

**Invitation for Bids**

**No. IFB 19-967**

**Roof Replacement, Gutter, and Downspouts**

**Issued By:**

**The Housing Authority of Kansas City, Missouri**

**920 Main Suite 701**

**Kansas City, Missouri 64105**

**March 8, 2019**

**INVITATION FOR BIDS  
IFB-19-967**

**THE ABOVE NUMBER MUST APPEAR ON ALL RESPONSES AND RELATED CORRESPONDENCE.**

**REQUEST DATE: March 8,2019**

**THIS IS NOT AN ORDER**

**Bids Due:  
April 5, 2019 at 2:00 p.m.**

**Pre-Bid Conference  
March 20, 2019 at 10:00 a.m**

**Jessica Johnson  
Procurement Agent  
[jjohnson@hakc.org](mailto:jjohnson@hakc.org)  
Ph. (816)968-4260  
Fax (816)968-4117**

**PART ONE  
INTRODUCTION AND BID STRUCTURE**

1. The Housing Authority of Kansas City, Missouri is organized under the laws of the State of Missouri. It owns and operates over 1900 units of conventional public housing in multifamily and single-family sites through the city and provides rental assistance subsidies to approximately 7500 households under the Section 8 Housing Assistance Payment Program. The agency has an annual operating budget of \$20 million. Receives approximately \$3.5 million in annual Capitol Fund program allocations and maintains funding awards for the HOPE VI and Public Housing Development Programs. HAKC also funds and manages a variety of social service and economic development programs for its residents.
2. There will be a pre-bid conference for this project at **10:00 am – March 20, 2019** at the job site located at **7905 E. 92<sup>nd</sup> Street , Kansas City, MO.**
3. For the convenience of the bidder, this solicitation is structured as follows:

Part I Introduction and Bid Structure  
Part II Scope of Work Description and Terms  
**Bid Forms**  
Bid Documents

- a. Davis Bacon Wage Rate Determination
- b. Notarized Non-Collusive Affidavit**

- c. Section 3 Requirements
- d. **General Contract Conditions HUD 5370**
- e. **Instructions to Offerors, HUD 5369**
- f. **Certifications & Representation, HUD 5369-A**
- g. Sample Contract

**BOLD** indicates forms required to be completed and returned with **every** bid submission.

**Failure to provide the indicated forms, may cause your submission to be removed from consideration for award.**

**NOTE FOR PROJECTS EXCEEDING \$50,000:** The bidder shall complete and submit his/her bid with the *Form HUD-2530, "Previous Participation Certificate"*. If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

4. Sealed Bid Selection Criteria

A firm fixed-price contract (lump sum or unit price) is awarded to the lowest responsible bidder whose bid, conforming with all material terms and conditions of the invitation for bids, is the lowest in price.

**PART TWO  
SCOPE OF WORK**

1. The Housing Authority of Kansas City, Missouri (HAKC) is seeking bids from qualified contractors to **Roof Replacement, Gutter, and Downspouts.** In accordance with the attached scope of work.

Work must be completed within **25 days** from the date of the Notice to Proceed.

Contractor shall be assessed Liquidated Damages of \$100.00 for each work day in excess of this allotted time for completion. Exceptions may be granted for delays caused by Owner or modifications to the Scope of Work.

**This is a time sensitive project with an expected start date to occur as soon as possible.**

2. TAXES

HAKC is a sales-tax exempt entity. Copies of the sales tax exemption information will be provided to the successful bidder on request. The contractor shall not include in the bid amount, any taxes chargeable against the performance of the work.

3. PERMITS

Before starting work, the contractor shall obtain and pay for all necessary permits and licenses whether issued by the State, county, or City, and furnish proof of insurance as required, for all work under these specifications. The contractor shall be held responsible for all violations for any cause in connections with the work.

4. CHARACTER OF WORKMEN AND WORK

At all times, the contractor shall be responsible for the conduct and discipline of his employees and/or any subcontractor or persons employed by subcontractors. All workers must have sufficient knowledge, skill and experience to perform the work assigned to them properly.

5. ASSIGNMENT OF THE CONTRACT

The contractor shall not enter into any sub-contracts' or assign, transfer, convey or otherwise dispose of the ensuing contract, or any and all of its rights, title or interest, or its power to execute such contract to any person, company, or corporation without the written consent of HAKC.

6. PROVISIONS FOR CHANGES OR AMENDMENTS.

If at any time HAKC desires to expand, alter, or terminate a portion of the scope of work, as defined herein, the contract will be amended to reflect these changes at costs/deductions acceptable to both parties. HAKC shall provide prior written notice to the contractor for any changes to the scope of work. The contractor shall not hold the Authority responsible for termination due to no fault of HAKC.

**As it relates to the foregoing paragraph, all directions to the contractor, and all changes or amendments to the project, between the contractor and the HAKC must come through the Project Manager, Michael Ponnle, 816-968-4285. The HAKC will not be responsible for payment for any change(s) not authorized in advance, by the Project Manager.**

7. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires, to the greatest extent feasible, opportunities for job training and employment be given to lower income residents of the federally funded area, and contracts for work in connection with the Section 3 covered project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the Section 3 area. Section 3 requires that a recipient/contractor take affirmative steps to give preference to qualified Section 3 area residents and business concerns in providing training, employment and contracting in connection with Section 3 covered projects. As a recipient of HUD funding, HAKC maintains an aggressive Section 3 policy, which emphasizes employment of public housing residents, or other low-income residents on contracts let by the Authority and that affirmative efforts be taken to contract with Section 3 business concerns, which includes resident-owned businesses.

HAKC believes that Section 3 is an effective tool for advancing economic development and self-sufficiency opportunities for public housing residents. HAKC requires the contractor to emphasize resident hiring for new positions required because of this contract. See "Section 3 Program" attachment for additional information on compliance with Section 3 requirement.

8. INSURANCE, BONDING AND HOLD HARMLESS AGREEMENT

The contractor must carry insurance with respect to property and operations as set forth below. If applicable, Fidelity Bond requirements may be set prior to contract execution.

*Liability/Bodily Injury*

General:

- a) Three million dollars (\$3,000,000) for all claims arising out of a single occurrence;
- b) Four hundred thousand dollars (\$500,000) for any person in a single accident or occurrence;  
*Property Damage*
- c) Five hundred thousand dollars (\$500,000) for each occurrence.

Auto:

- d) Five hundred thousand dollars (\$500,000) each person
- e) Five hundred thousand dollars (\$500,000) each occurrence  
*Property Damage*

- f) Five hundred thousand dollars (\$500,000) for each occurrence

Worker's Compensation

- g) Policy shall contain limits  $\geq$  the policy limits required by state or federal law, and not less than: Five hundred thousand dollars (\$500,000) per accident

In addition, the contractor agrees that it will indemnify and hold HAKC harmless for any acts, including acts of negligence, on the part of the contractor's agents or employees and from any and all claims on or about the premises resulting from the acts, including acts of negligence, of the contractor, its employees, or agents. The contractor shall investigate and furnish HAKC with full reports on all accidents, claims and potential claims for damages relating to the services provided under this contract, and will cooperate fully with HAKC and its' agents in connection with all claims.

**A bid submission of \$50,000.00 or higher must be accompanied by a negotiable bid guarantee of 5% of the amount of the bid.**

As a "public entity" seeking to enter into a written contract with a "Contractor" for a public works project as those terms are defined in Section 107.170 RSMo., estimated to meet or exceed the sum of fifty thousand (\$50,000) dollars, the HAKC must require the Contractor to furnish to HAKC a payment bond with good and sufficient sureties in the amount of **one hundred percent (100%)** of the total cost of the contract and such bond, among other conditions, shall be conditioned for the payment of any and all materials, incorporated, consumed, or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise. As an additional condition of the contract the Contractor shall also furnish to HAKC a performance bond with good and sufficient sureties in the amount of **one hundred percent (100%)** of the total cost of the contract whereby said surety shall, among other things, insure for the completion of all work that is the subject of the contract. All bonds executed and furnished pursuant to this contract shall be deemed to contain the requirements and conditions set out within Section 107.170 RSMo., regardless of whether the same be set forth in said bond, or of any terms or provisions of the said bond to the contrary notwithstanding.

9. PAYMENT

**In order for payment to be processed, the contractor must:**

- a) Certify that no additional staff was hired in order to complete this project. This will be verified by submission of the payroll sheets (if Davis Bacon applies).
- b) If additional staff is to be hired, contractor must advertise in the newspaper of record for the area and demonstrate that additional contacts were made to locate qualified Section 3 residents. Sources for locating Section 3 residents include the individual development where the work is to be performed; other HAKC developments; HAKC's Department of Resident Services; the City of Kansas

City, Missouri; etc. If additional staff were hired, contractor must show proof that 30% of those hired (one individual hired for each three positions filled) are Section 3 residents in accordance with current median income data.

This information can be found at the following website:

[www.factfinder.census.gov/home/saff/main.html](http://www.factfinder.census.gov/home/saff/main.html)

- c) If no qualified Section 3 residents are available, the contractor must show proof of attempts to locate and hire Section 3 residents.
- d) If additional staff are hired for this project, one-third (1/3) of the available hours for the “new” positions must be worked by the Section 3 resident.
- e) For additional information, contractors may refer to 24, CFR, Sec 135.38.
- f) Contractor shall certify that all employees of the contractor are United States citizens or have work visas to work in the United States. Copies of the work visas shall be submitted with the first payroll sheets submitted to Contracts requesting payment.

The contractor shall invoice per the firm, fixed prices indicated on the Bid Form. The firm, fixed prices shall be legally binding for the entire term of the contract. The Project Manager must approve all invoices prior to payment. When providing services, contractor must obtain the signature of the Property Manager or their designee, on the work order or receipt, to verify the service/work provided is complete, satisfactory and in accordance with the scope of work. Without this signature, payment cannot be processed. **Invoices/Payment Certification Packets for non as-needed contracts over \$2,000.00 which require Davis-Bacon wages, must have “Payroll Form WH-347” attached.**

**In addition, HAKC will not process any invoice(s) for payment until the required certified payrolls, citizenship status, Section 3 certifications, and all other evidentiary documentation is received.**

The contractor shall submit all requests for payment under this contract to:

**Office of Procurement & Contracts**  
**920 MainStreet, Suite 701**  
**Kansas City, MO 64105**  
[procurement@hakc.org](mailto:procurement@hakc.org)

## 10. QUESTIONS

Questions relating to the bid content or procedures for submission must be

submitted in writing, by fax or e-mail to:

Jessica Johnson, Fax (816) 968-4117 or [jjohnson@hakc.org](mailto:jjohnson@hakc.org)

## 11. SUBMISSION REQUIREMENTS

Electronic bids must be received at the offices of the Housing Authority of Kansas City, Missouri no later than **2:00 PM, April 5th, 2019. Bids must be Emailed to [jjohnson@hakc.org](mailto:jjohnson@hakc.org) OR Faxed to 816-968-4117.**

Each response to this Invitation for Bids must be clearly identified as a response to the **Invitation for Bid No. IFB 19-967. Any submission received later than 2:00 PM, April 5th, 2019 will not be accepted.** The bidder may also be responsible for demonstrating adequate staffing for managing multiple jobs with the periods specified herein.

When the contractor is declared the successful bidder, and at the time the contract is signed, if applicable, he/she may be asked to certify that:

- a. Contractor is aware that wage decision rates apply
- b. Contractor will, or will not, be required to hire additional staff
- c. Contractor will comply with and provide documentation of US citizenship or legal status for all his/her employees.

Failure to follow the instructions of this IFB may result in the elimination of your bid as being non-responsive. **Failure to sign your completed bid form will be cause for automatic rejection.**

HAKC reserves the right to consider historic information whether gained from the proposal, references, or any other source, in the evaluation process. HAKC also reserves the right to reject all bids/proposals, make no award, multiple or partial awards, and to waive any minor informality or irregularity in the bids/proposals received in response to this solicitation.

## 12. PROPOSED SCHEDULE

Pre-Bid Conference  
Located at:

March 20<sup>th</sup> 2019 at 10:00 a.m.  
7905 E. 92<sup>nd</sup> Sreet KCMO

Bid Due Date

April 5th, 2019 by 2:00 p.m.

## Scope of Work Housing Authority of Kansas City

**Project:** Replace Roof Coverings/CDX, Gutter & Down Spouts.

**Locations:** 7905 E. 92<sup>nd</sup> Street

**Development:** South Scattered Sites:

March. 2019

It is the Contractors responsibility to make a site visit and take steps as may be reasonably necessary to ascertain the nature and location of the work and general conditions that could affect the work or the cost thereof. Contractors are strongly encouraged to attend Pre-Bid Conference on the scheduled date.

### **Overview:**

- a. Remove roof covering complete and replace with Architectural (30 years) Roof Shingles.
- b. Remove the entire 3/8" plywood roof deck and replace all with 1/2" thick Plywood CDX roof deck.
- c. Roof coverings replacement to include all necessary roof accessories to meet the City of Kansas City Codes Dept. approval.
- d. Remove and replace gutters/down spouts and install new gutter guards around the roof. Bring Ladder on pre-bid day for roof measurements.

### **General Preparation:**

1. Remove roof covering to deck including flashings around chimney, valley, ridge cap, vents, gutter, down spouts, other roof covering accessories and haul.
2. Remove the entire thin plywood roof deck complete and haul.
3. Call the project manager for inspection and approval after roof coverings are completely removed before proceeding to the next activity.

4. Remove and replace rows of sidings along the walls as needed at both North & South Split walls to allow replace existing flashings. *Note: All flashing must be removed and install new flashings.*
5. Cut out and replace any rotted Wood Roof Member (See Unit Price)
6. Cut out, remove & replace rotted roof rafter 2"x8" or 2"x10". (Allow 65LF)
7. Cut out, remove & replace rotted roof beams 2"x10" or 2"x12" Beams or Joists. (Allow 55LF)
8. Provide **Unit Prices** for removal and replacement of the followings with your bid:
  - b. "LF" Fascia boards or bargeboards.
  - c. "LF" Aluminum Fascia and Bargeboard Wraps

**Unit Prices for Roof Members as follows**

- f. "LF" 2"x4" roof members
- g. "LF" 2"x6" Roof Rafter
- i. "LF" 2"x10" Roof Beam
- j. "LF" 2"x8" Roof Joist

**Furnish & Install the followings according to manufactural specifications:**

9. Furnish and install 4' x 8' x **1/2"** thick Plywood Roof CDX deck to the entire roof.
10. #30, asphalt roof felt underlayment.
11. **(8)** New Aluminum square roof vents to the entire roof.
- 12 (30yrs.) Architectural Asphalt Roof Shingles: Use Malarkey Roof coverings (equal or better product). (Color - WEATHERED WOOD)
13. Roof Ridge (Cap) must be the same color, texture and grade as the shingles.
14. Use Ventilation Ridge Cap (Ridge Vent) along the apex ridge at two ridge locations.
15. Roof galvanized metal drip edges, and other roof covering accessories to meet the

City of Kansas City Dept., approval.

16. Use new step flashing around b-vent or furnace flue and all plumbing vents above the roofs.
17. Use aluminum valley material to where valleys are located irrespective its location. *(Note: Do not use shingles along valleys even if shingles was originally used.)*
18. Use aluminum, stock unit 5" "K" type, 0.032" thick, Plain Gutter with matching 3"x 4" down spouts at locations where gutter & down spouts were removed. Add new short (6FT long) down spout to the gutter from top roof to lower roof at front and rear where split roof level occurred. Also, install water splash stop on gutter (8" high x 12" long where valley join gutter).

**Notes on Down Spouts:**

- a. Attach down spouts to any existing buried drain pipe around the house with new down spout adapter and screw (2) the adapter to the drain line and down spout. (4 screws)
  - b. All down spouts at the ground elevation that were not attached to drain line are required to extend with an elbow 30" long away from foundation wall and properly placed over a concrete splash block. (Elbow extension to be free 2-1/2" from the ground)
  - c. Turn down spouts extension end to the sides where water will flow away without back-up or any obstructions.
  - d. Where two down spouts meet, use "Y" down spout connection or approved adapter to connect both down spouts to a single line.
16. Install 6" wide Gutter Guards over the gutters around the roof. Follow manufacturer specification & instructions for installation. *(Use Steel Powder Coated Screen Gutter Guard by "E-Z Lock Small Hole" gutter guard [equal or better] product.)*
  17. 48" long precast concrete splash block to **each down spout and sump pump drain outlets**. Remove any existing broken splash blocks or plastics and haul.
  18. Remove all demolished shingles and other roof debris irrespective of their sizes. Use magnetic roller to remove nails and other metal objects on the ground.
  19. Provide ladder for inspection during the progress of work. Also, at final inspection to inspect the roof gutters and guards guard installed.
  20. Check weather forecast to make sure roof deck are not demo if forecast indicated rain on that day.
  21. Provide tarp covering ready on site for the entire roof in case of sudden rains or showers.

## General Requirements as Outlined:

1. As soon as contract is signed, contractor is required to schedule a PRE-CONSTRUCTION CONFERENCE date on job site with the Project Manager. Completion of pre-construction meeting will facilitate the issuance of Notice to Proceed. (NTP).

It is mandatory for the Contractor to submit the followings to the Project Manager on the Pre-Construction Conference Day.

- a. A Schedule of Values for this project: *Showing the components of your work break down including the (\$\$) value for each activity on the schedule.*
  - b. A work schedule showing each work activity's estimated start & finish dates. *(By each street address as called out for this project.)*
  - c. Complete and return all preliminary contract documents submitted with your Payment Certificate Package. *(Note: The Payment Certificate package includes **Schedule of Value; Project Plan & Schedule; Section 3 Workers Compliance; Environmental Compliance; Verification of Contractor's Safety Program on the Job Site & Construction Progress Schedule**). It is required that all form mentioned dully filled out and submit to the Project Manager on the Pre-Construction Conference Meeting for review prior to issuance of the NTP.*
2. When working in an occupied unit, the Contractor is to assure that, staffs conduct themselves in a professional manner at all times.
  3. The Contractor is to attend a Pre-Construction conference within 24 hours of executing the contract with HAKC. It is strongly encouraged that any sub-contractors attend this meeting. Contractor is responsible for all subs performing work and task as written in the contract.
  3. Contractor is to locate a supplier that can provide materials immediately upon receiving the NTP. Work is to begin immediately upon receiving the NTP.
  4. Proper signage or barriers shall be installed to assure tenants or children don't come in contact with work underway or tools that cause injury to the resident.
  5. Contractor has a duty to furnish power generators, tools, labor, equipment and materials to perform the services required in this scope of work.
  6. Contractor shall be responsible for the physical identification and measurement of work as outlined in the scope of work at no additional cost to HAKC.
  7. **HUD Form WH-347:** (Certified Payrolls & Statement of Compliance) are **due on weekly basis** for all workers including sub-contractors. Deductions column on Form WH-347 must be duly filled out.
    - a. Writing **"Form 1099 or Salary"** on **"With-holding Tax"** lines is not acceptable; all deductions are to be clearly stated for each worker as required by HUD.
    - b. If a classification does not exist; the contractor shall request a classification in writing to

- HAKC. Such request shall be submitted with the effected payroll or immediately upon identification.
- c. If work is not performed during one or more weeks during the progress of the work contractor is required to submit a fully signed Certified Payroll for each week stating: "No Work Perform during this Week."
8. All workers are required to carry a Valid Identification while working on HUD projects. The worker may be removed the job site, and/or a Stop Work Notice may be issued if any individual working on the project fails to follow this requirement or refuses to participate in an employee interview with HAKC staff.
9. Contractor is required to **POST SIGNAGE** at a **conspicuous location** on the job site **from the day the job starts thru its completion.** The signage board can be 36" x 42" x ¾" thick plywood with 2" wide trim around. The Contractor shall secure the following HUD documents on the Signage and secure the Signage Post to the ground with a 2" wide pointed stake.
- Contractor's Company Name in **large and bold print.**
  - Davis-Bacon Wage Determination sheets issued for this project.  
(Post entire decision sheets on the signage)
  - Current POSTER for EMPLOYEE RIGHTS UNDER THE DAVIS-BACON Act for Laborers and Mechanics.
  - The scope of work issued for this project is required to be posted on the board throughout the duration of this project.
11. All work is to be performed in a professional workman-like manner and consistent with industry standards. All workmen must have sufficient knowledge and skills to perform the tasks required for this contract.
12. Contractor is responsible for the OFF-SITE disposal of trash & construction debris on a daily basis.
13. Contractor is required to call the Project Manager for *inspection and approval* of **All Materials** delivered to the job site before use.
14. Contractor is required to give 5 business days notification to the Project Manager to enable proper notification to the residents. (*The units are occupied*).
15. Contractor is not allowed to use resident's utilities during the progress of this contract. Contractor is required to provide their own power source throughout the duration of the contract
16. Contractor shall submit a written Application for Partial & Substantial Completion and Final Inspection stating the Status of the project. (See Contract Article 20.5.6)
17. Contractor shall provide a written, notarized and signed WARRANTY for this project stating warranty coverage for materials and defects in workmanship. (*Coverage shall be for a minimum of 1 year for defects in workmanship and materials.*)
18. Contractor is liable for all materials and installations until final approval.

Duration: Contractor shall have Twenty-Five (25) days to complete this project.

General Decision Number: MO190063 01/04/2019 MO63

Superseded General Decision Number: MO20180063

State: Missouri

Construction Type: Residential

County: Jackson County in Missouri.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 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, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 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 calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

| Modification Number | Publication Date |
|---------------------|------------------|
| 0                   | 01/04/2019       |

BRMO0015-023 04/01/2018

|                 | Rates    | Fringes |
|-----------------|----------|---------|
| BRICKLAYER..... | \$ 35.43 | 19.73   |

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CARP0005-011 05/01/2018

|                | Rates    | Fringes |
|----------------|----------|---------|
| CARPENTER..... | \$ 29.94 | 17.10   |

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\* ELEC0124-001 08/27/2018

|                  | Rates    | Fringes |
|------------------|----------|---------|
| ELECTRICIAN..... | \$ 39.45 | 22.51   |

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ENGI0101-031 04/01/2016

|                           | Rates    | Fringes |
|---------------------------|----------|---------|
| POWER EQUIPMENT OPERATOR: |          |         |
| Backhoe/Excavator.....    | \$ 37.63 | 15.97   |
| Roller.....               | \$ 37.63 | 15.97   |

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LABO0264-004 04/01/2014

|                           | Rates    | Fringes |
|---------------------------|----------|---------|
| LABORER                   |          |         |
| Mason Tender - Brick..... | \$ 15.60 | 7.40    |

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PAIN0003-021 04/01/2017

|                       | Rates    | Fringes |
|-----------------------|----------|---------|
| PAINTER               |          |         |
| Brush and Roller..... | \$ 29.34 | 16.96   |

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PLUM0008-018 06/01/2018

|              | Rates    | Fringes |
|--------------|----------|---------|
| PLUMBER..... | \$ 45.34 | 21.39   |

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ROOF0020-009 06/01/2018

|             | Rates    | Fringes |
|-------------|----------|---------|
| ROOFER..... | \$ 32.95 | 18.89   |

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 SFMO0314-004 01/01/2017

PORTION OF COUNTY WITHIN A 30 MILE RADIUS OF THE INTERSECTION  
 OF PERSHING & BROADWAY IN KANSAS CITY, MO

|  | Rates    | Fringes |
|--|----------|---------|
| SPRINKLER FITTER (Fire<br>Sprinklers)..... | \$ 36.74 | 19.92   |

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 SFMO0669-005 04/01/2017

REMAINDER OF COUNTY

|  | Rates    | Fringes |
|--|----------|---------|
| SPRINKLER FITTER (Fire<br>Sprinklers)..... | \$ 34.79 | 15.84   |

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 SHEE0002-028 07/01/2011

|  | Rates    | Fringes |
|--|----------|---------|
| SHEET METAL WORKER (Including<br>HVAC Duct and HVAC System)..... | \$ 27.37 | 8.14    |

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 SUMO2011-007 08/11/2011

|                                   | Rates    | Fringes |
|-----------------------------------|----------|---------|
| CEMENT MASON/CONCRETE FINISHER... | \$ 16.00 | 0.00    |
| LABORER: Common or General.....   | \$ 11.00 | 0.00    |

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

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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 [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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)).

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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.

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## 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 Regional Office for the area in which the survey was conducted because those Regional Offices have 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

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

=====  
===

END OF GENERAL DECISION

=====

**Page 1 of Bid Form  
IFB-19-967**

**Date:** \_\_\_\_\_

**FROM:** \_\_\_\_\_  
Hereinafter called the "Bidder"

**TO:** Housing Authority of Kansas City, Missouri  
920 Main Street, Suite 701  
Kansas City, Missouri 64105  
Hereinafter called the "Owner"

The undersigned bidder for \_\_\_\_\_, (your company name)  
located at \_\_\_\_\_, (your company address) in accordance with the applicable specifications and related documents prepared by the Housing Authority of Kansas City, Missouri, and having familiarized itself with the local conditions effecting the cost of the Work at the place where the Work is to be done and with the Instructions to Bidders, Plans and Specifications, General and Supplementary Conditions, Special Conditions, Form of Agreement and other Contract Documents, and having examined the location of the proposed Work and considered the availability of labor and materials, hereby proposes and agrees to perform everything required to be performed, and to provide and furnish all labor, materials, necessary tools, expendable equipment, and all utility and transportation service necessary to perform and complete in a workmanlike and timely manner all the Work required to **Roof Replacement, Gutter, and Downspouts 7905 E. 92nd Street, Kansas City, MO** in accordance with the scope of work, all in strict conformance with the Instructions to Bidders and other Contract Documents (including Addendum Nos \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, the receipt of which is hereby acknowledged,) for the lump sum(s) hereinafter specified.

**MBE/WBE PARTICIPATION**

Does the bidder have a MBE/WBE policy for awarding to subcontractors? \_\_\_\_\_

The bidder agrees to make every effort to carry out this MBE/WBE policy through award of subcontracts to minority/women's business enterprises to the fullest extent consistent with the efficient performance of this contract.

If 'Yes', indicate potential MBE/WBE participation level:

MBE Percentage Participation \_\_\_\_\_ %  
WBE Percentage Participation \_\_\_\_\_ %

**All pages of the Bid Form must be:  
Filled out completely, signed and returned.  
Failure to complete and submit all documents request in this IFB may  
remove your bid from consideration.**



**Page 3 of Bid Form  
IFB-19-967**

NON-COLLUSIVE AFFIDAVIT

\_\_\_\_\_ being first duly sworn, deposes and says:

That he is \_\_\_\_\_. (Partner, Officer of Firm, Corp., etc.)

The party making the foregoing proposal or bid and attests to the following:

1. That affiant employed no person, corporation, firm association or other organization, either directly or indirectly, to secure the public contract under whose services in connection with the construction of the public building or project or in securing the public contract were in the regular course of their duties for affiant; and
2. That no part of the contract price received by affiant was paid or will be paid to any person, or corporation, firm association, or other organization for soliciting the contract, other than the payment of their normal compensation to persons regularly employed by the affiant who services in connection with the construction of the public building or project were in the regular course of their duties for affiant: and
3. That such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix an overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Housing Authority of Kansas City, Missouri or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

\_\_\_\_\_  
(Name of Firm)

\_\_\_\_\_

(Signature of Bidder)

Subscribed and sworn to before me this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_

\_\_\_\_\_

NOTARY PUBLIC

My commission expires: \_\_\_\_\_

# REFERENCES

## BANKS

| <i>Name</i> | <i>Address</i> | <i>Phone</i> | <i>Account #</i> |
|-------------|----------------|--------------|------------------|
|             |                |              |                  |
|             |                |              |                  |
|             |                |              |                  |
|             |                |              |                  |

## TRADE

| <i>Name</i> | <i>Address</i> | <i>Phone</i> | <i>Account #</i> |
|-------------|----------------|--------------|------------------|
|             |                |              |                  |
|             |                |              |                  |
|             |                |              |                  |
|             |                |              |                  |

## SUBCONTRACTORS

| <i>Name</i> | <i>Address</i> | <i>Phone</i> | <i>Account #</i> |
|-------------|----------------|--------------|------------------|
|             |                |              |                  |
|             |                |              |                  |
|             |                |              |                  |
|             |                |              |                  |



## STATEMENT OF QUALIFICATIONS

All questions must be answered in a clear and comprehensive manner. If necessary, questions may be answered on separate attached sheet(s). This document must be notarized by a notary public.

1. Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

2. Name of Owner(s): \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email: \_\_\_\_\_

3. Date Company was Established: \_\_\_\_\_

4. Are you a Sole Proprietorship?: \_\_\_\_\_

Partnership?: \_\_\_\_\_

Joint Venture?: \_\_\_\_\_

Corporation? \_\_\_\_\_

If a corporation, please enclose a copy of corporation papers and corporate seal.

5. How many years have you been engaged in business under your present firm or trade name? \_\_\_\_\_  
\_\_\_\_\_

6. Give the name and address of any other contract firm under which the owners or partners have operated. Include dates:

| NAME | ADDRESS | DATE |
|------|---------|------|
|      |         |      |
|      |         |      |
|      |         |      |
|      |         |      |

7. Current similar contracts: (Give name, address, phone number, amount of each contract, and appropriate anticipated date of starting and completion.)

| NAME | ADDRESS | PHONE | AMOUNT | START | COMPLETE |
|------|---------|-------|--------|-------|----------|
|      |         |       |        |       |          |
|      |         |       |        |       |          |
|      |         |       |        |       |          |
|      |         |       |        |       |          |
|      |         |       |        |       |          |
|      |         |       |        |       |          |

8. General scope of work performed by your Company, (i.e., general contracting, specialty in any particular trade).

9. Are you minority owned? \_\_\_\_\_. If so, are you certified as an MBE/WBE with the City or State? \_\_\_\_\_. If yes, please attach a copy of this certification. Resident owned business? \_\_\_\_\_.

10. If so, provide the information below:

| NAME | % of OWNERSHIP | RACE | SEX | TITLE |
|------|----------------|------|-----|-------|
|      |                |      |     |       |
|      |                |      |     |       |
|      |                |      |     |       |

11. Are you in compliance with the Kansas City, Missouri Human Relations Department? \_\_\_\_\_. (Attach a copy of Certificate of Compliance from the City.)
12. City of Kansas City, Missouri occupation License Number: \_\_\_\_\_.  
(Enclose a copy)
13. Registration with Secretary of State of Missouri (Enclose a copy)
14. Have you ever failed to complete any work awarded to you? \_\_\_\_\_ If so, when, where and why?
15. Have you ever defaulted on a contract? \_\_\_\_\_ If so, when, where and why?
16. List the more important projects recently completed by your company, stating the approximate cost for each, and the month and year completed. Include the name, address and phone number of each party.

| NAME | ADDRESS | PHONE | AMOUNT | START | COMPLETE |
|------|---------|-------|--------|-------|----------|
|      |         |       |        |       |          |
|      |         |       |        |       |          |
|      |         |       |        |       |          |
|      |         |       |        |       |          |
|      |         |       |        |       |          |

17. List name, address, background and experience of the principal members of your organization, including the officers (if needed, use additional sheets).

| NAME | ADDRESS | BACKGROUND EXPERIENCE |
|------|---------|-----------------------|
|      |         |                       |
|      |         |                       |
|      |         |                       |
|      |         |                       |

18. Has the company ever been party to or involved in any action related to discrimination based upon race, nationality, sex, or religion? \_\_\_\_\_ If so, give full details:

19. Has the company ever caused a lien for material or mechanical work default payment to be placed against owner? \_\_\_\_\_ If so, when, where, why and resolution:

20. Social Security Number: \_\_\_\_\_

21. Federal I.D. Number: \_\_\_\_\_

22. Insurance Company: \_\_\_\_\_

Amount of Insurance: \_\_\_\_\_

Bonding Agent: \_\_\_\_\_

Amount of Bond: \_\_\_\_\_

**Attach a copy of the insurance certificate.**

**At Contract Signing – verification of the HAKC as an Additional Insured is required.**

23. Are you certified by any other agencies? \_\_\_\_\_

Names of Agencies:

24. Please sign the statement below to authorize the release of information to the HAKC for the purpose of verifying your references.

I hereby authorize the release of information to the Housing Authority of Kansas City, Missouri for the purpose of verifying my references.

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Date

# STATEMENT OF RELEASE OF INFORMATION AUTHORIZATION

The undersigned hereby authorizes and request any person, firm or corporation to furnish any information requested by the Housing Authority of Kansas City, Missouri in verification of the recitals comprising this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Name of Contractor: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MISSOURI    )  
                                  ) SS  
COUNTY OF JACKSON )

\_\_\_\_\_ being duly sworn, deposes and says that he is \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_ and that the answers to  
the foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

# JOINT VENTURE QUESTIONNAIRE

The following questionnaire must be fully completed and submitted concurrently with the Contractor's Occupation Statement by all Contractors submitted as a joint venture.

Names of Firms involved in the Joint Venture: \_\_\_\_\_

- 
1. Specify the percent of Minority Business Enterprise/Women Business enterprise (MBE/WBE) ownership in terms of profit and loss sharing.
  2. Describe the Capital Contributions by each Joint Venturer.
  3. Describe the financial controls of the Joint Venture: Who will keep the books, how will expenses to be reimbursed what is the authority of each Joint Venturer to commit to obligate the others?
  4. Explain the relationship of ownership, options for ownership or loans between the Joint Venturers.
  5. How and by whom will the on-site work be supervised?
  6. Who will be responsible for material purchases and how will the purchases be financed?
  7. Who will provide the equipment, the estimated cost thereof and how will the equipment be financed?
  8. How and from whom will bonding be acquired; insurance; name of company(s) providing bonding and insurance.
  9. Describe the experience and business qualifications of each Joint Venturer.
  10. Submit copies of any Joint Venture Agreement.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

# General Conditions for Construction Public Housing Programs

U.S. Department of Housing and Urban

**Contracts Development** - Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp. 3/31/2020)

**Applicability. This form is applicable to any construction/development contract greater than \$150,000.**

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, 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.

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**1. Definitions** (a) The Contractor shall furnish all necessary labor,

(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 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 Availability and Use of Utility Services herein.

(b) The Contractor shall perform on the site, and with its own authority is as set forth elsewhere in this contract.

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 (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, 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.

change order, or other modification. (d) The Contractor shall be responsible for all damages to

(c) "Contracting Officer" means the person delegated the au- persons or property that occur as a result of the Contractor's fault or negligence, and authority by the PHA to enter into, administer, and/or shall take proper terminate this contract and designated as such in writing

to the Contractor. The term includes any successor 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 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. contract.

(e) "Drawings" means the drawings enumerated in the (e) The Contractor shall lay out the work from base lines and schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications 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 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 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, relationship between the Contractor and HUD.

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

(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. complete and operating condition.

(h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this

(h) The Contractor's responsibility will terminate when all contract.

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.

(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.

(l) "Work" means materials, workmanship, and manufacture and fabrication of components.

### **3. Architect's Duties, Responsibilities, and Authority**

#### **2. Contractor's Responsibility for Work**

(a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

Previous editions are obsolete

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(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.

#### **6. Construction Progress Schedule**

Rev. 12/19/2015

(a) 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 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; the required schedule.

(2) Making modifications in drawings and technical 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 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** progress will be regained.

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

(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 Construction Requirements**

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

(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

(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.

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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 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.

perform the work without additional expense to the PHA.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are (b) The PHA assumes no responsibility for any conclusions used, it shall be 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.

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

#### **8. Differing Site Conditions**

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".

(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 (d) "Shop drawings" means drawings, submitted to the PHA contract.

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 (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 contract.

(e) If this contract requires shop drawings, the Contractor the contract modified in writing accordingly. 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)  
(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. below.

#### **9. Specifications and Drawings for Construction**

(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

(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

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

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required in the planning and production of the work. Such

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

machinery and mechanical and other equipment.

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

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

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

made up to the time the work is completed and accepted. expense, with all shipping charges prepaid. The

Contractor shall label, or otherwise properly mark on

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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

(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 is intended to be used.

(a) "As-built drawings," as used in this clause, means

(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.

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." (4) Approval of a sample shall not constitute a waiver of

(b) As required by the Contracting Officer, the Contractor the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories

may be rejected for cause even though samples have 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 been approved.

walks.

(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.

(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

(6) After approval, samples will be kept in the Project office until completion of work. They may be built into

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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.

this contract.

(b) Approval of equipment and materials. 12. Permits and Codes

(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

(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

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waivers. Before installing the work, the Contractor shall 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.

#### 14. Temporary Heating

Where the requirements of the drawings and

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. 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.

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

(a) The PHA shall make all reasonably required amounts of 13. Health, Safety, and Accident Prevention 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

(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 without charge.

(b) The Contractor, at its expense and in a manner by the Secretary of Labor by regulation;

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.

(2) Protect the lives, health, and safety of other persons;

(3) 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

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

seq.; and (a) The Contractor shall preserve and protect all structures,

(2) Include the terms of this clause in every subcontract 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 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 contract.

(b) The Contractor shall only remove trees when specifically 1904.

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

(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 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, stop order issued under these circumstances.

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 (e) The Contractor shall be responsible for its subcontractors' connected with the

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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. 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.

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(f) New work which connects to existing work shall The contractor shall comply with the Clean Air Act, as 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. 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 **19. Energy Efficiency** 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 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 - specified in the plans or specifications. (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

(i) 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 performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements. premises.

(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 (k) The Contractor shall repair any damage to vegetation, scientific 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.

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

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

(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 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

be removed. approvals with respect to the work shall be given to the

(b) The Contractor shall, as directed by the Contracting Contractor by the Contracting Officer.

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.

(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.

#### **18. Clean Air and Water**

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(f) The PHA may conduct routine inspections of the occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of 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.

construction site on a daily basis.

(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 **22. Warranty of Title** the premises.

(h) If the Contractor does not promptly replace or correct 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. 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

### **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 (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 extension of time. possession.

(j) The Contractor shall notify the Contracting Officer, in (b) The Contractor shall remedy, at the Contractor's 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.

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—

(1) 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 **21. Use and Possession Prior to Completion** writing, within a reasonable time after the discovery of any failure, defect or damage.

(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

(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:

(1) Obtain all warranties that would be given in normal deemed an acceptance of any work under the contract. commercial practice;

(b) While the PHA has such possession or use, the (2) Require all warranties to be executed in writing, for 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 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.

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(h) Unless a defect is caused by the negligence of the basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one Contractor or subcontractor or supplier at any tier, the 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 project, the Contractor shall furnish a separate furnished material or design.

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

(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. 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 submitted not later than days in advance of

(j) This warranty shall not limit the PHA's rights under the 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 Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens separate progress payment estimate for each.

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.

(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:

Administrative Requirements (1) The amounts requested are only for performance in accordance with the specifications, terms, and

25. Contract Period 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, this contract within 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. (3) This request for progress payments does not include

26. Order of Provisions

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 In the event of a conflict between these General subcontract. 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.

Name:

Title:

Date:

27. Payments (f) Except as otherwise provided in State law, the PHA shall

(a) The PHA shall pay the Contractor the price as provided in 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, 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

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Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are 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 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 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.

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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 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 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 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 PHA.

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;

(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

(3) PHA-furnished facilities, equipment, materials,

services, or site; or,

(4) Directing the acceleration in the performance of the work caused it.

(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 (i) The PHA shall make the final payment due the Contractor the order as a change order 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 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 has been assigned.

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

(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.

the defective specifications.

(e) The Contractor must assert its right to an adjustment

## **28. Contract Modifications**

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

(a) Only the Contracting Officer has authority to modify any adjustment shall be allowed if asserted after final term or condition of this contract. Any contract payment under this contract.

modification shall be authorized in writing. (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:

(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

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(1) Direct Costs. Materials (list individual items, the 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.

quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit 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

(c) A claim under this clause shall not be allowed (1) for any 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**

allowed a profit on the profit received by any

(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.

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 net-change 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

(b) Except for disputes arising under the clauses entitled contract in its entirety.

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

(h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the resolved under this clause.

(c) All claims by the Contractor shall be made in writing and date when such action will be taken, 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

(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.

decision will be made.

(e) The Contracting Officer's decision shall be final unless

### **30. Suspension of Work**

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

(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 Contracting Officer's decision.

convenience of the PHA. (f) The Contractor shall proceed diligently with performance

(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 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

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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 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 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**

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 (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 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 which such termination becomes effective.

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

(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 the Disputes clause of this contract. made subject to the provisions of the Disputes clause of

(c) If, after termination of the Contractor's right to proceed, it this contract. 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.

### **35. Assignment of Contract**

#### **33. Liquidated Damages**

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.

(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 \$ [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

#### **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:

by delay. (1) Workers' Compensation, in accordance with state or

(b) If the PHA terminates the Contractor's right to proceed, Territorial Workers' Compensation laws.

the resulting damage will consist of liquidated damages until such reasonable time as may be required for final (2) Commercial General Liability with a combined single than \$

limit for bodily injury and property damage of not less [Contracting Officer insert amount]

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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

(2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

on the site(s) not covered by Automobile Liability (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 under (3) below. If the Contractor has a "claims made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the programs by any agency of the United States execution date of the Contract; and the extended reporting period may not be less than five years Government or of the state in which the work under this contract is to be performed.

following the completion date of the Contract. (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

(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 \$ Contractor.

[Contracting Officer insert amount] per occurrence. (d) The Contractor shall insert appropriate clauses in all (b) Before commencing work, the Contractor shall furnish the subcontracts to bind subcontractors to the terms and conditions of this contract insofar as PHA with a certificate of insurance evidencing that they are applicable

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 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 include such work.

of the contract permit, which encourage participation by

small and minority businesses and women's business  
(c) All insurance shall be carried with companies which are enterprises; and 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.

(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.

**37. Subcontracts** (b) The Contractor shall take affirmative action to ensure that

(a) Definitions. As used in this contract - 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.

(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.

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(c) The Contractor shall post in conspicuous places available (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 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 housing 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

(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.

employees and applicants for employment. (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

(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, 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 or as otherwise provided by law. violation of the regulations in 24 CFR Part 135.

(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 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.

interests of the United States.

(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).

(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.

**40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.**

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**41. Interest of Members of Congress** (a) The PHA, HUD, or Comptroller General of the United

No member 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.

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 **42. Interest of Members, Officers, or Employees and audit, examination, Former Members, Officers, or Employees** excerpts, and transcriptions.

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.

(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.

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

(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.

(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

**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.

Federal contract, grant, loan, or cooperative agreement.

(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

(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.

work in more than one classification may be

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

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

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be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the 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 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 program.

determination.

(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

(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. respective employees to whom they are due.

(c) Payrolls and basic records.

(1) Payrolls and basic records relating thereto shall be

(iii) In the event the Contractor, the laborers or 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.

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

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(2) (i) The Contractor shall submit weekly for each week make such records available may be grounds for debarment action pursuant in which any contract work is performed a copy of to 29 CFR 5.12.

all payrolls to the Contracting Officer for (d) (1) Apprentices. Apprentices will be permitted to work at

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

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

Control Number 1214-0149.) appropriate) to be eligible for probationary

(ii) Each payroll submitted shall be accompanied by a 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

"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 hourly rate) specified in the Contractor's or

(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 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 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 program is approved.

(2) Trainees. Except as provided in 29 CFR 5.16, its designee may, after written notice to the 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 Rev. 12/19/2015

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

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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

(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 (j)(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 clause.

(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. clause.

(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.

(3) Withholding for unpaid wages and liquidated damages.

(g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon Act shall be the property of 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.

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).

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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 DOL-recognized 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.

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# Instructions to Bidders for Contracts Public and Indian Housing Programs

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

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### 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.

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### **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 —

[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.

**9. 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 [http:// www.fms.treas.gov/c570/index.html](http://www.fms.treas.gov/c570/index.html), 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 Indian-owned 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

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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 re-advertise 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 be 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 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.

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# **Representations, Certifications, and Other Statements of Bidders Public and Indian Housing Programs**

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

Office of Public and Indian Housing

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## **Representations, Certifications, and Other Statements of Bidders**

Public and Indian Housing Programs

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### **1. Certificate of Independent Price Determination**

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to

subparagraphs (a)(1) through (a)(3) above.

\_\_\_\_\_ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit"  is,  is not included with the bid.

## **2. Contingent Fee Representation and Agreement**

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1)  has,  has not employed or retained any person or company to solicit or obtain this contract; and

(2)  has,  has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

## **3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions** (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

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## 6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period:  
calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

## 7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a)  is,  is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b)  is,  is not a women-owned business enterprise. "Womenowned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c)  is,  is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

Black Americans  Asian Pacific Americans

Hispanic Americans  Asian Indian Americans

Native Americans  Hasidic Jewish Americans

## 8. Indian-Owned Economic Enterprise and Indian

**Organization Representation** (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a)  is,  is not an Indian-owned economic enterprise.

"Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned.

"Indian," as used in this provision, means 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.

(b)  is,  is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an

officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) 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 on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

#### **4. Organizational Conflicts of Interest Certification**

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the bidder; or,  
(b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

#### **5. Bidder's Certification of Eligibility**

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's sub-contractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award.

If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

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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.

#### **9. Certification of Eligibility Under the Davis-Bacon**

**Act** (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it

nor any person or firm who has an interest in the bidder'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).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any 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).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

**10. Certification of Nonsegregated Facilities** (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

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

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

**Note:** The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

**11. Clean Air and Water Certification** (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt

subcontract.

**12. Previous Participation Certificate** (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate"

[ ] is, [ ] is not included with the bid.

**13. Bidder's Signature**

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

\_\_\_\_\_  
(Signature and Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Address)

**g. HAKC CONTRACT FOR CONSTRUCTION SERVICES**

Sample Contract – available on HAKC website -  
<http://www.hakc.org/procurement.aspx>

# Section 3 Brochure

## What is Section 3?

It is a means by which HUD fosters local economic development, neighborhood economic improvement, and individual self-sufficiency. Section 3 is the legal basis for providing jobs for residents and awarding contracts to businesses in areas receiving certain types of HUD financial assistance.

Under Section 3 of the HUD Act of 1968, wherever HUD financial assistance is expended for housing or community development, to the greatest extent feasible, economic opportunities will be given to Section 3 residents and businesses in that area.

## Section 3 Policy

Congress established the Section 3 policy to guarantee that the employment and other economic opportunities created by Federal financial assistance for housing and community development programs should, if possible, be directed toward low and very-low income persons, particularly those who are recipients of government assistance for housing.

## Who are Section 3 residents?

Section 3 residents are:

- Public Housing residents
- Low and very-low income persons who live in the metropolitan area or non-metropolitan county where a HUD-assisted project for housing or community development is located.

## Determining Income Levels

- Low income is defined as 80% or below the median income of that area
- Very-low income is defined as 50% or below the median income of that area
- Median incomes can be found using the **American Fact Finder** at [www.factfinder.census.gov/home/saff/main.html](http://www.factfinder.census.gov/home/saff/main.html)

## What is a Section 3 business & what types of economic opportunities are available under Section 3?

A business:

- That is at least 51 percent or more owned by Section 3 residents,
- 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

- That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to a Section 3 business concern

Type of Opportunities: Job training, Employment, Contracts

Examples include:

| <i>Administrative/<br/>Management</i>  | <i>Services</i>   | <i>Construction</i>  |
|--|---|--|
| accounting<br>operate payroll<br>painting<br>research<br>plastering<br>bookkeeping<br>plumbing purchasing<br>surveying<br>word processing<br>setting | appliance repair<br>florists<br>marketing<br>carpet installation<br>janitorial<br>photography<br>catering<br>landscaping<br>printing<br>computer/information<br>manufacturing<br>transportation | architecture machine<br>bricklaying<br>carpentry<br>cement/masonry<br>demolition<br>drywall tile<br>electrical<br>elevator construction<br>engineering<br>fencing<br>heating<br>iron works |

### **Who will award the economic opportunities?**

Recipients of HUD financial assistance and their contractors and subcontractors are required to provide economic opportunities, to the greatest extent possible, consistent with existing Federal, State, and local laws and regulations.

### **Who receives priority under Section 3?**

For training and employment:

- Persons in public and assisted housing
- Persons in the area where the HUD financial assistance is expended
- Participants in HUD Youthbuild programs
- Homeless persons

For contracting:

Businesses that meet the definition of a **Section 3 business owner**

### **How can businesses find Section 3 residents to work for them?**

Businesses can recruit in the neighborhood and public housing developments to inform residents about available training and job opportunities. Distributing flyers, posting signs, placing ads, and contacting resident organizations and local community development and employment agencies to locate potential workers are effective ways of acquiring jobs.

### **Are recipients, contractors and subcontractors required to provide long-term employment**

### **opportunities, and not simply seasonal or temporary employment?**

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very-low income person, including seasonal and temporary employment, as well as long-term jobs.

Employment goals are based on “new hires”, which are defined as full-time employees for permanent, temporary or seasonal employment opportunities.

Recipients and contractors are encouraged to provide long-term employment. At least 30 percent of the permanent, full-time employees hired should be Section 3 residents. After a Section 3 employee has been employed for 3 years, the employee may no longer be counted as a Section 3 employee to meet the 30 percent requirement. This requires recipients to continue hiring Section 3 residents when employment opportunities are available.

### **How can businesses and low income persons find out more about Section 3?**

Contact the Fair Housing and Equal Opportunity representative at your nearest HUD Field Office or the HUD Community Builder.

### **What if it appears an entity is not complying with Section 3?**

There is a complaint process. Section 3 residents, businesses, or a representative for either may file complaints if they believe a violation of Section 3 requirements has occurred where a HUD-funded project is planned or underway. Complaints will be investigated; if appropriate, voluntary resolutions will be sought. A complaint that cannot be resolved voluntarily may result in an administrative hearing.

### **Will HUD require compliance?**

Yes. HUD receives annual reports from recipients, monitors the performance of contractors and investigates complaints. HUD examines employment and contract records for evidence of actions taken to train and employ Section 3 residents and to award contracts to Section 3 businesses.

### **How can businesses or residents pursue an alleged violation of Section 3?**

You can file a written complaint with the **local HUD Field Office** or mail it to:

The Assistant Secretary for Fair Housing and Equal Opportunity  
ATTN: Office of Economic Opportunity  
U.S. Department of Housing and Urban Development  
451 Seventh Street, S.W.,  
Room 5100  
Washington, D.C. 20410-2000

A written complaint should contain:

- Name and address of the person filing the complaint
- Name and address of subject of complaint (HUD recipient, contractor or subcontractor)
- Description of acts or omissions in alleged violation of Section 3
- Statement of corrective action sought i.e. training, employment or contracts

## Section 3 Office:

The Section 3 Division is located in the Historic Lincoln Building, in the 18th and Vine District, 1601 E. 18th St., Suite 200, Kansas City, MO 64108. The **Section 3 Office** serves to regulate the City's federal requirements related to the **Section 3 HUD Act of 1968**, as amended. That acts intends to foster local and neighborhood economic development and to increase individual self-sufficiency. The Section 3 Office certifies businesses and individuals as Section 3 Business Enterprises or Section 3 Workers.

The City of Kansas City Missouri is responsible for administering more than \$9 million in Section 3 covered Community Development Block Grant (CDBG) funding. In 2006, Kansas City was the subject of a Section 3 Compliance Review, which resulted in a number of findings of noncompliance. Accordingly, Kansas City made Section 3 compliance a priority by creating an Office of Section 3 Administration with its own Section 3 Coordinator.

This office works closely with the city's Contract Compliance Division, Office of Community Development, and potential Section 3 residents/contractors. As a result, the city has developed innovative strategies for complying with the requirements of Section 3 and has exceeded the goals for contracting and employment opportunities found at 24 CFR § 135.30.

For more information please contact:

Section 3 Office  
Phone: 816-513-6817  
Fax: 816-513-6820

or

Diana Adorno-Boody  
([dboody@hac.org](mailto:dboody@hac.org)) 816-777-2904

Sec. 134.38 Section 3 clause.

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 agree 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 regulations, 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).

#### **I. 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 the 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. 134.34) 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 where category 1 or category 2 persons reside; for all other recipients, 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 resident 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.
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- (9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.
  - (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 contractor's 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 contractor's training and employment positions.
  - (13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers or 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 the 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 a 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 24 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 residents 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 implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

## II.

### III. 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 (see section III of this Appendix).
- (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) Contacting 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 HAs, contacting 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 known 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 contacting 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) Carrying out workshops on contracting 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.  
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- (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 Has, participating in the "Contracting with Resident-Owned Business" 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.

#### **IV. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns**

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the "contracting party") for implementing the Section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

- (1) **Small Purchase Procedures.** For Section 3 covered contracts aggregating no more than \$25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.
  - (i) **Solicitation.** (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:
    - the Section 3 covered contract to be awarded with sufficient specificity;
    - the time within which quotations must be submitted; and
    - the information that must be submitted with each quotation.
  - (B) If the method described in paragraph (i) (A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when is has been unable to obtain at least three quotations.
  - (ii) **Award.** (A) Where the Section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation. (B) Where the Section 3 covered contract is to be awarded based on factors other than price, a

request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for Section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) Procurement by sealed bids (Invitation for Bids). Preference in the award of Section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

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(i) Bids shall be solicited from all businesses (Section 3 business concerns, and non-Section 3 business concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid --

(A) Is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) Is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

---

|  | X =<br>lesser<br>of:                        |
|--|---|
| When the lowest responsive bid is less than \$100,000<br>\$9,000 | 10% of that bid or                          |
| When the lowest responsive bid is:                               |   |
| At least \$100,000, but less than \$200,000<br>\$16,000          | 9% of that bid, or                          |
| At least \$200,000, but less than \$300,000<br>\$21,000          | 8% of that bid, or                          |
| At least \$300,000, but less than \$400,000<br>\$24,000          | 7% of that bid, or                          |
| At least \$400,000, but less than \$500,000<br>\$25,000          | 6% of that bid, or                          |
| At least \$500,000, but less than \$1 million<br>\$40,000        | 5% of that bid, or                          |
| At least \$1 million, but less than \$2 million<br>\$60,000      | 4% of that bid, or                          |
| At least \$2 million, but less than \$4 million<br>\$80,000      | 3% of that bid, or                          |
| At least \$4 million, but less than \$7 million<br>\$105,000     | 2% of that bid, or                          |
| \$7 million or more -----  | 1 ½ % of the lowest responsive bid, with no |

- (ii) If no responsive bid by a Section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.
- (3) Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)). (i) For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance ) to be used to rate proposals.
- (ii) One of the evaluation factors shall address both the preference for Section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (Section 3 strategy), as disclosed in proposals submitted by all business concerns (Section 3 and non-Section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.
  - (iii) The component of this evaluation factor designed to address the preference for Section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.
  - (iv) With respect to the second component (the acceptability of the Section 3 strategy), the FRP shall require the disclosure of the contractor's Section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable Section 3 strategy. The contract award shall be made to the responsible firm (either Section 3 or non-Section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.