



**INVITATION FOR BIDS**

***TO PROVIDE EVAPORATIVE COOLER REPLACEMENTS – IN BARSTOW CA***  
***Project Number: #PC1051***

- 1) **Introduction:** The Housing Authority of the County of San Bernardino (HACSB) is accepting bids from licensed and bonded Trade Contractors to provide ***Evaporative Cooler Replacements – in Barstow CA***
- 2) **Project Funding:** This project is funded through U.S. Department of Housing and Urban Development (HUD), a Public Entity and HUD Determined Wages (HUD Form 52158) will be required. Tentative construction date will be July-August, 2018.
- 3) **Bidder requirement:** Pursuant to California Business and Professions Code 7028.15 to hold a valid State Contractor's License as classified in Public Contract Code Section 3300 at the time the contract is awarded. Bidders shall conform to California Business and Professions Code 7059 for Specialty Contractor's Licensing Provisions. Certification is contained in the Bid Form. Prime Bidders must possess the following classification(s) of contractor's license for each Bid Package listed below:

<b><i>HACSB PROJECT NUMBER</i></b>	<b><i>LICENSE REQUIRED</i></b>	<b><i>TRADE</i></b>	<b><i>ESTIMATE</i></b>
<i>#PC1051</i>	C20	Warm-Air Heating, Ventilating and Air-Conditioning Contractor	\$58,493.00

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***Site Location:*** **Multiple Scattered Sites:**  
 2004 Lassen Court, Barstow, CA 92311

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**Mandatory Job Walk on: July 10, 2018 at 11:30 am; Job site: 2004 Lassen Court, Barstow CA 92311**

- 4) **Contractor Responsibility:** The performance and completion of all items in the Scope of Work. The Contractor shall coordinate all work and shall cooperate with the HACSB Project Coordinator as necessary to ensure progress and timely completion of the Work.

- 5) **Duration:** The contract is 30 days. Tentative construction dates will be July-August, 2018. Actual start date for project will be given through an official notice to proceed letter. Working hours for this project will be 8:00 am to 4:30 pm Monday through Friday. Liquidated damages in the amount of \$250 per day can be assessed for this project if it is not completed within 30 days from notice to proceed.
- 6) **H.U.D Wages:** HUD wages are required to be paid for all work performed under this Invitation for bid. Current Wage Determinations are attached to this IFB under HUD FORM 52158. It shall be mandatory upon the Contractor to whom any contract is awarded and upon any Subcontractor under him to pay not less than said specified HUD rates to all laborers and mechanics employed by them in the execution of the contract. The Contractor should use the HUD Wage Rates for trades for pricing their bid.
- 7) **DIR Registration:** The DIR requires registration of public works projects to be completed within five days of awarding the contract. A PWC 100 form will be completed by the awarding body. The completion and the submission of this form fulfills the required public works project award notification as required by Labor Code sec. 1773.3
- 8) **JOB WALK:**  
Mandatory Job Walk on:  
July 10, 2018 at 11:30 am;  
Job site: 2004 Lassen Court, Barstow, CA 92311
- 9) **Deadline for Questions/ Clarification:** No oral request after job walk will be accepted. All such requests must be in writing through email to [Cgoss@HACSB.com](mailto:Cgoss@HACSB.com) or faxed to 909-915-1831 no later than **5:00pm PST on July 16, 2018.**
- 10) **Deadline for Bids: July 20, 2018 at 2:00 PM. Late bids will not be accepted.**  
  
**Bid Submittals:** Bids are to be mailed or hand delivered to - 715 E. Brier Drive San Bernardino, CA 92408. OR emailed to [Cgoss@HACSB.com](mailto:Cgoss@HACSB.com) **(If emailed complete bids and documents must be sent)**
- 11) **Intent to award:** It is the HACSB's intent to award a single contract to the lowest responsive bidder based on the total bid amount for the scope of all the work. Where found advantageous an award may be distributed to multiple vendors.

- 12) **“OR” Equal** If a reference to a specific brand name is made in these bid specifications, the brand name is illustrative and to be construed as a specification, which describes a component that has been tested or evaluated by HACSB as best meeting specific operational, design, performance, maintenance, quality, reliability standards and requirements of the HACSB, thereby incorporating these requirements by reference within the specification. An equivalent (“or equal”) may be offered by the bidder, subject to testing or evaluation by the HACSB prior to award of contract. HACSB shall be the sole judge of whether any proposed item will fulfill its requirements for HACSB intended purpose and reserves the right to reject proposed item as non-responsive. It shall be the sole responsibility of the bidder to provide, at bidder’s expense, any product information, test data and other information or documents HACSB may require fully evaluating or demonstrating the acceptability of the offered substitute. Where appropriate, independent testing or evaluation (including destructive testing), may be required as a condition of acceptance at a qualified test facility at the bidder’s expense.
- 13) **Interpretation of IFB:** The Contractor must make careful examination and understand all of the requirements, specifications, and conditions stated in the IFB. If any Contractor planning to submit a quote finds discrepancies in or omissions from the IFB, or is in doubt as to the meaning, a written request for interpretation or correction must be given to HACSB. Any changes to the IFB will be made only by written addendum and may be posted on the HACSB website at <http://ww2.hacsb.com/business>. The HACSB is not responsible for any other explanations or interpretations. If any provision in this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. All notices regarding this procurement may be posted on the HACSB purchasing website at
- 14) **Contractor Responsibility:** It is the contractor’s responsibility to submit all necessary documents included with the bid package including the use of the supplied bid bond form. Bid Guarantee by the bidder in accordance with the Instructions to Bidders for Contracts, which states: “All bids must be accompanied by a negotiable bid guarantee, which shall be not less than five percent (5%) of the amount of the bid”. The Bid Guarantee shall be submitted by each bidder with the bid, if applicable. Use of a standard surety company’s form for the Bid Bond is permitted.
- 14.1 The work shall consist of the provision of all permits, materials, labor and equipment to perform the complete work as identified in the Scope of Work for this bid. Contractor will be responsible for following all items addressed in the Scope of Work, specifications, and all applicable laws, codes, regulations and any manufacturer’s recommendations.

15) **Bid Requirements:** The following items are statutory requirements for each bidder and are **to be submitted with the bid**. Signatures, and/or initials, are required. If any of the required/applicable items are not submitted, incomplete, or submitted on any other form other than those provided, the bid can be considered non-responsive and will be disqualified. All of these forms are available on the HACSB website at [www.hacsb.com](http://www.hacsb.com) on the "Business" page under "Procurement Forms".

1. Representations, Certifications, and Other Statements of Bidders (HUD 5369-A).
2. General Contract Conditions Small Construction/Development (HUD 5370EZ).
3. Statement of Bidder's Qualifications
4. Designation of Subcontractors (included in this document)
5. Certification of Bidder Regarding Status as a Section 3 Business concern.
6. Certification of Bidder Regarding Equal Employment Opportunity.
7. Certification of Bidder Regarding Minority/Women's Business Enterprise.
8. Corporate Certification (applicable to corporations only)
9. Minority Code Identification Form.
10. Non-collusive Affidavit Form. (included in this document)
11. Cost Sheet Form. (included in this document)
12. Registered with Department of Industrial Relations (DIR)  
<http://www.dir.ca.gov/public-works/Contractors.html>
13. Bid Guarantee (for contracts in excess of \$25,000) by the bidder in accordance with the Instructions to Bidders for Contracts, which states: "All bids must be accompanied by a negotiable bid guarantee, which shall be not less than five percent (5%) of the amount of the bid". The Bid Guarantee shall be submitted by each bidder with the bid. Use of a standard surety company's form for the Bid Bond is permitted.

The following items are **required** of the apparent low bidder **once determined**:

1. Valid State of California contractor's License, or appropriate specialty contractor's license
2. Certificate of Worker's Compensation Insurance
3. Certificate of Liability Insurance, minimum policy coverage of \$1,000,000.00 *with the HACSB named as an additional insured on the policy.*
4. Certificate of Automobile Liability Insurance, minimum policy coverage of \$500,000.00 with the HACSB named as an additional insured on the policy.
5. Contractor's Certification of Compliance with the California Prevailing Wages and Related Acts Requirements. (If applicable).
6. Certification of Understanding and Authorization.
7. Agreement Certification
8. Stipulation of Lien.
9. Warranty/Guarantee.
10. Post jobsite notices on public works requirements
11. 100 % Performance/Payment Bond (if bid is over \$100,000)

- 15.1) Bidders shall inform all proposed subcontractors that they will be required to submit similar items within 72 hours if requested by HACSB. See also the Designation of Subcontractors included in this bid.
- 15.2) Bidder's attention is directed to the provision for Equal Employment Opportunity and payment for all persons of not less than the minimum wages as set forth in Prevailing Wage Requirements. These rates will be enforced.
- 15.3) No bid shall be withdrawn for a period of one hundred twenty (120) days subsequent to the opening of the bids without the consent of the HACSB.
- 15.4) Additional requirements may be imposed as necessary to satisfy all statutory requirements which may attach to the work needed to be performed. The HACSB reserves the right to reject any or all bids, to accept the bid best suited to its needs, or to waive any non-statutory informality in the bidding.
- 15.5) Payroll certification will be required through LCP Tracker system. [www.lcptracker.net](http://www.lcptracker.net)

Housing Authority of the County of San Bernardino  
715 East Brier Drive  
San Bernardino, CA 92408  
Clifford Goss, Procurement Officer  
Phone: 909-332-6342 Email: [CGoss@hacsb.com](mailto:CGoss@hacsb.com)

## **SPECIFICATIONS AND SCOPE OF WORK**

### **JOB OVERVIEW**

The Housing Authority of the County of San Bernardino is seeking qualified licensed contractor(s) provide replacement of Evaporative Cooling equipment. The work shall consist of the provision of all permits, materials, labor and equipment to perform the complete work as stipulated in this section. Contractor will be responsible for following all items addressed in the Scope of Work, specifications, and all applicable laws, codes, regulations and any manufacturer's recommendations.

### **SCOPE OF WORK**

Contractor shall supply labor, materials and equipment to remove and replace evaporative cooling equipment. Scope of work includes, but not limited to the following:

1. Inspect steel cooler support frames for corrosion & notify HACSB of replacement needs. If support is rusted and can no longer be safely used, contractor will remove the support and patch holes in stucco.
2. Disconnect, de-pipe, detach, and remove the existing evaporative cooler unit. Re-use existing plenums.
3. Recycling of metal scrap is strongly encouraged.
4. Provide and install replacement evaporative cooler units in the same locations as current.
5. If steel support frame was removed due to rust, new cooler shall be suspended from roof eaves with traditional cooler chain kit.
6. Re-use existing supply tubing where possible. Contractor will install new ¼" copper tubing to units as necessary. No extras will be approved for water supply connections.
7. Install new pump, basket & overflow tube.
8. Provide and re-connect all necessary piping, electrical conduit, wiring, controls, ductwork & mounting accessories.
9. All electrical whips, wiring, boxes and cover plates from switch location to cooler to be replaced and wired for 2 speed operation. Whip shall have 5 conductors total (3 switched wires, neutral and ground wires).
10. The blower motor pulley shall be field-adjusted to achieve proper amp draw on motor nameplate.
11. Provide testing, adjusting, and balancing services for the new system and for all registers.

### **EXCLUSIONS**

Interior Control Switch, Painting

### **JOB SCHEDULING**

Anticipated job start date is 8/15/2018. This date is tentative, and may change based on other trades working on the projects(s). Job duration is 30 calendar days. Contractor shall submit proposed work schedule to HACSB at least 2 weeks prior to work start date.

### **MATERIALS SPECIFICATIONS**

All units must be supplied with "Aspen" pad material, new pump & basket. All motors shall be 2 speed; 120V nominal with adjustable pulleys.

3500 CFM side draft; ½ HP motor; 4500 CFM down draft; ½ HP motor; 6500 CFM down draft; ½ HP motor.

Bidders must submit proposed product information, manufacturer & model number with bid packages.

### **SITE LOCATION(S)**

“BIGHORN” SITE (22 Units)

#	ADD	STREET	Apt #	Location	Sq Ft	CFM	Discharge
1	2004	Lassen Ct		Up ^	1015	3500	Side
2	2004	Lassen Ct		Dwn v	1015	3500	Side
3	2008	Lassen Ct		Up ^	1015	3500	Side
4	2004	Bighorn Ct		Up ^	1015	3500	Side
5	2008	Bighorn Ct		Up ^	1015	3500	Side
6	2008	Bighorn Ct		Dwn v	1015	3500	Side
7	2012	Bighorn Ct		Up ^	1015	3500	Side
8	2012	Bighorn Ct		Dwn v	1015	3500	Side
9	2016	Bighorn Ct		Up ^	1015	3500	Side
10	2016	Bighorn Ct		Dwn v	1015	3500	Side
11	2020	Bighorn Ct		Up ^	1015	3500	Side
12	2020	Bighorn Ct		Dwn v	1015	3500	Side
13	2024	Bighorn Dr		Up ^	1015	3500	Side
14	902	Bighorn Dr		Up ^	1015	3500	Side
15	904	Bighorn Dr		Up ^	1015	3500	Side
16	908	Bighorn Dr		Up ^	1015	3500	Side
17	2017	Monterey		Up ^	1015	3500	Side
18	2025	Monterey		Up ^	1015	3500	Side
19	2025	Monterey		Dwn v	1015	3500	Side
20	2029	Monterey		Up ^	1015	3500	Side
21	2029	Monterey		Dwn v	1015	3500	Side
22	901	Zion		Up ^	1015	3500	Side

“DESERET” SITE (10 Units)

#	ADD	STREET	Apt #	Location	Sq Ft	CFM	Discharge
1	1050	Deseret	1	Roof	657	3500	Down
2	1050	Deseret	2	Roof	615	3500	Down
3	1050	Deseret	3	Roof	615	3500	Down
4	1050	Deseret	4	Roof	1173	6500	Down
5	1050	Deseret	5	Roof	1010	6500	Down
6	1050	Deseret	11	Roof	1010	6500	Down
7	1050	Deseret	12	Roof	890	4500	Down
8	1050	Deseret	13	Roof	890	4500	Down
9	1050	Deseret	14	Roof	890	4500	Down
10	1050	Deseret	15	Roof	1010	6500	Down

END OF SOW

16) **EXCLUSIONS** : NA

17) **SCHEDULING** Tentative construction dates will be between July 2018 and August 2018. Contractor shall submit work plan to HACSB at least 14 days prior to beginning work.

18) **PROJECT CONDITIONS:**

- 23.1 Contractor to work in a safe orderly manner ensuring safety of personnel, pedestrians and property.
- 23.2 Contractor is responsible to comply with any/all required permits required by local authorities and ordinances. Contractor is responsible for all approvals, inspections per local Building & Safety Requirements
- 23.3 Conditions existing at time of inspection for bidding purposes will be maintained by HACSB as far as practical.
- 23.4 Contractor to verify all utilities disconnected prior to work. Including, but not limited to Gas, Electric, Cable TV, FIOS, Sewer, Telephone, and Water.
- 23.5 Curb/Gutter and Driveway approach shall remain and be protected during repairs.
- 23.6 Storage or sale of removed items or materials on-site will not be permitted.
- 23.7 Contractor responsible for RRP compliance & notification.
- 23.8 Contractor to dispose of all construction related debris.
- 23.9 Contractor shall preserve all surrounding buildings and property. Any damage to surrounding buildings or property will be repaired by the Contractor at his expense.

END SCOPE OF WORK SECTION



Housing Authority of the County of San Bernardino  
Bid Issue Date: June 22, 2018  
Job Walk Date: July 10, 2018  
Bid Closing Date: July 20, 2018

Bid PC1051  
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# INVITATION FOR BID COST SHEET - PC1051

DATE: \_\_\_\_\_

Housing Authority of the County of San Bernardino  
Procurement & Contracts Department

**DELIVER PROPOSAL TO: 715 E. Brier St. San Bernardino CA, 92408**  
**BY: 2:00pm on July 20th, 2018**  
**Attn: Clifford Goss PC1051**

Materials and/or Services: **Evaporative Cooler Replacements – in Barstow CA**  
**PC1051: 2004 Lassen Court, Barstow, CA 92311**  
**Bids Due: 2:00pm on July 20, 2018**

Vendor Name: \_\_\_\_\_  
Name and Title of Vendor's contact person: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

Contractor's License # \_\_\_\_\_ Expiration Date: \_\_\_\_\_

The undersigned hereby agrees to furnish all materials, labor, tools, equipment, apparatus, facilities, and transportation necessary to complete all work in strict conformity with the specifications, the Instructions and Conditions attached hereto, and to execute the contract to the satisfaction of the HACSB, at the following cost(s):\*

LABOR \$ \_\_\_\_\_  
MATERIALS \$ \_\_\_\_\_  
ALL OTHERS \$ \_\_\_\_\_  
TOTAL PROJECT COST \$ \_\_\_\_\_

\_\_\_\_\_ Dollars

Contractor Warranty \_\_\_\_\_ Manufacture Warranty \_\_\_\_\_

**Note: If Proposal is greater than \$25,000 the Proposal shall also include a Bid Guarantee as defined in the Contract Documents. ORIGINAL BID BOND MUST BE DELIVERD TO OFFICE AND RECEIVED BY DUE DATE.**

In submitting this Proposal it is understood that the right is reserved by HACSB to reject any and all proposals. If written notice of the acceptance of this Proposal is mailed, telegraphed, faxed or delivered to undersigned within thirty (30) days after the opening thereof, or at any time thereafter before this proposal is withdrawn, the undersigned agrees to a contract in the prescribed form and furnish any required insurance requirements within ten (10) days after the contract is presented to it for signature.

VENDOR'S AUTHORIZED SIGNATURE:  
The undersigned hereby certifies that this Proposal is submitted in response to this solicitation.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_



## NON-COLLUSION AFFIDAVIT FORM

(Public Contract Code Section 7106)

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid.  
(Owner, partner, etc.) (Company)

2. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham.

3. Neither said bidder nor any of its officers, partners owners, subcontractors, agents, representatives, employees or parties in interest including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix price or prices in the attached Bid or of any other Bidder, or to fix overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement and advantage against the Housing Authority of the County of San Bernardino, or the owner of the property interested in the proposal contract;

4. No member of the Board, or other Officers of the Housing Authority of the County of San Bernardino, or any person in the employ of the City or Agency is directly or indirectly interested in the bid, or the work to which it relates, or in any portion of the profits thereof; and,

5. The price of prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest including this affiant;

6. I am/The Bidder is not indebted to the Housing Authority of the County of San Bernardino in any form or manner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city], \_\_\_\_\_ [State].

\_\_\_\_\_  
Signature Name

\_\_\_\_\_  
Printed Name of Person Signing

**INSTRUCTIONS AND CONDITIONS**

1. **Vendor Registration.** For HACSB to consider Vendor's proposal ("Proposal"), Vendor shall register with the HACSB. Vendor must submit vendor application and all required forms located on HACSB website at [www.hacsb.com](http://www.hacsb.com).
2. **Verification.** Vendor should verify bids before submission, as they cannot be withdrawn or corrected after being submitted. Proposal must be signed by a responsible officer or employee of the Vendor's firm. Obligations assumed by such signatures must be fulfilled. This Proposal may, at HACSB's sole discretion, be rejected if is adjudged incomplete, illegible, or conditional. Vendor may submit alternate proposals or explanations on separate sheets. Such alternates will not be considered in determining the low bid, but may be used in negotiations after determination of the low bidder.
3. **Manufacturers.** (If applicable) In the Proposal, Vendor must state brand of manufacturer and model number on each item bid. If bidding manufacturer and model other than that specified, attach specifications sheets for alternate product(s). Use of a brand name as part of specification by HACSB is not intended to restrict competition, but should be considered a point of reference in terms of product quality and design.
4. **Request for Clarification.** Request for clarification or specifications, if any, shall be directed by telephone to John Borgardt at (909) 890-0664 or at time of job walk. Interpretations requested which are not covered in the specifications will only be made in writing by HACSB.
5. **Required Proposal Documents.** This Proposal shall include and incorporate by reference all of the following documents ("Contract Documents"):

1.	Certification of Acceptance of the General Conditions of the Contract for Construction (form HUD 5370-EZ).
2.	Specific Conditions of the Contract for Construction Pre-Screen.
3.	Representations, Certifications, and Other Statements of Bidders (form HUD 5369-A).
4.	Request for Taxpayer Identification Number and Certification (IRS Form W-9).
5.	Minority Code Identification Form.
6.	Non-Collusive Affidavit.
7.	Statement of Bidder's Qualifications.
8.	Designation of Subcontractors Form.
9.	Applicable prevailing wages determined by the United States Department of Labor.
10.	Certification of Authorization and Understanding.
11.	Bidder Certification Status as a Section 3 Business Corporation.
12.	Certificate as to Corporate Principal (Corporations only).
13.	Stipulation of Lien.
14.	Warranty/Guarantee.
15.	Agreement Certification.

6. **Delivery of Proposal.** Proposals received late or at any location of HACSB other than that indicated on the proposal will be deemed non-responsive and will not be considered.
7. **Quotations.** Unless otherwise stipulated, quotations are subject to acceptance at any time within 60 days after receipt.
8. **Compliance with Contract Documents.** Vendor shall comply with all of the Contract Documents in connection with the performance of the work hereunder. In the event of any conflict between this Proposal and the Contract Documents, the Contract Documents shall control.
9. **Award of Contract.** Bid opening will be officiated and attended by HACSB Contract Administrator at the time and place indicated the Request for Proposal. Identity of the successful bidder may not be determined at bid opening. HACSB reserves the right to obtain opinion of its counsel of legality and sufficiency of bids. The contract will be awarded, if at all, to the lowest responsible bidder within sixty (60) days of the final date of receiving bids and a purchase order will be issued.
10. **HACSB's Discretion in Awarding Contract.** HACSB recognizes that price is only one of several criteria to be used in judging a product or service, and HACSB is not legally bound to accept the lowest bid. HACSB reserves the right, unless otherwise stated, to accept or reject any or all bids, or any part thereof, either separately or as a whole, or to waive any informality in a bid. HACSB reserves the right to reject, in its sole discretion, any or all bids, or to waive any informality in the bids, and to reject any items there on. HACSB may, at its sole discretion, cancel this Proposal or any part of this Proposal at any time prior to award.
11. **Time of Performance.** All work and/or deliveries and set up shall be completed and the contract performed within the total number of calendar days stated in the Proposal. Any modification of this time caused by inclusion of any alternate in the contract shall be as stated in such alternate. Total number of calendar days: to be determined relative to each contract awarded.
12. **Time is of the Essence.** Time of delivery is a part of the consideration and must be stated in definite terms, and must be adhered to.
13. **Best Efforts.** Vendor shall perform its duties on premises approved by HACSB, during HACSB'S regular work days and normal work hours and warrants that it shall perform its services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Vendor acknowledges that HACSB has the right to review the services performed by Vendor and may in its reasonable business discretion, reject such services in writing.
14. **Costs.** Cost of transportation, handling, and/or inspection on deliveries which do not meet specifications shall be the responsibility of the Vendor.
15. **Subcontractors.** A list of subcontractors will be submitted at the time of bid opening on the form entitled "Designation of Subcontractors" and as required by State Law. The subcontractor shall have demonstrated to HACSB's satisfaction previous

- experience in each additional division or classification he is listed under other than its primary contracting business. If a subcontractor is licensed and qualified to do more than one division or classification of work as defined by the specifications, it shall be listed under each of these additional divisions or classifications. All contractors shall be listed if their portion of the work is one-half (½) of one percent (1%) or more of the total project bid amount. Within 72 hours after bid opening, the apparent low bidder will be required to submit an additional list which will include all of the following information for the general contractor and each subcontractor listed in the Proposal: (a) complete name (as it appears on State Contractor's License), address and telephone number for each; (b) trade for each; (c) State Contractor's License Number and license classification for each; and (d) expiration date of State Contractor's License (if license is expired or inactive, proof of renewal must be submitted).
16. **Samples.** Samples of items, when required, shall be furnished at no charge to HACSB; and if not destroyed by tests, will upon request be returned at Vendor's expense.
  17. **Superintendence by Vendor.** Vendor certifies that it shall give its personal superintendence to the work or have a competent superintendent, satisfactory to HACSB and/or the Architect, if any, on the project at all times during progress with full authority to act for Vendor.
  18. **Removal of Debris, Cleaning.** Vendor shall, daily or as directed during the progress of the work on the project, remove and properly dispose of the resultant trash, dirt and debris, and keep the premises reasonably clear.
  19. **Force Majeure.** Neither party shall be held liable for failure or delay of fulfillment if hindered or prevented by fire, strikes, or Acts of God. (Force Majeure)
  20. **Warranty/Guarantee.** Vendor warrants and guarantees that the goods supplied under this Request for Bid and any purchase order resulting from award of same (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by HACSB, free from defects in design. HACSB's approval of designs or specifications furnished by Vendor shall not relieve Vendor of its obligations under this warranty. All warranties, including special warranties specified elsewhere herein, shall inure to HACSB, its successors, assigns, customer agencies and users of the goods or services.
  21. **Stipulation of Lien.** Vendor certifies that all work executed under this Proposal will be performed in accordance with terms of any contract awarded to Vendor by this process and there will be no claims of laborers or mechanics for unpaid wages arising out of the performance of said contract. In consideration of the payment under the terms of the contract, Vendor hereby does release HACSB from any and all claims arising from any contract awarded by this process. Vendor shall prepare and submit to HACSB, a written Stipulation of Lien. The Stipulation of Lien shall be recorded in the County Recorder's Office of San Bernardino County, California.
  22. **Safety and Accident Prevention:** Vendor certifies that it shall exercise proper precaution at all times for the protection of persons and property. The safety provisions of applicable law, building and construction codes shall be observed, and Contractor shall take or cause to be taken such additional safety and health measures as HACSB may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the State of California Construction Safety Orders (CCR Title 8, Chapter 4, Subchapter 4, as amended) and the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable laws.
  23. **Assignment.** Assignment of the agreement by Vendor to other suppliers/contractors must be approved by the HACSB Inspector.
  24. **Modification.** In addition to the provisions regarding modification specified in the Contract Documents, deviations from the specifications and addenda may only be made at the request of HACSB. Vendor shall not use any specification in lieu of those contained in the specifications, without written consent of HACSB. HACSB shall expect a debit or credit during the project for any deviations from specifications and addenda.
  25. **Indemnity; Hold Harmless.** Vendor agrees to defend, save, indemnify and hold harmless HACSB and all its officers, employees, and agents, against any and all liabilities, claims, judgments, or demands, including demands arising from injuries or death of persons (Vendor's employees included) and damage to property, arising directly or indirectly out of the performance of the work, the obligations herein undertaken or out of the operations conducted by Vendor including liability of any nature or kind on account of use of any copyright, or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used under this Proposal, save and except claims or litigation to the extent arising through the active negligence or willful misconduct of HACSB. Contractor shall reimburse HACSB for any expenditures, including reasonable attorneys' fees, HACSB may incur arising out of any such claim or litigation, and, if requested by HACSB, Contractor shall defend any such suits at the sole cost and expense of Contractor with counsel selected by HACSB.
  26. **Lead Paint Prohibition.** Any Vendor awarded a contract for construction or rehabilitation shall comply with 24 CFR Part 35 prohibiting use of lead-based paint. EPA 2008 Lead Rule Firm Certification, Employee Certification required for work in units built prior to 1978.
  27. **Equal Employment Opportunity.** Vendor agrees to comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act, Equal Opportunity, San Bernardino County Emerging Small Business Enterprise program, and other applicable Federal, State, and County laws, regulations, and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted. The articles covered by this bid must conform with safety orders of OSHA, CALOSHA, and/or NIOSHA, and OSH-POD.
  28. **National Labor Relations Board Certification.** Vendor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Vendor within the immediately preceding

- two-year period because of Vendor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.
29. **California Prevailing Wage (If Price Is Less Than \$2,000).** In the event the Proposal is less than \$2,000, Vendor agrees to comply with all prevailing rate requirements of the California Labor Code. HACSB shall have the right to audit and inspect Vendor's books and records, and interview Vendor's employees, contractors and subcontractors, all according to the same provisions set forth in Section 26 above.
  30. **Worker's Compensation Insurance.** Vendors making delivery of goods or providing services on HACSB premises shall carry liability insurance and Worker's Compensation coverage in accordance with the Housing Authority's Standard Practice requirements.
  31. **No Conflicts.** Vendor certifies that no HACSB employee, whose position in the HACSB service enables them to influence any award of your offer or any competing offer, shall have any direct or indirect financial interest in any transaction resulting from this Request for Bid.
  32. **Covenant Against Gratuities.** Vendor shall not offer, either directly or through an intermediary, any improper consideration such as, but not limited to; cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the HACSB in an attempt to secure favorable treatment regarding the award of this bid. Vendor shall immediately report any attempt by a Housing Authority officer, employee or agent to solicit, either directly or through an intermediary, improper consideration from Vendor. The report shall be made to the supervisor or manager charged with the supervision of the employee or to the HACSB.
  33. **Collusion.** Vendor, by submitting a proposal, hereby certifies that no officer, agent, or employee of the HACSB has a pecuniary interest in this Proposal; that the Proposal is made in good faith without fraud, collusion, or connection of any kind with any other vendor; and that the Vendor is competing solely in its own behalf without connection with, or obligation to any undisclosed person or company.
  34. **Drug Free Workplace Certification.** Vendor certifies it is in compliance with the Drug-Free Workplace Act of 1990 and has actions in place in accordance with Government Code Section 8355.
  35. **This Request for Quote is not an order. This request is a solicitation only, and is not intended or to be construed as an offer to enter into any contract or other agreement. No acquisition can be made from this quote without a purchase order issued by the HACSB.**
  36. **Nondisclosure of Proposal.** There will be no public opening or reading of this Proposal.
  37. **Valid Price.** Vendor certifies that the prices quoted in this Proposal do not exceed existing selling prices to other customers for the same or substantially similar items or services for comparable quantities under similar terms and conditions.
  38. **Licenses.** Vendor shall ensure that it has all necessary licenses and permits required by the laws of Federal, State, County and municipal laws, ordinances, rules and regulations. Vendor shall maintain these licenses and permits in effect for the duration of this project. Vendor will notify HACSB immediately of loss or suspension of any such licenses and permits. Failure to maintain a required license or permit may result in immediate termination of this contract.
  39. **Default by Vendor.** In case of default by Vendor, HACSB may procure the product(s) or service from other sources and may deduct the unpaid balance due Vendor, or may collect against the bond of surety, or may bill Vendor for excess costs so paid. Prices paid by the HACSB shall be considered the prevailing market prices paid at the time such purchase is made.
  40. **Disputes.** In the event a dispute arises concerning the bid process or award of the bid, the party wishing resolution of the dispute shall submit a request in writing to the Procurement Department. Vendor may appeal the recommended award or denial of award, providing the following stipulations are met:
    - a. Appeal must be in writing.
    - b. Must be submitted within ten (10) calendar days of the bid due date.An appeal of a denial of award can only be brought on the following grounds:
    - a. Failure of HACSB to follow the selection procedures and adhere to requirements specified in the Request for Bid or any addenda or amendments.
    - b. There has been a violation of conflict of interest as provided by California Government Code Section 87100 et seq.
    - c. A violation of State or Federal law.

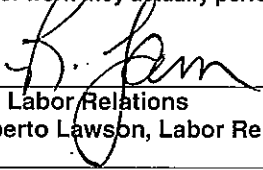
Appeals will not be accepted for any other reasons than those stated above. All appeals must be sent to:

**Clifford Goss, Procurement Officer**  
**Housing Authority of the County of San Bernardino**  
**715 E. Brier Drive**  
**San Bernardino, CA 92408-2841**

<b>Maintenance Wage Rate Decision</b>	<b>U.S. Department of Housing and Urban Development Office of Labor Relations</b>	<b>HUD FORM 52158 (06/2006)</b>
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Agency Name: <b>Housing Authority of the County of San Bernadino</b>	LR 2000 Agency ID No: <b>CA122A</b>	Wage Decision Type: <input checked="" type="checkbox"/> Routine Maintenance <input checked="" type="checkbox"/> Nonroutine Maintenance
	Effective Date: <b>October 1, 2017</b>	Expiration Date: <b>September 30, 2018</b>

The following wage rate determination is made pursuant to Section 12(a) of the U.S. Housing Act of 1937, as amended, (public housing agencies), or pursuant to Section 104(b) of the Native American Housing Assistance and Self-determination Act of 1996, as amended, (Indian housing agencies). The agency and its contractors may pay to maintenance laborers and mechanics no less than the wage rate(s) indicated for the type of work they actually perform.

  
 HUD Labor Relations  
 (Ruperto Lawson, Labor Relations Specialist)

November 8, 2017  
 Date

WORK CLASSIFICATION(S)	HOURLY WAGE RATES	
	BASIC WAGE	FRINGE BENEFIT(S) (if any)
Landscape Maintenance Laborer	\$10.00	\$.47
Janitorial Services	\$10.00	\$.47
Maintenance Technician	\$19.52	\$8.00
Lead Maintenance Technician	\$21.52	\$8.82
Maintenance Supervisor	\$23.73	\$9.72
Porter	\$12.90	\$5.29

The agency employee benefit program has been determined by HUD to be acceptable for meeting the prevailing fringe benefit requirements.

(HUD Labor Relations: If applicable, check box and initial below.)

\_\_\_\_\_  
 LR Staff Initial

**FOR HUD USE ONLY**  
 LR2000:  
 Log in:  
 Log out:

**HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO  
CAPITAL FUND PROGRAM  
715 E. BRIER DRIVE  
SAN BERNARDINO, CA 92408-2841  
(909) 890-0644 FAX (909) 890-4618**

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**STATEMENT OF BIDDER'S QUALIFICATIONS (GENERAL CONTRACTOR)**

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. Attach additional pages if needed.

1. Name of Bidder \_\_\_\_\_
2. Names of Principals \_\_\_\_\_
3. Names of Authorized Signatories \_\_\_\_\_
4. Permanent Main Office Address \_\_\_\_\_  
\_\_\_\_\_
5. When Organized \_\_\_\_\_
6. Where Incorporated \_\_\_\_\_
7. How many years have you been engaged in the contracting business under your present name? \_\_\_\_\_
8. Have you ever defaulted on a contract? \_\_\_\_\_  
If so, where and why? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. Have you ever refused to sign a contract at your original bid? \_\_\_\_\_  
If yes, explain. \_\_\_\_\_  
\_\_\_\_\_



Dated at \_\_\_\_\_, this \_\_\_\_\_ day  
(Place) (Date)

of \_\_\_\_\_, 20\_\_\_\_.  
(Month) (Year)

\_\_\_\_\_  
(Name of Bidder)

By: \_\_\_\_\_  
(Signature of Bidder's Representative)

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

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

\_\_\_\_\_ being duly sworn, deposes and says he is  
(Individual Signing Above)

\_\_\_\_\_ of \_\_\_\_\_  
(Title) (Name of Organization)

and that the answers to the foregoing questions and all statements therein contained are true and correct.

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Date) (Month) (Year)

\_\_\_\_\_  
(Notary Public)

My Commission Expires \_\_\_\_\_  
(Date)

**CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3  
PREFERENCE IN CONTRACTING AND DEMONSTRATION OF CAPABILITY**

**MANDATORY**—Proposer must submit the “Certification” form as to whether they “satisfy” or “do not satisfy” the Section 3 requirements. All bids received with the “Certification” form will be considered.

**OPTIONAL**—To be considered for the Section 3 Preference, you must also complete the “Documentation” section and provide the backup as required.

**Section 3 Business Concern** means a business where:

1. 51 percent or more is owned by Section 3 residents; or
2. 30 percent of the permanent full-time employees are currently Section 3 residents or were Section 3 residents when first hired (if within the past three years); or
3. The business commits in writing to subcontract over 25 percent of the total dollar amount of all subcontracts to be let to businesses that meet the requirements of paragraphs 1 and 2 of this definitions;

AND

The Business was formed in accordance with State law and is licensed under State, County, Municipal law to engage in the business activity for which it was formed.

**Section 3 Compliance Requirements**

- A. The Section 3 regulations provide that recipients, its contractors, and any subcontractors demonstrate compliance by employing Section 3 residents as 30% of the aggregate number of new hires.
- B. A vendor is required to hire only when a new hire is needed to perform the work. In the event that no new hires are needed, vendors must document that no new hires were made during the term of the contract.
- C. The Section 3 Regulations, at 24 CFR Part 135, require that in public housing programs, compliance efforts shall be directed to provide training and employment opportunities to residents.
- D. In situations where a new hire is needed, a vendor will not be required to hire persons who are not qualified. If a new hire is needed and a Section 3 resident is identified, that Section 3 resident will be required to submit evidence of Section 3 status to the recipient, contractor or subcontractor.

**Bid/Proposal Compliance (Construction Projects)**

As part of each bid or proposal submitted, the respondent must document their workforce by position. Such information will be re-verified at the commencement of the contract. The HACSB will periodically audit this information. Failure to comply shall result in the delay of payment.

## **Bid/Proposal Evaluation**

Vendors who fail to complete the certification stating if they “satisfy” or “do not satisfy” the Section 3 requirements will be deemed non-responsive. This means that in the proposal or bid documents submitted to the HACSB, the Contractor's Certification must be completed and signed.

If requesting an exemption—include the applicable attachments and supporting documentation to support claims of compliance by hiring, contracting, or other economic opportunities.

After written notice from the HACSB specifying the defects in the Section 3 information, vendors will be given no more than 5 business days to complete the form and provide all required documents. Failure to respond within the 5 days will result in HACSB declaring the bidder or respondent non-responsive. The contract or bid will then be awarded to the next lowest bidder or to the respondent with the next highest score.

### **Section 3 Program Evaluation Preference**

This IFB contains a preference for Section 3 business concerns in the award of Section 3 covered contracts as follows:

- (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 no more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

**X = lesser of:**

**When the lowest responsive bid is:**

Less than \$100,000 .....	10% of that bid or \$9,000
At least \$100,000, but less than \$200,000 .....	9% of that bid, or \$16, 000
At least \$200,000 but less than \$300,000 .....	8% of that bid, or \$21,000
At least \$300,000 but less than \$400,000 .....	7% of that bid, or \$24,000
At least \$400,000 but less than \$500,000 .....	6% of that bid, or \$25,000
At least \$500,000 but less than \$1 million .....	5% of that bid, or \$40,000
At least \$1 million but less than \$2 million .....	4% of that bid, or \$60,000
At least \$2 million but less than \$4 million .....	3% of that bid, or \$80,000
At least \$4 million but less than \$7 million .....	2% of that bid, or \$105,000
\$7 million or more .....	1 1/2 % of the lowest responsive bid, with no dollar limit.

- (ii) If no responsive bid by a Section 3 business concern meets the requirements, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

## **HUD Compliance and Monitoring**

HUD monitors the performance of recipients and contractors. 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. HUD provides technical assistance to recipients and contractors in order to obtain compliance with Section 3 requirements.

There is a complaint process. Section 3 residents and business concerns may file complaints if they think 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. There are appeal rights to the Secretary. Section 3 residents and businesses may also seek judicial relief.

A Section 3 businesses or resident complaint about a violation of Section 3 requirements shall be made in writing to the local HUD FHEO Office or to:

The Assistant Secretary for Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development 451 Seventh Street, SW, Room  
5100  
Washington, DC 20410-2000  
1-800-669-9777  
1-800-927-9276 (TTY)  
[www.hud.gov](http://www.hud.gov) [www.espanol.hud.gov](http://www.espanol.hud.gov)

A written complaint should contain:

- A. Name and address of the person filing the complaint;
- B. Name and address of subject of complaint (HUD recipient or contractor);
- C. Description of acts or omissions in alleged violation of Section 3; and
- D. Statement of corrective actions sought.

**CERTIFICATION FOR BUSINESS CONCERNS SEEKING  
SECTION 3 PREFERENCE**

**THIS PAGE MUST BE COMPLETED AND SUBMITTED WITH YOUR BID**

Name of Business	
Address of Business	

Type of Business:     Corporation                       Partnership  
                                  Sole Proprietorship                       Joint Venture

I, (print name and title) \_\_\_\_\_

Hereby certify that the business entity known as (print business name)  
\_\_\_\_\_

(Please check one)  
satisfies       does not satisfy       One or more of the Section 3 Business Concerns as defined above.

**If you check "does not satisfy" your proposal will not be deemed non-responsive.**

**OPTIONAL- to claim the Section 3 Preference-you must complete the "Documentation" section below and include any attachments**

\_\_\_\_\_ (Corporate Seal)  
Authorizing Name and Signature

Attested by: \_\_\_\_\_

**OPTIONAL (to claim the Section 3 Preference)**

**Documentation--**

Attached is the following documentation as evidence of Section 3 status:

**For Business claiming status as a Section 3 resident-owned enterprise:**

- Copy of resident lease
- Copy of receipt of public assistance
- Copy of evidence of participation in a public assistance program
- Other evidence

**For business entity as applicable:**

- Copy of Articles of Incorporation
- Certificate of Good Standing
- Assumed Business Name Certificate
- Partnership Agreement
- List of owners/stockholders and % ownership of each
- Corporation Annual Report
- Organization chart with names and titles and brief function statement
- Latest Board minutes appointing officers
- Additional documentation

**For business claiming Section 3 status by subcontracting 25 percent of the dollar awarded to qualified Section 3 business:**

- List of subcontracted Section 3 business(s) and subcontract amount

**For business claiming Section 3 status, claiming at least 30 percent of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:**

- List of all current full-time employees
- List of employees claiming Section 3 status
- PHA/IHA Residential lease less than 3 years from day of employment
- Other evidence of Section 3 status less than 3 years from date of employment

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- Current financial statement
- Statement of ability to comply with public policy
- List of owned equipment
- List of all contracts for the past two years

Name of Business

Address of Business

(Corporate Seal)

\_\_\_\_\_  
Authorizing Name and Signature

Attested by:\_\_\_\_\_

**MINORITY CODE IDENTIFICATION FORM**

COMPANY NAME: \_\_\_\_\_

VENDOR ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

VENDOR CONTACT NAME: \_\_\_\_\_

TELEPHONE NUMBER: ( ) \_\_\_\_\_ FAX NUMBER: ( ) \_\_\_\_\_

RACIAL/ETHNIC CODE: \_\_\_\_\_

(see below)

**\*RACIAL/ETHNIC CODES:**

1 - White Americans

2 - Black Americans

3 - Native Americans

4 - Hispanic Americans

5 - Asian/Pacific Islander Americans

6 - Hasidic Jews

7 - Women

Codes per HUD - 2516 form

**HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO  
 CAPITAL FUND PROGRAM  
 715 E. BRIER DRIVE  
 SAN BERNARDINO, CA 92408-2841  
 (909) 890-0644 FAX (909) 890-4618**

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**MINORITY/WOMEN'S BUSINESS ENTERPRISE CERTIFICATION**

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

a. The undersigned acknowledges that it is the policy of the (Company Name):  
 \_\_\_\_\_ to take positive steps to maximize the utilization of  
 minority/women's business enterprises in all contract activity administered by the Housing Authority  
 of the County of San Bernardino.

b. The undersigned will utilize his best efforts to carry out this policy in the award of his  
 subcontracts to the fullest extent consistent with the efficient performance of this contract. As used  
 in this contract, the term "minority or women's business enterprise" means a business, at least 50  
 percent of which is owned by minority or women's group members or, in the case of publicly owned  
 businesses, at least 51 percent of the stock is owned by minority group members or women. For the  
 purpose of this definition, minority group members are Black, Hispanics, Asians, Native Americans,  
 Alaskans or Pacific Islanders.

c. The undersigned has taken affirmative action to seek out and consider minority and women's  
 business enterprises for the portions of work to be subcontracted. Such actions are fully documented  
 in his records and available upon request. Results are as follows:

Name and Address of Minority/Women's Firms Contractor Anticipates Utilizing*	Category of Work	Dollar Value of Participation
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total Bid \$ \_\_\_\_\_ Total Subcontract  
 Amount \$ \_\_\_\_\_

Minority/Women's Enterprise Total of Subcontract Amount \$ \_\_\_\_\_

\* Indicate whether business is owned by a minority or a woman.



**U.S. Department of Housing and  
Urban Development**  
Office of Public and Indian Housing

**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.

## 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, except 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>, 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

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

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to 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 are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [ ] does [ ] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

# General Contract Conditions for Small Construction/Development Contracts

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
OMB Approval No. 2577-0157 (exp. 3/31/2020)

**Applicability.** The following contract clauses are applicable and must be inserted into small construction/development contracts greater than \$2,000 but not more than \$150,000.

## 1. Definitions

Terms used in this form are the same as defined in form HUD-5370

## 2. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers. The only liens on the PHA's property shall be the Declaration of Trust or other liens approved by HUD.

## 3. Disputes

- (a) Except for disputes arising under the **Labor Standards** clauses, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (c) The Contracting Officer shall, within 30 days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (d) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within 30 days after receipt of the Contracting Officer's decision.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

## 4. 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 proceed with the work (or separable part of the work) that has been delayed. In the 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 the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if –
  - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor; and
  - (2) The Contractor, within 10 days from the beginning of such delay notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of Fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the **Disputes** clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligation of the parties will be the same as if the termination had been for convenience of the PHA.

## 5. Termination for Convenience

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

## 6. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$ \_\_\_\_\_ [Contracting Officer insert amount] per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$ \_\_\_\_\_ [Contracting Officer insert amount] per occurrence.

(b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

## 7. Contract Modifications

(a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which

do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the 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.

## 8. Changes

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) PHA-furnished facilities, equipment, materials, services, or site; or,
- (4) Directing the acceleration in the performance of the work.

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor

breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs - when size of change warrants revision.

- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the 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 contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

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

The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

#### 10. Rights in Data and Patent Rights (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

#### 11. Energy Efficiency

The Contractor shall comply with all 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 this contract is performed.

#### 12. 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.

#### 13. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (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



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- qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
  - (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
  - (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

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

##### (a) Minimum Wages.

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

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

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) **Withholding of Funds.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) **Payrolls and Basic Records.**

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of

the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c)(1) of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

- (e) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate

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

- (f) 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.
- (g) 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.
- (h) Contract Termination; Debarment. A breach of the labor standards clauses in this contract may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (i) Compliance with Davis-Bacon and related Act Requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (j) 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.
- (k) Certification of Eligibility.
- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government

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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.

(l) 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.

(m) Non-Federal Prevailing Wage Rates. Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State 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:

- (i) 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;
- (ii) 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
- (iii) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

**Equal Employment  
Opportunity Certification**  
Excerpt From 41 CFR §60-1.4(b)

U.S. Department of Housing  
and Urban Development  
Office of Housing  
Federal Housing Commissioner

Department of Veterans Affairs  
OMB Control No. 2502-0029  
(exp. 7/31/2009)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

**Provided,** That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

Firm Name and Address

By

Title

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **Excerpt from HUD Regulations**

200.410 Definition of term "applicant".

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

200.420 Equal Opportunity Clause to be included in contracts and subcontracts.

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

- (2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard race, creed, color, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

- (5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

- (7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference to the equal opportunity clause.

200.425 Modification in and exemptions from the regulations in this subpart.

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

- (1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

- (2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

- (3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

- (4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

- (5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.