieha.com</a> by 12:00 p.m. on Thursday, November 17, 2022.

This project will require use of Davis Bacon Wage Determination.

A bid opening will be held on **Wednesday, November 30, 2022 at 3:00 p.m.** at Muncie Housing Authority, 409 East 1<sup>st</sup> St. Muncie, IN 47302.

Deliver three (3) original proposal submissions in a sealed envelope or box clearly marked with the Company Name, Company Address, and: "IFB# CFP19-008-22-6-D-C" to the following address:

Muncie Housing Authority
Attn: Mindy Kirby, Finance Assistant
(765) 288-9242 Ext. 234
409 E. First Street
Muncie, IN 47302

MHA reserves the right to reject any and all bids

MUNCIE HOUSING AUTHORITY
IS A FAIR HOUSING/EQUAL OPPORTUNITY AGENCY

#### THE HOUSING AUTHORITY OF THE CITY OF MUNCIE

#### CONTRACT WITH INDEPENDENT CONTRACTOR

This Contract is made this day of, 2022 U.S. Housing and Urban Development (HUD) procurement	
Muncie Housing Authority, (hereinafter called Owner) and	<u> </u>
(hereinafter called Contractor). All references to the Munci	e Housing Authority (MHA) in the
project manual shall mean the Owner as defined in this Con	tract.
Article 1. Performance. The contractor shall perform all re-	equired completion work herein
designated as Building Restoration at Southern Pines. Sa	1 1 0
ownership of the Owner. All work is to be performed accor	2
contract documents referred to herein, said documents are spars as a part of this agreement.	pecifically incorporated by reference
as a part of this agreement.	
Article 2. Compensation. In consideration for full and sat	isfactory performance of all work
requirements contained in Article 1, the Owner agrees to con	mpensate the Contractor in the
amount of	(\$)for
all services specified in the Scope of Work.	

#### Article 3. Contractor Covenants. Contractor agrees to the following:

- A. To furnish all materials and perform all work on the Properties in accordance with the Scope of Work and any other contract documents.
- B. To commence work on the date specified in the Notice to Proceed, said notice being herein specifically incorporated by reference and to complete all work within **the date specified in the Notice to Proceed**, unless that the day and/or time shall be extended as provided below for or by agreement endorsed on this contract and signed by the parties; and then in such case, on or before the extended day and/or time.
- C. To give all requisite notices to the proper authorities, obtain all official inspections, permits, certificates, and licenses made necessary by the work in Contractor's charge, and to pay all proper and legal fees.
- D. To maintain insurance as will protect Contractor from all claims arising under workman's compensation acts and from any other claims for damages from personal injury, including death, which may arise from operations under this contract, whether such operations be by the Contractor or by any sub-contractor or anyone directly or indirectly employed by or acting as agent for either of them. Certificates of insurance shall be filed with Owner, if it so requires, and shall be subject to its approval for adequacy of protection.

- E. To indemnify and save harmless Owner, the Consolidated City of Muncie, Delaware County and their respective officers, employees, agents against all loss, costs, or damages on account of injuries to person or property occurring in the performance of the contract. Indemnifiable damages include, but are not limited to judgements, liens, attorney's fees, court costs, inspection fees. Additionally, Contractor shall have a duty to defend Owner against any and all claims arising out of Contractor's acts or omissions under this contract. The duty to defend shall immediately accrue upon written tender of the defense to contractor. Contractor shall either bear the defense costs or shall ensure that its insurance carrier will agree to defend on Contractor's behalf. Failure to immediately accept the tender of defense shall be deemed a material breach of this agreement, and Owner shall have the right, in its sole discretion, to defend any actions itself and charge Contractor with all costs associated with said defense and/or to terminate the contract.
- F. That Owner may make alterations, deviations, additions or omissions from the Project Manual, by written change order, without affection or making the contract void. If this event occurs, the parties shall agree on the value of any such changes and any additional time required to complete the work, and add to or deduct from the above agreed compensation any excess of deficiency occasioned by the above referenced changes.
- G. If the Contractor is adjudged a bankrupt, or if it should make any general assignment for the benefit of creditors, or if a receiver should be appointed on account of Contract's insolvency, or if Contractor should persistently or repeatedly refuse or should fail, except in cases where any extension of time is allowed in writing, to supply enough properly skilled workers or proper materials, or if Contractor should fail to make prompt payment to any sub-contractor or for material or labor, or persistently disregard laws, ordinances or instructions of the Owner, or otherwise be guilty of a substantial violation of any contract terms, Owner may, without prejudice to any other right or remedy and after giving Contractor **Thirty (30)** days written notice, terminate the contract and take possession of the premises and of all materials, tools and appliances on the premises.
- H. Contractor certifies and warrants to Owner that neither it, its sub-contractors, agents and employees of either who will participate, in any way, in the performance of any services required under this contract has or will have any conflict of interest, direct or indirect, with the Owner, Consolidated City of Muncie or Delaware County. Contractor shall immediately advise Owner if any conflict arises during the term of this agreement. If a conflict, parties will immediately take all steps necessary to resolve said conflict. If an agreed resolution cannot be reached, Owner reserves the sole right to unilaterally resolve the conflict after consultation with Owner's legal representative. Owner may then send written notice to Contractor demanding certain

actions within certain time to resolve the conflict. Contractor's failure to comply with any Owner directives, on this issue, will be deemed a material breach of this contract. Contractor waives all claims against Owner which Contractor may now or may subsequently acquire for employer's liability compensation for personal injury, unemployment compensation or otherwise, under the laws of the United States of America or the State of Indiana.

- I. Contractor shall control the conduct and means of performing the work required under this Contract. Contractor will adhere to professional standards and will perform all services required under this Contract in a manner consistent with professional services of the type being contracted for in this Agreement. All work shall be done in a good and workmanlike manner.
- J. Contractor shall pay all of his employees the minimum wage rate determined by U.S. Department of Housing and Urban Development (HUD) which is:

#### **Davis Bacon Wage Determination**

K. Contractor will not discriminate against any employee or applicant for employment because of race or color, religion, sex, national origin, age, or disability. Also, Contractor will take affirmative action steps necessary to provide equal and fair treatment of all applicants and employees in regard to hiring, upgrading, demotion, transfer, or termination.

#### Article 4. Owner Covenants. Owner agrees to the following:

- A. To pay Contractor for the performance for the contract, subject to additions and deductions provided in the contract as provided in Article 2 above. Payment shall become due and payable in full within 30 days of completion of all contract terms, inspections and approval by Owner. Contractor will be notified in writing once the work is inspected and approved. Payment shall be tendered within thirty (30) days of the notice of inspection and approval.
- B. To effect and maintain fire insurance on the entire structure upon which work is to be done and on all material in or adjacent to and intended for insurable value. The loss, if any, is to be made adjustable with and payable to Owner as trustee for whom it may concern. Contractor shall, however, be responsible for insuring its own equipment.
- C. Owner shall review all work on a regular basis and shall notify Contractor of any discrepancies or deficiencies contained in the work of Contractor. Contractor shall have the right to correct any errors for which it may be responsible in full satisfaction of all Owner's claims. Any errors not corrected shall be grounds for termination of this contract and full restitution to the Owner.

#### Article 5. Mutual Covenants. The parties further agree as follows:

- A. Upon completion of the work, Owner reserves the right to inspect the premises to determine and ensure compliance prior to payment hereunder. Said right includes the right of Owner to ensure that all suppliers and sub-contractors have been fully compensated and that no liens would be filed. Owner may, at its discretion; tender payment directly to any supplier or sub-contractor to which Contractor has failed to compensate. Any funds paid under this provision may be deducted from the contractual payment amounts payable or billed to Contractor directly, based on Owner's sole discretion.
- B. Payment shall not be tendered until Contractor, if required, shall deliver to Owner a certification that no liens exist, complete release of all liens arising out of this contract, or receipts in full in lieu of a release and, if required in either case, and affidavit that so far Contractor has knowledge or information that the certificates, releases and receipts include all labor and material for which a lien could be filed. Contractor may, if any sub-contractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to Owner, to indemnify against any actual or potential lien. If any lien remains unsatisfied after all payments are made, Contractor shall refund the Owner all monies that the latter may be compelled to pay in discharging such lien, including costs and reasonable attorney's fees. Owner may withhold a portion of the contract payment equal to any amounts paid under this provision from the contractual funds payable herein.
- C. The funds used to finance this project may come from various governmental sources. Notwithstanding any other terms of this contract, if the allocated funds designated to pay for the services under this contract, are at any time delayed, stopped or reduced, due to no action or omission of Owner, the contract may immediately be terminated by Owner without further recourse. Contractor will be entitled to compensation for all work performed prior to termination.
- D. Owner may terminate this agreement for cause or convenience. Cause will be deemed to be any breach of this contract by the Contractor. When the contract is terminated for convenience (i.e. for any business reason), the Owner shall provide the Contractor with a written notice of termination allowing for 15 days advance notice. Contractor shall be entitled to compensation for all work completed up to and including the effective termination date. Upon completion or termination of this contract, Contractor shall provide, as the exclusive property of the Owner, all original construction documents, data, studies, briefs, drawings, maps, models, photographs, files, and any and all documents related to the contractual services.
- E. Each provision contained within this contract shall be enforced independently of any

other provision herein contained and any other claim or cause of action. If any clause or provision, or any part thereof, is later adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of applicable law, it shall not effect the validity of the remaining part or whole of any other clause or provision, which shall remain in full force and effect.

- F. Failure of Owner, at any time, to require strict performance by Contractor, shall in no way affect the rights of Owner to enforce the same or subsequent breaches under the contract. Nor shall Owner be deemed, in any way, to have agreed to any contract modifications by any act, omission and/or acquiescence.
- G. This contract represents a mutual understanding of terms between the parties indicated. This agreement shall not be assignable in any way, by Contractor without the prior written consent of Owner. Owner reserves the right to withhold consent for any reason whatsoever and at its discretion.
- H. Jurisdiction, under this contract, shall be deemed to be Delaware County, Indiana.
- I. Any and all notice or correspondence required to be sent under this contract, shall be addressed as follows:

OWNER

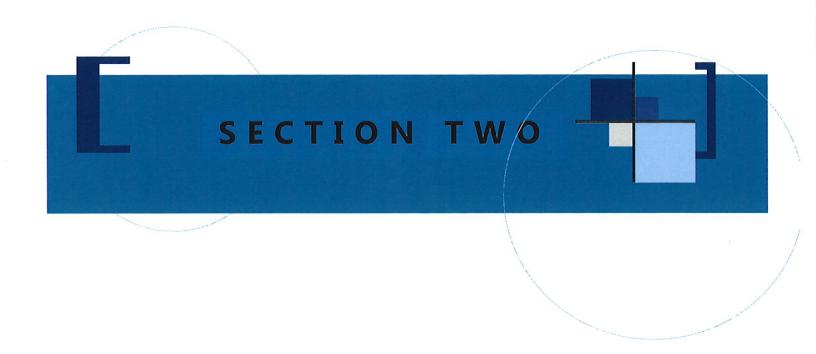
CONTRACTOR	OWNER		
	Muncie Housing Authority		
Company Name			
	Joseph N. Anderson		
Contact Name	*		
	Chief Executive Officer		
Contact Title			
	409 East First Street		
Address			
	Muncie, Indiana 47302		
City. State. Zin	ividiloio, indiana 47302		

CONTRACTOR

- J. This contract and all documents specifically incorporated by reference, represent the entire agreement between the parties and supercedes all prior written or oral negotiations, representations and understanding, written or oral. The terms and conditions herein may only be modified by written agreement signed by both Owner and Contractor. The documents specifically incorporated by reference are as follows:
  - 1. Scope of Work
  - 2. Section 3 Compliance
  - 3. Notice to Proceed
  - 4. Any and all Federal, State, and Local laws, regulations, and ordinances.
  - 5. The General Condition of the Contract
  - 6. Any other documents specifically referenced in this contract.

**IN WITNESS THEREOF,** the parties have executed this Agreement at Muncie, Indiana, the day and year first above written.

NOTARIZATION OF OWNER'S SIGNATURE:		
By:	Date:	
Title:		
Subscribed and sworn or affirmed to before me this	day of	, 20
IN TESTIMONY WHEREOF, I,(Notary Prin		have hereunto set my
hand and official seal. (Notary Prin	ted Name)	
, a Notary Public (Notary Signature)	for the	
County of		
State of		SEAL
My commission expires:		
NOTARIZATION OF CONTRACTOR'S SIGNATURE.		
Title:		
Subscribed and sworn or affirmed to before me this	day of	,20
IN TESTIMONY WHEREOF, I,		have hereunto set my
hand and official seal. (Notary Prin	ted Name)	
, a Notary (Notary Signature)	Public for the	
County of		
State of My commission expires:		SEAL



## CONTRACT CONDITIONS

## U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

## **Instructions to Bidders for Contracts Public and Indian Housing Programs**

Previous edition is obsolete form HUD-5369 (10/2002)

#### Instructions to Bidders for Contracts

Public and Indian Housing Programs

#### **Table of Contents**

Cla	use	Page
1.	Bid Preparation and Submission	1
2.	Explanations and Interpretations to Prospective Bidders	1
3.	Amendments to Invitations for Bids	1
4.	Responsibility of Prospective Contractor	1
5.	Late Submissions, Modifications, and Withdrawal of Bid	s 1
6.	Bid Opening	2
7.	Service of Protest	2
8.	Contract Award	2
9.	Bid Guarantee	3
10.	Assurance of Completion	3
11.	Preconstruction Conference	3
12.	Indian Preference Requirements	3

#### 1. Bid Preparation and Submission

- (a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.
- (b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)
- (c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."
- (d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.
- (e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.
- (f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.
- (g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.
- (h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

#### 2. Explanations and Interpretations to Prospective Bidders

- (a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.
- (b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

#### 3. Amendments to Invitations for Bids

- (a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.
- (c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

#### 4. Responsibility of Prospective Contractor

- (a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:
  - (1) Integrity;
  - (2) Compliance with public policy;
  - (3) Record of past performance; and
  - (4) Financial and technical resources (including construction and technical equipment).
- (b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

#### 5. Late Submissions, Modifications, and Withdrawal of Bids

- (a) Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:
- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.
- (b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.
- (c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
- (d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.
- (e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.
- (f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the PHA/IHA will be considered at any time it is received and may be accepted.
- (g) Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

#### 6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

#### 7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

#### Muncie Housing Authority 409 East First Street Muncie, Indiana 47302

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

#### 8. Contract Award

- (a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.
- (b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.
- (c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.
- (d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

- (e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.
- (f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.
- (g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.
- Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

#### 10. Assurance of Completion

- (a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —
- (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;
- [ ] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;
- (3) a 20 percent cash escrow;
- [ ] (4) a 25 percent irrevocable letter of credit; or,
- [ ] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).
- (b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <a href="http://www.fms.treas.gov/c570/index.html">http://www.fms.treas.gov/c570/index.html</a>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

- (c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.
- (d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

#### 11. Preconstruction Conference (applicable to construction contracts)

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

- **12. Indian Preference Requirements** (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)
- (a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible
- (1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,
- (2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indianowned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

- (b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.
- (2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.
- (c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.
- (d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -
- (1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and
- (2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.
- (e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:
- (1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.
- (2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

- (f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.
- (2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.
- (g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.
- (h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.
- (i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).
- (j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.
- (k) The IHA [ ] does [ ] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

#### **General Conditions for Construction Contracts - Public Housing Programs**

#### U.S. Department of Housing and Urban Development

Office of Public and Indian Housing OMB Approval No. 2577-0157 (exp. 01/31/2014)

Applicability. This form is applicable to any construction/development contract greater than \$100,000.

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).

The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses to the collection of information are required to obtain a benefit or to retain a benefit.

The information requested does not lend itself to confidentiality.

HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

	Table	e of Con	tent	3	
Clause		Page			Page
1.	Definitions	2		Administrative Requirements	
2.	Contractor's Responsibility for Work	2	25.	Contract Period	9
3.	Architect's Duties, Responsibilities and Authority	2	26.	Order of Precedence	9
4.	Other Contracts	3	27.	Payments	9
	Construction Requirements		28.	Contract Modifications	10
5.	Preconstruction Conference and Notice to Proceed	3	29.	Changes	10
6.	Construction Progress Schedule	3	30.	Suspension of Work	11
7.	Site Investigation and Conditions Affecting the Work	3	31.	Disputes	11
8.	Differing Site Conditions	4	32.	Default	11
9.	Specifications and Drawings for Construction	4	33.	Liquidated Damages	12
10.	As-Built Drawings	5	34.	Termination of Convenience	12
11.	Material and Workmanship	5	35.	Assignment of Contract	12
12.	Permits and Codes	5	36.	Insurance	12
13.	Health, Safety, and Accident Prevention	6	37.	Subcontracts	13
14.	Temporary Buildings and Transportation Materials	6	38.	Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms	13
15.	Availability and Use of Utility Services	6	39.	Equal Employment Opportunity	13
16.	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	6	40.	Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968	14
17.	Temporary Buildings and Transportation Materials	7	41.	Interest of Members of Congress	15
18.	Clean Air and Water	7	42.	Interest of Members, Officers, or Employees and Former Members, Officers, or Employees	15
19.	Energy Efficiency	7	43.	Limitations on Payments Made to Influence	15
20.	Inspection and Acceptance of Construction	7	44.	Royalties and Patents	15
21.	Use and Possession Prior to Completion	8	45.	Examination and Retention of Contractor's Records	15
22.	Warranty of Title	8	46.	Labor Standards-Davis-Bacon and Related Acts	15
23.	Warranty of Construction	8	47.	Non-Federal Prevailing Wage Rates	19
24.	Prohibition Against Liens	9	48.	Procurement of Recovered Materials	19

#### 1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
- (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
- (d)"Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
- (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
- (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
- (g)"Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
- (h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.
- (j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
- (I) "Work" means materials, workmanship, and manufacture and fabrication of components.
- 2. Contractor's Responsibility for Work

- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availablility and Use of Utility Services herein
- (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [ ] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
- (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
- (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
- (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
- (f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer
- (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
- (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.
- 3. Architect's Duties, Responsibilities, and Authority
- (a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

- (b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.
- (c) The Architect's duties and responsibilities may include but shall not be limited to:
  - (1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;
  - (2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;
  - (3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and.
  - (4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

#### 4. Other Contracts

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

#### Construction Requirements

#### 5. Pre-construction Conference and Notice to Proceed

- (a)Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.
- (b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

#### 6. Construction Progress Schedule

- The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials. and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.
- The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

#### 7. Site Investigation and Conditions Affecting the Work

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads;(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is

- reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.
- (b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

#### 8. Differing Site Conditions

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer
- (d)No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

#### 9. Specifications and Drawings for Construction

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be

required in the planning and production of the work. Such

- promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Wherever in the specifications or upon the drawings the words 'directed", 'required", 'ordered", 'designated", 'prescribed", or words of like import are used, it shall be understood that the 'direction", 'requirement", 'order", 'designation", or 'prescription", of the Contracting Officer is intended and similarly the words 'approved", 'acceptable", 'satisfactory", or words of like import shall mean 'approved by", or 'acceptable to", or 'satisfactory to" the Contracting Officer, unless otherwise expressly stated.
- (c) Where 'as shown", 'as indicated", 'as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word 'provided" as used herein shall be understood to mean 'provide complete in place" that is 'furnished and installed".
- (d)'Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- (e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.
- (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

requests may be submitted as the need arises, but each

- such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.
- (h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.
- (i)This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

#### 10. As-Built Drawings

- (a) 'As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. 'As-built drawings" shall be synonymous with 'Record drawings."
- (b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.
- (c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

#### 11. Material and Workmanship

- (a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) Approval of equipment and materials.
  - (1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the

machinery and mechanical and other equipment, waivers. Before installing the work, the Contractor shall

- When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- (2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.
- (3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.
- (4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.
- (5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.
- (6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.
- (c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

#### 12. Permits and Codes

(a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any

examine the drawings and the specifications for

compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

(b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

#### 13. Health, Safety, and Accident Prevention

- (a) In performing this contract, the Contractor shall:
  - (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
  - (2) Protect the lives, health, and safety of other persons;
  - Prevent damage to property, materials, supplies, and equipment; and,
  - (4) Avoid work interruptions.
- (b) For these purposes, the Contractor shall:
  - (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
  - (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.
- (c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.
- (d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- (e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.
- (f) New work which connects to existing work

#### 14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

#### 15. Availability and Use of Utility Services

- (a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.
- (b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

#### 16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.
- (b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- (c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- (d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- (e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

shall correspond in all respects with that to which it

- connects and/or be similar to existing work unless otherwise required by the specifications.
- (g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
- (h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
- The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
- (j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- (k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

#### 17. Temporary Buildings and Transportation of Materials

- (a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- (b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

#### 18. Clean Air and Water

The contactor shall comply with the Clean Air Act, as

(f) The PHA may conduct routine inspections of the construction site on a daily basis.

amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

#### 19. Energy Efficiency

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

#### 20.Inspection and Acceptance of Construction

- (a) Definitions. As used in this clause -
  - (1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.
  - (2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
  - (3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.
- (d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to

contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the

Contractor's right to proceed.

- (i)If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the PHA considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (j)The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right under any warranty or guarantee.

#### 21. Use and Possession Prior to Completion

- (a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.
- (b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas

occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the

 (h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

#### 22. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

#### 23. Warranty of Construction

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of 12 Months (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.
- (b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—
  - The Contractor's failure to conform to contract requirements; or
  - (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
- (c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.
- (d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
- (e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
  - Obtain all warranties that would be given in normal commercial practice;
  - Require all warranties to be executed in writing, for the benefit of the PHA; and,
  - (3) Enforce all warranties for the benefit of the PHA.
- (g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the

- repair of any damage that results from any defect in PHA furnished material or design.
- (i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.
- (j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

#### 24. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

#### Administrative Requirements

#### 25. Contract Period

The Contractor shall complete all work required under this contract within 90 calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

#### 26. Order of Provisions

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

#### 27. Payments

- (a) The PHA shall pay the Contractor the price as provided in this contract.
- (b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.
- (c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a

basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has

- acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.
- (d)The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than 30 days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:
  - The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
  - (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
  - (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

Name:		***************************************	
Title:			
Date:			

- (f) Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.
- (g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.

acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting

- Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.
- (h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.
- (i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.
- (j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.
- (k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

#### 28. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or
  - responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the
  - Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit

- Contractor and the Contracting Officer.
- (c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

#### 29. Changes

- (a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) PHA-furnished facilities, equipment, materials, services, or site; or,
  - (4) Directing the acceleration in the performance of the work.
- (b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- (f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's

- Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.
- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the netchange in direct costs for the Contractor or subcontractor performing the work.

- (g)The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

#### 30. Suspension of Work

- (a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have
  - been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.
- (c) A claim under this clause shall not be allowed (1) for any proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and

costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

#### 31. Disputes

- (a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.
- (f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

#### 32. Default

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to

may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall

- be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.
- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—
  - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
  - (2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

#### 33. Liquidated Damages

- (a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of \$ 0.00 \_\_\_\_ Contracting Officer insert amount] for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay.
- (b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final

- completion of the work together with any increased costs occasioned the PHA in completing the work.
- (c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

#### 34. Termination for Convenience

- (a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.
- (b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA: and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.
- (c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.
- (d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

#### 35. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

#### 36. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:
  - (1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.
  - (2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$ 1,000,00.00 [Contracting Officer insert amount]

- per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claimsmade" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.
- (3) Automobile Liability on owned and non -owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$1,500,000 [Contracting Officer insert amount] per occurrence.
- (b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.
- (c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or nonrenewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

#### 37. Subcontracts

- (a) Definitions. As used in this contract -
  - (1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

- (2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.
- (b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.
- (c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.
- (d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors,
- (e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

#### 38. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

#### 39. Equal Employment Opportunity

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

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

- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.
- Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.
- 41. Interest of Members of Congress

- (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).

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

#### 42. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

#### 43. Limitations on Payments made to Influence Certain Federal Financial Transactions

- (a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and 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; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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 a Federal contract, grant, loan, or cooperative agreement.

#### 44. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

#### 45. Examination and Retention of Contractor's Records

- (a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

#### 46. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

(a) Minimum Wages.

(1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall subcontractors at the site of the work in a prominent and

accessible place where it can be easily seen by the workers.

- (2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination, HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
  - In the event the Contractor, the (iii) laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
  - (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in

providing bona fide fringe benefits under a plan or

- program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.
- (c) Payrolls and basic records.
  - (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
  - (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
    - (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
    - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
    - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
  - (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
  - (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to

- make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the
  - rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
  - (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the **Employment and Training Administration withdraws** approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- (f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (i) Certification of eligibility.
  - (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.
- (j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
  - (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
  - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (i)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this
  - (3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.
- (k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

#### 47. Non-Federal Prevailing Wage Rates

- (a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds: (1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
- (b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOLrecognized State Apprenticeship Agency; or
- (c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

#### 48. Procurement of Recovered Materials.

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

# MUNCIE HOUSING AUTHORITY SPECIAL CONDITIONS

These Special Conditions are in addition to the General Conditions, HUD - 5370 (11/2006). If a conflict exists the Special Conditions supersede the General Conditions.

#### SECTION I - PROJECT LOCATION

The subject property owned by the Muncie Housing Authority is located in the City of Muncie. The exact address and/or number of units (if applicable) are noted in the attached specifications.

#### SECTION II - PRE-CONSTRUCTION CONFERENCE AND PLAN OF OPERATION

The Contractor shall submit to the Housing Authority within ten days of his/her signing of the contract his/her actual plan of operations. Before issuance of the **Notice to Proceed**, the Contractor shall be required to attend a pre-construction conference at which time he/she shall explain to the Housing Authority the written plan of operations. The Pre-Construction Conference shall take place within thirty (30) days after contract signing between the Contractor and the Housing Authority. The contractor's plan of operations shall outline the Contractor's schedule for completing the Contract work within the time allotted for completion (refer to Section IV - Time of Completion) and shall include such items as:

- A. Sequence of work
- B. Available equipment and materials
- C. Labor force including Section 3 compliance
- D. Labor recruitment source
- E. Listing of subcontractors
- F. Any other pertinent data

U.S. Department of labor Reporting Requirements will be discussed at the Pre-Construction Conference as well as Contractor's Plan of Operation.

#### SECTION III - NOTICE TO PROCEED (in addition to HUD-5370)

Upon approval of the Contract documents and the Contractor's plan of operations, the Housing Authority shall issue a written Notice to Proceed to the Contractor. Absolutely no work can commence prior to issuance of the Notice to Proceed. If work is ordered by purchase order, the purchase order shall be the same as the Notice to Proceed.

#### SECTION IV - TIME OF COMPLETION

- A. The work will commence on the date stipulated and shall be fully completed as stipulated in the **Notice to Proceed**.
- B. The Contractor, upon receipt of the **Notice to Proceed**, shall commence work immediately and shall be fully completed on or before the date stipulated.

#### SECTION V - RESPONSIBILITIES OF THE CONTRACTOR

Except as otherwise specifically stated in the Contract documents, General Conditions to the contract, and Technical Specifications, the Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, superintendence, temporary construction of every nature, charges, levies or fees, permits or expenses incurred, and all other services and facilities of every nature whatsoever necessary for the performance of the Contract.

#### **SECTION VI - COMMUNICATIONS**

- A. All notices, demands, requests, approvals, proposals, and claims must be in writing.
- B. Any notice or demand upon the Contractor shall be sufficiently given: if delivered at the office of the Contractor stated on the signature page of the Agreement (or at such other office as the Contractor may from time to time designate in writing to the Housing Authority); if deposited in the United States mail in a sealed, postage-prepaid envelope; if delivered with charges prepaid to any telegraph company for transmission (in each case addressed to such office); or as may from time to time be given to the Contractor's duly authorized field superintendent in the form of a **Field Notice**.
- C. All papers required to be delivered to the Housing Authority shall, unless otherwise specified in writing to the Contractor, be delivered to the Authority's Office, 409 East First Street, Muncie, Indiana. Any notice or demand upon the Housing Authority shall be sufficiently given if so delivered with charges prepaid to any telegraph company for transmission to said Housing Authority at such address, to such representative of the Housing Authority, or to such other address as the Housing Authority may subsequently specify in writing to the Contractor for such purpose.
- D. The Contractor shall designate in writing at the time of execution of the Contract the name of its duly authorized representative with whom the Housing Authority may transmit all business in connection with the operating of the Contract. The Contractor shall also designate in writing his/her duly authorized superintendent to whom the Housing Authority representative may give written **Field Notices**, which will be comprised of instructions regarding compliance with the provisions of this Contract. The Contractor will also list the address and telephone number of the person authorized to receive messages during working hours.
- E Where not explicitly stated a reasonable time shall mean thirty (30) days.

#### SECTION VII - SAFETY, CLEANUP AND SPECIAL PROVISIONS

The work as required under the terms set forth in the General Conditions to Contract shall be performed in a coordinated and safe manner as stated and as herein provided:

- A. No combustible debris shall be thrown, stored or burned on the property, adjacent parcels, sidewalks, streets or alleys. Debris created from work at the property must be disposed of immediately.
- B. Any debris caused by the Contractor shall be removed from the work area daily, put in the Contractor's containers, and disposed of off site by the Contractor. The use of resident or Authority refuse containers for any purpose is strictly forbidden under this/her Contract
- C. If during the prosecution of the work by the Contractor the daily cleanup provision of the Contract is not observed or an unsafe or hazardous condition is created which may adversely affect persons or property, the Housing Authority may in its discretion undertake cleanup and deduct the cost of the same from the Contract amount. This provision, if exercised by the Housing Authority, does not relieve or release the Contractor and his/her sureties from any of their responsibilities or obligations under his/her Contract.

#### SECTION VIII - CHANGES IN THE WORK (in addition to HUD-5370)

The Housing Authority may make changes in the Scope of Work required to be performed by the Contractor by making additions thereto or by omitting work therefrom without invalidating the Contract, without relieving or releasing the Contractor from any of his/her obligations under the Contract or any guarantee given by him/her pursuant to the Contract provisions, without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds, provided that the total net amount of the charges does not change the Contract amount by more than 25%. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise.

#### SECTION IX - RESIDENTS' BELONGINGS

The Contractor shall be reasonably responsible for damage to or loss of residents' property while working on the specific premises.

#### SECTION X - STORAGE OF MATERIALS

- A. Materials transported to the job site and stored are the Contractor's responsibility until installed and accepted. The Contractor must have expressed authorization from MHA to store materials on site.
- B. All tools and equipment stored on the job site shall be the sole responsibility of the Contractor.

#### <u>SECTION XI - VEHICLES PROHIBITED ON PREMISES EXCEPT BY SPECIAL</u> PERMISSION

No automotive vehicle, truck, tractor, or wheeled and self-propelled vehicles shall be permitted to operate on the premises, except on bona fide streets, avenues, or parking lots, without proper approval of the Housing Authority representative.

#### SECTION XII - OBJECTIONABLE EMPLOYEE

The Housing Authority reserves the right to request the Contractor to dismiss from the work any employee who it may deem incompetent, careless, insubordinate, or otherwise objectionable.

# <u>SECTION XIII - TECHNICAL SPECIFICATIONS & DRAWINGS (in addition to HUD-5370)</u>

Anything mentioned in the Scope of Work and not shown on the drawings or shown on the drawings and not mentioned in the Scope of Work shall be of like effect as if shown on or mentioned in both. In case of any difference between drawings and the Scope of Work, the Scope of Work shall govern. In case of any discrepancy in drawings or Scope of Work, the matter shall be immediately submitted to the Housing Authority, who shall render a decision about said discrepancy. No adjustments shall be made by the Contractor unless at his/her decision to make adjustment at their own risk and expense.

Shop drawings supplied to the Housing Authority shall be a reproducible set of drawings.

#### SECTION XIV - MINIMUM RATES OF PAY (in addition to HUD-5370)

The Contractor shall pay prevailing wages as determined by the Secretary of Labor to all laborers and mechanics employed in connection with the Contract. The prevailing wages are specifically noted herein. The Contractor will be responsible for requesting minimum wage determinations for any classification of employee not listed herein. Such written request should be sent to the Housing Authority representative.

It is explicitly the responsibility of the Contractor to provide all weekly payroll information to the Housing Authority. The Housing Authority shall provide the "weekly payroll" forms, WH-347, for the Contractor's convenience of supplying the required payroll information.

#### SECTION XV - INSURANCE (in addition to HUD-5370)

The Contractor shall be required to have insurance coverage in the amounts and types as specified in Section 36 of the General Conditions throughout the time of the Contract. The Housing Authority shall be co-insured under endorsement to these policies and shall be given ten (10) days notice in the event of cancellation. The Contractor on all insurance certificates and/or policies provided by him/her for this Contract shall name the Muncie Housing Authority as additional insured by endorsement to the policy.

Prior to commencement of Work, the Contractor and each of his/her subcontractors shall furnish the Authority with evidence showing that the following insurance coverage is in force and will

cover all operations under the Contract:

The Comprehensive General Liability shall include all of the following:

- 1. Operations of the Contractor.
- 2. Operations of the subcontractors (contingent).
- 3. Products/Completed Operations (to be carried for one year after completion of the Contract).
- 4. Broad Form of Property Damage (including completed operations).
- 5. Personal Injury Liability (Perils A, B, C).
- 6. Employees and Additional Insured.
- 7. Property Damage Hazards Explosion, collapse and underground, if an exposure exists.
- 8. Broad Form Blanket Contractual.
- 9. Owned, non-owned and hired motor vehicle.

Insurance required shall be written for not less then the following:

- 1. Worker's Compensation:
  - a. State: Statutory
  - b. Applicable Federal: Statutory
  - c. Employer's Liability: \$100,000
- 2. Comprehensive General Liability (including premises-operations, Independent Contractor's Protective, Products and Completed Operation Broad Form Property Damage):
  - a. Bodily Injury: each occurrence \$1,000,000
  - b. Property Damage:
    - (1) Each occurrence \$500,000
    - (2) Annual aggregate \$500,000
- 3. Contractual Liability:
  - a. Bodily Injury: each occurrence \$500,000
  - b. Property Damage:
    - (1) Each occurrence \$500,000
    - (2) Annual aggregate \$500,000
- 4. Personal Injury with Employment Exclusion Deleted: Annual aggregate \$500,000.
- 5. Completed Operations and Products Liability: Shall be maintained for one (1) year after final payment.
- 6. Property Damage Liability Insurance: Shall include coverage for the following hazards X, C, and U coverage.

- 7. Comprehensive Automobile Liability:
  - a. Bodily Injury:
    - (1) Each person \$500,000
    - (2) Each occurrence \$500,000
  - b. Property Damage: each occurrence \$500,000

#### **SECTION XVI - PAYMENTS**

#### A. Partial Payments

The Contractor shall submit his/her request for partial payment on forms supplied by the Housing Authority no more than once every thirty (30) days. The payment shall be made for work completed to date and for materials installed on site based on the approved **Breakdown of Contract Price**, subject to a deduction of:

- (1) ten percent (10%) retainage until final completion
- (2) the amount of the previous payment made to the Contractor. The number of partial payments allowed for any Contract shall be governed by the length of completion time with only one payment for each thirty (30) days or portion thereof.

No partial payments will be authorized after the original Contract completion date unless the Contract time has been extended by an approved **change order**. An exception may be made when the Contract calls for certain work which cannot be completed because of weather conditions, strike or delays in delivery, providing that the Contractor has made reasonable efforts to maintain the planned schedule.

#### B. Final Payments

After the final inspection and acceptance by the Housing Authority of all work under the Contract, the Contractor shall prepare his/her requisition for final payment which shall consist of the total cost of the work, less all previous payments and subject to withholding any amount due the Housing Authority under the sections entitled **Safety**, **Cleanup and Special Provisions**, **Part C** under these Special Conditions.

- C. The Housing Authority, before making any payment, may require the Contractor to furnish releases or receipts from any or all persons performing work and supplying materials or services to the Contractor, or any subcontractor, if this is deemed necessary to protect its interests. Any subordinate to the Contractor with an agreement or contract in excess of \$20,000 in performance of the Contract with the Housing Authority shall provide to the Housing Authority a waiver of lien through the Contractor.
- D. The final payment to the Contractor by the Housing Authority shall be made subject to the following:

- Submission by the Contractor of all written certificates required of him/her and his/her subcontractors by the section entitled Contractor's Certificates.
- 2. That no payment made under the Contract shall act as a waiver of the right of the Housing Authority to require the fulfillment of all of the terms of the Contract.

#### SECTION XVII - INSPECTION BY OTHERS

The workmanship and material specifications are also subject to the inspection of the Muncie Building Department.

#### SECTION XVIII - SPECIAL CONDITIONS

The Contractor and his/her subcontractors and workmen shall carry a driver's license wherever required and shall provide proof of such licensure upon request.

#### SECTION XIX- GENERAL GUARANTY (in addition to HUD-5369-C)

The Contractor shall remedy any defect due to faulty material or workmanship and pay for any damage to other work resulting therefrom, which may appear within the period of **one year from final payment**, unless noted differently elsewhere. Further, the Contractor will furnish MHA with all manufacturer's and supplier's written guarantees and warranties covering materials and equipment furnished under this contract.

#### SECTION XX - LEAD BASED PAINTS

Use of any lead based paint products is expressly prohibited.

#### SECTION XXI - SECTION 3 OF THE HUD ACT OF 1968 (U.S.C. 1701u)

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- 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).

#### SECTION XXII - LABOR FORCE LISTING

The Contractor will submit with the executed contract; a listing of all present employment positions needed to implement the specified work, a listing of all employees hired previous to the award of the contract, and a listing of vacant positions.

The Contractor will submit, prior to the Pre-Construction meeting, their plan to comply with the requirements of Section 3 of the HUD Act of 1968 (12 U.S.C. 1701). The contractor will not be given the Notice to Proceed until tangible evidence of compliance is given.

#### THE HOUSING AUTHORITY OF THE CITY OF MUNCIE

# SUPPLEMENTAL INSTRUCTIONS TO BIDDERS CONCERNING SECTION 3 REQUIREMENTS

These Supplemental Instructions are in addition to the Instructions to Bidders, HUD 5369 (10/2002). If a conflict exists the Special Instructions supersede the Instructions.

#### SUBPART A – GENERAL PROVISIONS

#### **SECTION I – PURPOSE**

- (a) **SECTION 3**. The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and Local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing and to business concerns which provide economic opportunities to low-and very low-income persons.
- (b) **PART 135**. The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of Section 3 are met.

#### **SECTION II – DEFINITIONS**

As used in this part:

Contractor means any entity which contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

Department or HUD means the Department of Housing and Urban Development, including its Field Offices to which authority has been delegated to perform functions under this part.

Employment opportunities generated by Section 3 covered assistance means all employment opportunities generated by the expenditure of Section 3 covered by the expenditure of Section 3 covered Public and Indiana Assistance (i.e. operating assistance, development assistance and modernization assistance). With respect to Section 3 covered Housing and Community Development assistance, this term means all employment opportunities arising in connection with Section 3 covered projects including management and administrative jobs connected with the Section 3 covered projects. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications,

or work write-ups; and jobs directly related to administrative support of these activities, e.g. construction manager, relocation specialist, payroll clerk, etc.

Housing Authority (HA) means collectively, Public Housing agency and Indian Housing authority.

**Housing Development** means low-income housing owned, developed, or operated by Public Housing agencies or operated by Public Housing agencies or Indian Housing authorities in accordance with HUD's Public and Indiana Housing program regulations codified in 25 CFR Chapter IX.

HUD Youthbuild Programs means programs that receive assistance under sub-title D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992(42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

**Metropolitan Area** means a metropolitan statistical area (MSA), as established by the Office of Management and Budget. For contracts with the Muncie Housing Authority the Muncie MSA includes Muncie, Yorktown, and Cowan.

**New Hires** means full-time employees for permanent temporary or seasonal employment opportunities.

**Section 3** means Section 3 of the Housing and Urban Development Act of 1968 as amended (12 U.S.C. 1701u).

Section 3 Business Concern means a business concern, as defined in this section.....

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

Section 3 Clause means the contract provisions set forth.

**Section 3 Covered Activity** means any activity which is funded by Section 3 covered assistance Public and Indiana Housing assistance.

Section 3 Covered Contract means a contract or subcontract (including a professional service contract) awarded by the Housing Authority or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. "Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). "Section 3 covered contracts" also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e. the installation of the furnace) and thus is covered by Section 3.

**Section 3 Covered Project** means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes building or improvements (regardless of ownership) assisted with housing or Community Development assistance.

#### Section 3 Resident means:

- (1) A public housing resident; or
- (2) An individual who resides in the metropolitan area or non metropolitan county in which the Section 3 covered assistance is expended, and who is;
  - (i) A low-income person, as the term is defined in Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that he Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or
  - (ii) A very low-income person, as the term is defined in Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.
- (3) A person seeking the training and employment preference provided by Section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

**Subcontractor** means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

### SECTION III – OTHER LAWS GOVERNING TRAINING, EMPLOYMENT, AND CONTRACTING

(a) Federal Labor Standards Provisions. Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a-276a-7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD assisted rehabilitation and maintenance activities on public and Indiana housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or for work subject to HUD determined prevailing wage rates, HUD policies

- and guidelines. These requirements include adherence to the wage rates and rations of apprentices or trainees to journeymen set out in "apprenticeship and training programs," as described in paragraph (d) of this section.
- (b) Approved apprenticeship and trainee programs. Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include; and apprenticeship program approved by the Bureau of apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29CFR part 5; or a training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this part.
- (c) Compliance with Executive Order 11246. Certain contractors covered by this part are subject to compliance with Executive Order 11246, as amended by Executive Order 12086, and the Department of Labor regulations issued pursuant thereto (41 CFR chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

# SECTION IV – NUMERICAL GOALS FOR MEETING THE GREATEST EXTENT FEASIBLE REQUIREMENT

#### (a). General

- (1) Recipients and covered contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns.
- (2) The goals established in this section apply to the entire amount of Section 3 assistance awarded to a recipient in any Federal fiscal Year (FY) commencing with the first FY following the effective date of this rule.
- (3) For recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring, or subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to Section 3 residents and Section 3 Business concerns.
  - (4) The numerical goals established in this section represent minimum numerical targets.
- (b). **Training and Employment**. The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires, efforts to employ Section 3 residents, to the greatest extent feasible, should be made at all job levels.
  - (c) Contracts. Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all Section 3 covered projects and Section 3 covered activities. Each Housing Authority, Contractor and Subcontractor may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns;

- (1) At least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization, or development of Public or Indian Housing, or for building construction and other public construction; and
- (2) At least 3 percent of the total dollar amount of all other Section 3 covered contracts.

#### (d) Safe Harbor and compliance determinations.

- (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the Section 3 preference requirements. It should be understood that for the contractor to demonstrate compliance wither the numerical goals for "Training and Employment" are me OR the numerical goals for "Contracts" are met. If neither is met the contractor must demonstrate that all steps listed in Section IX and X have been taken.
- (2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities which were proved in its efforts to comply with Section 3 and the requirements of this part.

# SECTION V – PREFERENCE FOR SECTION 3 RESIDENTS IN TRAINING AND EMPLOYMENT OPPORTUNITIES.

- (a) Order of providing preference. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in paragraph (a) of this section.
  - (1) **Public and Indian Housing programs**. In Public and Indian Housing programs, efforts shall be directed to provide training and employment opportunities to Section 3 residents in the following order of priority:
    - (i) <u>CATEGORY 1</u>: Residents of the Housing Development or developments for which the Section 3 covered assistance is expended (Category 1 residents).
    - (ii) <u>OTHER CATEGORY 1</u>: Residents of other housing developments managed by the Housing Authority that is expending the Section 3 covered housing assistance (Category 2 residents).
    - (iii) <u>CATEGORY 2</u>: Participants in HUD Youthbuild programs being carried out in the Metropolitan area (or Non-Metropolitan County) in which the Section 3 covered assistance is expanded (Category 3 residents).
    - (iv) CATEGORY 3: Other Section 3 residents.
  - (2) Eligibility for Preference. A Section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section

- 3 resident, as defined in Section II. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program).
- (3) Eligibility for employment. Nothing in this part shall be construed to require the employment of a Section 3 resident who does not meet the qualifications of the position(s) to be filled.

#### SECTION VI - SECTION 3 CLAUSE

All Section 3 covered contracts and subcontracts shall include the following clause (referred to as the Section 3 clause).

- 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 1948, 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 provided to 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 understanding, if any, a notice advising the labor organization or worker's 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. Non-Compliance 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 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).

#### SECTION VIII - SECTION 3 BUSINESS CONCERN BIDDING PREFERENCE

A Section 3 business concern(s) will be given preference over non Section 3 business concern(s) provided that the lowest most responsive quotation of the Section 3 business is not in excess of the specified percentage of the lowest most responsive quotation from any other qualifiable source. If no business concern qualifies for this preference, the award shall be made to the source with the lowest most responsive quotation.

#### BIDDING PREFERENCE SPECIFIED PERCENTAGE

THE PERCENTAGE OF THE LOWEST RESPONSIVE BID
BY A SECTION 3 BUSINESS CONCERN MAY EXCEED THE LOWEST BID FOR AWARD

#### AGGREGATE BID AMOUNT

<u>%</u>

LESS THAN	\$100,000.00			10%
AT LEAST	\$100,000.00	BUT LESS THAN	\$200,000.00	9%
	\$200,000.00		\$300,000.00	8%
	\$300,000.00		\$400,000.00	7%
	\$400,000.00		\$500,000.00	6%
	\$500,000.00		\$1,000,000.00	5%
	\$1,000,000.00		\$2,000,000.00	4%
	\$2,000,000.00		\$4,000,000.00	3%
	\$4,000,000.00		\$7,000,000.00	2%
		7,000,000.00 OR MOF	RE	1 1/2%

# SECTION IX – EXAMPLES OF EFFORTS TO OFFER TRAINING AND EMPLOYMENT OPPORTUNITIES TO SECTION 3 RESIDENTS

- 1. Entering into "first source" hiring agreements with organizations representing Section 3 residents.
- 2. Sponsoring a HUD certified "Step Up" employment and training program for Section 3 residents.
- 3. Establishing training programs, which are consistent with the requirements of the Department of Labor, for Public and Indian Housing residents and other Section 3 residents in building trades.
- 4. Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in Sec. 135.34) reside.
- 5. Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For instance, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the Section 3 covered project.
- 6. Contacting residents councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.
- 7. Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the Section 3 covered project.
- 8. Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside and in the neighborhood or service area in which a Section 3 project is located.
- 9. Arranging for a location in the housing development or developments where category 1 persons reside, or at a location within the neighborhood or service area of the Section 3 covered project.

- 10. Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the Section 3 covered project.
- 11. Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractors training and employment positions.
- 12. Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractors training and employment positions.
- 13. Advertising the jobs to be filled through local media, such as community television networks, newspapers of general circulation, and radio advertising.
- 14. Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the Section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible, and qualified Section 3 residents with he training and employment positions that the HA or contractor intends to fill.
- 15. For an HA, employing Section 3 residents directly on either a permanent or temporary basis to perform work generated by Section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian Housing regulations. See CFR 905.102 and Sec. 905.201(a)(6).
- 16. Where there are more qualified Section 3 residents than there are positions to be filled, maintaining a file of eligible qualified Section 3 residents for future employment positions.
- 17. Undertaking job counseling, education and related programs in association with local educational institutions.
- 18. Undertaking such continued job training efforts as may be necessary to ensure the continued employment of Section 3 resident previously hired for employment opportunities.
- 19. After selection of bidders, but prior to execution of contracts incorporating into the contract a negotiated provision for a specific number of Public Housing or other Section 3 residents to be trained or employed on the Section 3 covered assistance.
- 20. Coordinating plans and implementations of economic development (e.g. job training and preparation, business development assistance for residents) with the planning for housing and community development.

# SECTION X – EXAMPLES OF EFFORTS TO AWARD CONTRACTS TO SECTION 3 BUSINESS CONCERNS

- 1. Utilizing procurement procedures for Section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans.
- 2. In determining the responsibility of potential contractors, consider their record of Section 3 compliance as evidenced by past actions and their current plans for the pending contract.
- 3. Contracting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids or proposals for contracts for work in connection with Section 3 covered assistance.
- 4. Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.
- 5. For HA's, contracting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.
- 6. Providing written notice to all know Section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the Section 3 business concerns to respond to the bid invitations or request for proposals.
- 7. Following up with Section 3 business concerns that have expressed interest in the contracting opportunities by contracting them to provide additional information on the contracting opportunities.
- 8. Coordinating pre-bid meetings at which Section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.
- 9. Procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.
- 10. Advising Section 3 business concerns as to where they may seek assistance to overcome limitations, such as inability to obtain bonding, lines of credit, financing, or insurance.
- 11. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.

- 12. Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by Section 3 business concerns.
- 13. Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.
- 14. Advertising the contracting opportunities through trade association papers and newsletters and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
- 15. Developing a list of eligible Section 3 business concerns.
- 16. For HA's participating in the "Contracting with Resident-Owned Businesses" program provided under 24 CFR part 963.
- 17. Establishing or sponsoring programs designed to assist residents of Public or Indian Housing in the creation and development of resident-owned businesses.
- 18. Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to Section 3 business concerns.
- 19. Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.
- 20. Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.
- 21. Actively supporting joint ventures with Section 3 business concerns.
- 22. Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

#### MUNCIE HOUSING AUTHORITY

# CONTRACTORS CERTIFICATION CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

#### Project No. CFP19-008-22-6-D-C Project Name Building Restoration at Southern Pines

- 1. The undersigned, having executed a contract with The Housing Authority of the City of Muncie for the construction of the above identified project, acknowledges that:
  - a. The Labor Standards provisions of the Conditions of the Contract for Construction are included in the aforesaid contract;
  - b. Correction of any infractions of the aforesaid conditions, including infractions by any of his/her subcontractors and any lower tier subcontractors, is his/her responsibility.
  - c. All payrolls, as required in the Conditions of the Contract, will be collected from all subcontractors and forwarded to the Housing Authority along with his/her organization's payrolls. It is expressly understood that the payrolls are due to the Housing Authority within an acceptable time (seven to fourteen days) from the time of issuance of the pay to the Davis-Bacon Covered employees.

#### 2. He/She certifies that:

- a. Neither he/she nor any firm, corporation, partnership or association in which he/she has a substantial interest is designated as an ineligible contractor by the Controller General of the United States pursuant to Section 5.6(b) of the Regulation of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended (40 USC 276a-2(a)), or by the U.S. Department of Housing and Urban Development.
- b. No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.
- 3. He/She agreed to obtain and forward to the U.S. Department of Labor within ten (10) days after the execution of any subcontract, including those executed by his subcontractors and any lower tier subcontractors, a Subcontractors Identification

Form (forms to be provided by the Housing Authority is needed) for any subcontract in excess of \$10,000.00 and executed by the subcontractor.

4. I	He/She	certifies that:
	a.	The legal name and address of the undersigned are:
	b.	The undersigned is a :
		1. Single Proprietorship [ ]
		2. Partnership []
		3. Corporation organized in the State of
		4. Other organization (Describe)
	c.	The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are (if none, so state)
<u>me</u>		Address Trade Classification

<u>Name</u>

Name of Contractor	<del></del>	
Signature		
Subscribed and Sworn or Affirmed to before me this	day of	, 20
Notary Public		
State of		SEAL
County of		
My Commission Expires:		

# U.S. Department of Labor

**Employment Standards Administration** Wage and Hour Division

NAME OF CONTRACTOR

# **PAYROLL**

# (For Contractor's Optional Use; See Instructions, Form WH-347 Inst.)

Rev. April 2006

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

ADDRESS

NAME OF CONTRACTOR OR SUBCONTRACTOR	RACTOR L	<b>I</b>		ADDRESS		ı.			OMB No.: 1215-0149 Expires: 04/30/2009	15-0149 30/2009
PAYROLL NO.		FOR WEEK ENDING	Comments of the second	PROJECT	PROJECT AND LOCATION	N			PROJECT OR CONTRACT NO.	
(1)	DING (2) DNS	(3)	(4) DAY AND DATE	(5)	(6)	(7)			(8) DEDUCTIONS	(9)
NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	NO. OF WITHHOL EXEMPTION	WORK CLASSIFICATION	OT. OF	TOTAL	RATE OF PAY	GROSS AMOUNT EARNED	FICA	WITH- HOLDING TAX	OTHER DEDUCTIONS FO	WAGES PAID FOR WEEK
			0							
			· 0							
			0							***************************************
			Ø							
			0							
			v							
			0							
			(A)							
			0							
			(A)							
			0							
			Ø							
			0							
			Ø							
		***************************************	Ø							
The Copeland Act (40 U.S.C. 3145) requires con	ntractors ar	nd subcontractors perfo	orming work on Federally financed or a	ıssisted con	struction co	ntracts to "furnit	sh weekly a	statement w	The Copeland Act (40 U.S.C. 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the	กั ต

with these requirements is mandatory. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits. a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. Compliance preceding week." U.S. Department of Labor (DOL) Regulations 29 CFR Part 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by

We estimate that it will take an average of 56 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U. S. Department of Labor, Room S3502, 200 Constitution Avenue, N. W., Washington, D. C. 20210.

(b) WHERE FRIN
(c) EXCEPTIONS
EXCEPT
The state of the s
REMARKS:
NAME AND TITLE
THE WILLFUL FALSIFICA SUBCONTRACTOR TO CIV

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION, SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	NAME AND TITLE	REMARKS:					EXCEPTION (CRAFT)
EE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE	SIGNATURE						EXPLANATION

"General Decision Number: IN20220025 10/28/2022

Superseded General Decision Number: IN20210025

State: Indiana

Construction Type: Residential

County: Delaware County in Indiana.

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	·

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at https://www.dol.gov/agencies/whd/government-contracts.

Modification Number	Publication	Date
0	01/07/2022	
1	02/18/2022	
2	02/25/2022	
3	05/20/2022	
4	06/03/2022	

5	08/19/2022
6	10/28/2022

#### ENGI0103-025 04/01/2016

11.010101 010 01, 01, 1010		
	Rates	Fringes
POWER EQUIPMENT OPERATOR:  Backhoe/Excavator	\$ 33.65	16.40
ENGI0103-027 04/01/2016		
	Rates	Fringes
POWER EQUIPMENT OPERATOR: (PAVER: Asphalt, Aggregate, and Concrete)	\$ 33.65	16.40
ENGI0150-029 06/01/2014		
	Rates	Fringes
POWER EQUIPMENT OPERATOR: (2) Loader  LAB00041-007 06/01/2022	\$ 38.60	28.83
21.0000.12.00, 00,01,2022	Rates	Fringes
LABORER	na ccs	77 231503
(2) Mason Tender - Cement/Concrete	\$ 37.15	23.48
LAB00741-006 06/01/2020		
	Rates	Fringes
LABORER (1) Pipelayer	\$ 23.13	16.00
PLUM0136-012 07/01/2020		
	Rates	Fringes
PLUMBER		3.06
ROOF0026-004 06/01/2022		
	Rates	Fringes
ROOFER	\$ 40.79	24.47
* SHEE0020-002 07/01/2022		
	Rates	Fringes
SHEET METAL WORKER (Excludes HVAC Duct Installation)	\$ 37.62	26.46
* UAVG-IN-0002 01/01/2019		
	Rates	Fringes
TRUCK DRIVER (Dump)	\$ 29.63	17.08

\* UAVG-IN-0006 01/01/2019

	Rates	Fringes
POWER EQUIPMENT OPERATOR (Bobcat/Skid Steer/Skid		
Loader)\$ POWER EQUIPMENT OPERATOR	32.00	30.65
(Grader/Blade)\$	35.71	29.55

<sup>\*</sup> SUIN2012-010 08/13/2012

		Rates	Fringes
CARPENTER		\$ 18.36	7.46
CEMENT MA	SON/CONCRETE FINISHER	\$ 17.78	0.00
ELECTRICI.	AN	\$ 17.48	3.40
LABORER:	Common or General	\$ 10.44 **	0.00
LABORER:	Mason Tender - Brick	\$ 14.00 **	0.00
OPERATOR:	Bulldozer	\$ 27.35	13.44
PAINTER:	Brush Only	\$ 18.29	7.43
PAINTER:	Roller	\$ 18.29	7.43
PAINTER:	Spray	\$ 18.29	7.43
SHEET METAL WORKER (HVAC Duct Installation Only)\$ 26.20 10.74			

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at

https://www.dol.gov/agencies/whd/government-contracts.

<sup>\*\*</sup> Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union

average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

-----

#### WAGE DETERMINATION APPEALS PROCESS

- 1.) Has there been an initial decision in the matter? This can be:
- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations Wage and Hour Division U.S. Department of Labor 200 Constitution Avenue, N.W. Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator U.S. Department of Labor 200 Constitution Avenue, N.W. Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board U.S. Department of Labor 200 Constitution Avenue, N.W. Washington, DC 20210

10/31/22, 4:06 PM SAM.gov

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISIO"

#### THE HOUSING AUTHORITY OF THE CITY OF MUNCIE

# AFFIRMATIVE ACTION/EQUAL OPPORTUNITY POLICY STATEMENT

The Vendor will provide equal opportunity to all employees and applicants for employment in accordance with all applicable equal employment opportunity/affirmative action laws, directives and regulations of Federal, State, and Local governing bodies or agencies thereof.

The Vendor will not discriminate against any employee or applicant for employment because of race or color, creed, religion, ancestry, national origin, sex affectional preference, disability, age, marital status, familial status, or status with regard to public assistance.

The Vendor will take affirmative action to ensure that all employment is free of such discriminations. Such employment practices include, but are not limited to, the following; hiring, upgrading, demotion, transfer, recruitment, or recruitment advertising, selection payoff, disciplinary action, termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.

The Vendor will prohibit the harassment of any employee or job applicant because of sex or national origin or race.

The Vendor will evaluate the performance of its management and supervisory personnel on the basis of their involvement in achieving these affirmative action objectives as well as other established criteria. Any employee of this company or subcontractors to this company who do not comply with the equal employment opportunity policies and procedures set forth in this statement and plan will be subject to disciplinary action. Any subcontractor not complying with all applicable equal employment opportunity/affirmative action laws, directives, and regulations of the Federal, State, and Local governing bodies or agencies thereof will be subject to appropriate legal sanctions.

The Vendor will appoint and EEO Coordinator to manage the Equal Employment Opportunity Program. The responsibilities will include monitoring all equal employment opportunity activities and reporting the effectiveness of this Affirmative Action Program, as required by Federal, State, and Local agencies. If any employee or applicant for employment believes he/she has been discriminated against, he/she should contact the EEO Coordinator.