

Housing Authority of the City of Winston-Salem

**Invitation for Bids to Select a Contractor for  
the Elevator Upgrade at Sunrise Towers**

Solicitation No.: IFB 22-1121 HAWS

500 West Fourth Street, Suite 300  
Winston-Salem, NC 27101

Mr. Kevin Cheshire, CEO  
Chief Executive Officer

November 20, 2022



## IFB 22-1121 Sunrise Towers Elevator Upgrade

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### NOTICE OF INVITATION FOR BIDS

IFB No. 22-1121 HAWS

### Sunrise Towers Elevator Upgrade

HA CONTACT PERSON	<i>Nancy Thomas, Vice President/CFO</i>  Telephone (336) 917-6066  Email: <a href="mailto:nthomas@haws.org">nthomas@haws.org</a>
HOW TO OBTAIN THE IFB DOCUMENTS ON THE HAWS WEBSITE	<ol style="list-style-type: none"><li>1. Access Website: <a href="http://www.haws.org">www.haws.org</a>.</li><li>2. Click on the three (3) solid lines at the top.</li><li>3. Choose Vendors</li><li>4. Bid Opportunities</li><li>5. Problems accessing system call 336-917-6066</li></ol>
<b>PRE-BID CONFERENCE</b>	Thursday, December 15, 2022 at 10:00 AM  (EST) 500 West Fourth Street, Suite 300  3 <sup>rd</sup> Floor Conference Room  Winston-Salem, NC 27101
<b>LAST DAY TO SUBMIT QUESTIONS</b>	Wednesday, December 21, 2022
BID SUBMITTAL RETURN	Nancy Thomas, VP / CFO  500 West Fourth Street, Suite 300  Winston-Salem, NC 27101
<b>BID SUBMITTAL DEADLINE</b>	<b>Monday, January 16, 2023 at 2:00 PM (EST)</b>

[Section 3, minority- and/or women-owned businesses are encouraged to respond.]

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- Attachment B:** Bid (Security) Bond
- Attachment C:** Profile of Firm Form
- Attachment D:** Contractor's Certification
- Attachment E:** Non-Collusive Affidavit
- Attachment F:** Section 3 Contractor Certification Statement
- Attachment G:** HUD 5369-A
- Attachment H:** HUD 5230
- Attachment I:** HUD 51000 & Job Schedule
- Attachment J:** Iran Divestment Act Certification

### **Section VII – Exhibits for Reference**

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- Exhibit A:** Form HUD-5369 Instructions to Bidders for Contract
- Exhibit B:** Form HUD-5370 General Conditions
- Exhibit C:** Form HUD-4010 Federal Labor Standards Provisions
- Exhibit D:** Form HUD 51001 Periodic Estimate for Partial Payment
- Exhibit E:** Form HUD 51002 Change Orders
- Exhibit F:** Davis Bacon Act Wage Determinations
- Exhibit G:** US Dept. of Labor WH347 Instructions
- Exhibit H:** US. Dept. of Labor WH347 Payroll Form
- Exhibit I:** Section 3 Explanation and Submittal Form
- Exhibit J:** HAWS Property Profile
- Exhibit K:** HAWS Sample Contract

## **SECTION 1 – Invitation for Bids (IFB)**

Housing Authority of the City of Winston-Salem (HAWS)

NOTICE TO CONTRACTORS

TO

Select a General Contractor by Bid for the:

**Elevator Upgrade for Sunrise Towers**

**Solicitation #: IFB No. 22-1121 HAWS**

The Housing Authority of the City of Winston-Salem, NC is soliciting **sealed bids** from qualified contractors to provide all labor, materials and equipment, and perform work necessary and elevator upgrade at **Sunrise Towers** located at 801 N. Martin Luther King Jr. Drive, Winston-Salem, NC. **All work shall be completed according to the scope of work, contract plans and documents as prepared for the HA.**

Bids shall be delivered sealed and received until **Monday, January 16, 2023 at 2:00 PM (EST)**, at which time and place they will be publicly opened and read. The bid packets shall be addressed and delivered to:

**Housing Authority of the City of Winston-Salem  
Attn: Nancy Thomas, Vice President/CFO  
500 West Fourth St., Suite 300  
Winston-Salem, NC 27101**

All bid documents shall be placed in sealed envelopes and shall be labeled as follows; **Bid Documents, Bid No. HAWS IFB No. 22-1121 HAWS**, the bidders name and, the **Date and Time** for receipt of the bids (**Monday, January 16, 2023 at 2:00 PM (EST)**). Any bidder who wishes its bid to be considered is responsible for making certain that the bid is received in the Housing Authority's administrative office (at the above listed address) by the proper time. No oral, electronic, facsimile or telephone bids will be considered. Bids received after the scheduled bid opening will be returned unopened.

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### **1. THE AGENCY'S RESERVATION OF RIGHTS.** The Agency reserves the right to:

- 1.1 Right to Reject, Waive, or Terminate the IFB.** Reject any or all bids, to waive any informality in the IFB process, or to terminate the IFB process at any time, if deemed by the Agency to be in its best interests.
- 1.2 Right to Not Award.** Not to award a contract pursuant to this IFB.
- 1.3 Right to Terminate.** Terminate a contract awarded pursuant to this IFB, at any time for its convenience upon 10 days written notice to the successful bidder(s).
- 1.4 Right to Determine Time and Location.** Determine the days, hours, and locations that the successful bidder(s) shall provide the services called for in this IFB.
- 1.5 Right to Retain Bids.** Retain all bids submitted and not permit withdrawal for a period of 60 days subsequent to the deadline for receiving bids without the written consent of the Agency Executive Director (ED).
- 1.6 Right to Negotiate.** Negotiate the fees proposed by the bidder entity.
- 1.7 Right to Reject any Bid.** Reject and not consider any bid that does not meet the requirements of this IFB, including but not necessarily limited to incomplete bids and/or bids offering alternate or non-requested services.
- 1.8 No Obligation to Compensate.** Have no obligation to compensate any bidder for any costs incurred in responding to this IFB.
- 1.9 Right to Prohibit.** At any time during the IFB or contract process to prohibit any further participation by a bidder or reject any bid submitted that does not conform to any of the requirements detailed herein. Each prospective bidder is thereby agreeing to abide by all terms and conditions listed within this document and further agrees that he/she will inform the PO in writing within 5 days of the discovery of any item listed herein or of any item that is issued thereafter by the Agency that he/she feels needs to be addressed. Failure to abide by this timeframe shall relieve the Agency, but not the prospective bidder, of any responsibility pertaining to such issue.

## **SECTION II – Scope of Work**

### **A. HAWS Background and Information**

The Housing Authority of the City of Winston-Salem (hereinafter, “HA”) is a public entity that was formed in 1941 to provide federally subsidized housing and housing assistance to low-income families, within the City of Winston-Salem. The HA is headed by an Executive Director (ED) and is governed by a nine-person board of commissioners and is subject to the requirements of Title 24 of the Code of Federal Regulations (hereinafter, “CFR”) and the HA’s procurement policy. Though brought into existence by a Resolution of the City of Winston-Salem, it is a separate entity from the City.

Currently, the HA owns and/or manages: (a) 9 multi-family apartment complexes totaling 1,163 units; (b) 3 market rate complexes, totaling 93 units; (c) 20 single-family homes throughout the city and Brookside View (under partial construction); manages 1(one) public housing property for Madison Housing Authority totaling 50 units; and (d) administrates a total of 4,600 Section 8 Housing Choice Vouchers (for a total of 5,859). The HA currently has approximately 106 employees.

In keeping with its mandate to provide efficient and effective services, the HA is now soliciting bids from qualified, licensed and insured entities to provide the above noted services to the HA. All bids submitted in response to this solicitation must conform to all of the requirements and specifications outlined within this document and any designated attachments in its entirety.

### **B. Work Specifications**

Scope of Work are included in this bid package on the next page.

SCOPE OF WORK ELEVATOR UPGRADES:  
SUNRISE TOWERS  
WINSTON-SALEM, NORTH CAROLINA

PART 1 GENERAL

1.1 GENERAL SUMMARY OF WORK

- A. The professional qualified contractor shall provide all equipment, material, permits, inspections, fees, taxes and services to complete the elevator upgrades of the property known as the Sunrise Towers located at 801 N. Martin Luther King Jr. Dr. Winston-Salem, NC. Site has two (2) traction elevators, with rated load of 2,500 lbs., rated speed of 300 fpm and eleven (11) floors/front openings each. Service cab has front and rear door openings. Duplex hoist way with overhead machine room.
- B. The property is located at 801 N. Martin Luther King Jr. Dr. (PIN 6835-69-5287.000 REID 6835695287000) was built in 1971. Building has @94,770 square feet of leasable space, 195 total units leased is a high rise building.
- C. Contractor shall include all trades, work by others to provide all-inclusive pricing. Project shall be executed in a manner to minimize disturbance of the residents and be completed in a timely manner. Equipment shall be energy efficient and meet or exceed current safety standards. All equipment and software shall be open source and/or non- propriety for future maintenance. All units must be installed as to the requirements in A.S.M.E A17.1

1.2 RELATED DOCUMENTS

- A. General provisions of the Contract apply to this Section.
- B. Contractor shall provide references and referrals to share testimonials regarding service history of similar projects, level of expertise and industry knowledge with similar buildings.



1.3 DEFINITIONS

1.4 MATERIAL OWNERSHIP

A. N/A.

1.5 MEASUREMENT AND PAYMENT

A. Basis of Measurement: Contractors shall verify all measurements, dimensions, and existing conditions.

B. Basis of Payment: Lump Sum price as bid that includes in full compliance with all control measures required.

1.5 SUBMITTALS

A. Photographs and/or videotape, sufficiently detailed, of existing conditions and documentation evidence upon work completion of property will be provided to agency.

1.7 QUALIFICATIONS

A. Submittal of copies of the contractor's business license, State of North Carolina Contractor's License (if required), and requisite insurance certificates to the Housing Authority will be required.

1.8 REGULATORY REQUIREMENTS

A. Conform to all applicable City, State, and Federal codes for work to be completed.

B. Provide copies of permits and inspections issued by the NCDOL (Elevator and Amusement Device Bureau) and N.C Electrical Board of Examiners. All work to compile with Elevator safety Act of North Carolina article 14A. and 13 NCAC 15

C. Contractor is required to observe and comply with all current and applicable OSHA standards for the proper and safe performance of all work for this project. The contractor must be sure that no work is performed on the site without ensuring that all appropriate safety standards are in place prior to

execution of the work.

## 1.9 SCHEDULING

- A. Perform work between the hours of 8:00 a.m. and 5:00 p.m. prevailing time during normal work weekdays. No work will be performed during nights or on weekends without written permission from the Owner.
- B. Keep the Housing Authority of Winston-Salem informed on an “up to the minute” basis of all inspections of governing authorities and any unforeseen items or conditions discovered while performing your work, that may affect changes in the scope of work or the methods of performance of the work.

## PART 2 PRODUCTS

- A. Contractor shall remove and dispose existing equipment in a manner not to damage the site. Great care will be taken to protect roofing no equipment shall be stored directly on roofing membrane.
- B. Provide and install new traction machines, governors, governor tail weights, brakes and ropes (metal tags will be attached in an approved manner), rope brakes, compensation (ropes or encapsulated chain) as required, guide shoes and all related equipment.
- C. Remove and replace existing controllers and associated equipment. New microprocessor based controllers, solid state drive system and all related hardware/software and on-board diagnostics for real time monitoring, service, fault log, status and adjusting without use of outside service tool. New traveling cables shall include spare wiring and shielded pairs for future use.
- D. Provide and install new hoist cables appropriate to the hoist machine/drive sheave and having a safety factor at least equal to that specified in the ANSI code. New hoist way access switches at all required landings.
- E. Furnish and install 24/7 emergency communications, to fully meet IBC 2018, ASME A17.1 2019 code and all applicable codes ( two-way audio,

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- video and text based) into the cab with all related components. New signalization fixtures as required to include but not limited to a car station with digital position indicator, all emergency lighting, fire service instructions and operation. Top of car inspection station code compliant and fire service recognition with emergency exit switch. All other required safety equipment to be furnished such as car-top handrail, 1 ½ fire rated machine room, doors (self-closing/ self-locking), door panels (#4 stainless steel finish) and Curtain of light/ car travel lanterns. Coordinate with fire monitoring provider to integrate systems together per code and ordinances.
- F. Provide and install new hoist way doors in baked enamel finish (color selection to be provided to owner). Doors shall include tracks, rollers, interlocks, keepers, closers and relating equipment. New car doors and operators shall include but not limited to hangers, sheaves, bearings closers, interlocks, clutches, switch assemblies, and relating equipment. Emergency devices and keys for opening doors from the landing shall be provided as required by code. New hall buttons in stainless steel with integrated position indicators shall be provided
- G. Install new independent ventilation, temperature controls or air-conditioning system within the machine room to maintain between 45 and 105 degrees, ASME code and/or manufactures specifications. Relative humidity should be maintained at not more than 85% or applicable code requirements.
- H. Install code compliant electrical lighting, GFCI fixtures, disconnects, labeling, wiring, interlocks and related electrical components as required at all locations including machine room, pit, hoist-way and car top/cab.
- I. Coordinate with owner and other providers for dedicated phone line per elevator for 24 hour emergency response dialing to and from phone. Internet and video monitoring as required by A17.1- 2019 elevator code. All required smoke and/or heat detectors and required fire monitoring panel by code.
- J. Remove all unused conduit, wiring, piping and related components from all areas. Repair any holes and penetrations in the hoist way and machine room to maintain fire ratings.

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- K. Cab interiors will be updated with new lighting, flooring, wall panels, signal fixtures and handrails to include 8” wheelchair flat bar. All materials will be aesthetically pleasing with durable commercial finish.

### PART 3 EXECUTION:

#### 3.1 EXAMINATION BY CONTRACTOR

- A. Site visit strongly recommended to verify existing conditions and measurements prior to bidding.
- B. Provide training as need to site staff and all warranty information to owner.

#### 3.2 SITE PLAN

N/A

## SECTION III – Instructions to Bidders

### A. Contractor's License

All Bidders shall be licensed under the provisions of applicable law of the State of North Carolina to do the type of work contemplated in this project. The successful Bidder for repairs shall possess a valid Contractor's License issued by the Contractors' State License Board at the time the contract is awarded. The class of the license shall be applicable to the work specified in the contract.

### B. Prevailing Wage-Davis Bacon Act

HUD has determined that, for construction maintenance work (work not covered by Davis-Bacon requirements, which is construction-related only), the Agency must ensure that Contractors do not pay its employees that perform such work for the Agency at a rate less than the rates listed on the **HUD Maintenance Wage Rates Determination (MWRD.)** Therefore, by submitting a bid, each bidder is thereby agreeing to and verifying that he/she will not pay his/her employees at rates less than detailed within Exhibit F, attached hereto. Please note that, as detailed within Section 10.10 of HUD Procurement Handbook 7460.8 REV 2 (most specifically within Section 10.10.E therein), the Contractor may not be required to submit certified payrolls; however, the Contractor must make its payroll records available to either the Agency or HUD on request, and failure on the part of the Contractor to comply with this requirement will be the sole responsibility of the Contractor, including any ensuing penalties, court costs, or wages due to employees as a result of the Contractor's failure to comply. To be clear, unless the Agency declares a job to be construction-related, which will be atypical, the Contractor shall assume that all work assigned by the Agency will be maintenance-related; accordingly, the MWRD will typically apply to the work.

**Davis-Bacon Prevailing Wage Rates.** As may apply by statute, regulation or law, if, at any time during the ensuing contract period(s), the Agency needs the successful bidder to provide services that require the successful bidder to pay Davis-Bacon for a specific task order pertaining to the ensuing contract, and the amount of construction work in this contract exceeds \$2,000.00 the Federal labor standards set forth in clause #46 of the Form HUD-5370 shall apply to the construction work to be performed under the contract.

### C. Bid Security Bond

Each Bid shall be accompanied by a certified check, cashier's check, or Bid bond issued by a guaranty company authorized to carry on business in the State of North Carolina, in **an amount equal to at least five percent (5%) of the sum of the total bid amount, including any options.** Said bond is payable without condition to the Housing Authority of the City of Winston-Salem as a guaranty that the bidder, if awarded the contract, will promptly execute the contract in accordance with the Bid in the manner and form required by these contract documents. **The Bid Security shall be forfeited to the**

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**Housing Authority of the City of Winston-Salem as liquidated damages in the case of failure or neglect of the bidder to furnish, execute and deliver to the Housing Authority of the City of Winston-Salem the required performance bond, payment bond and evidences of insurance, and to enter into, execute and deliver to the Housing Authority of the City of Winston-Salem the contract within ten (10) days after being notified in writing by the Housing Authority of the City of Winston-Salem that the award has been made.**

**1. Payment Bond**

The Successful Bidder will be required to furnish a **Payment Bond** in an amount equal to **one hundred (100%) of the total amount of the contract** before commencement of the work and conforming to the contract documents.

**2. Performance Bond**

The Successful Bidder will be required to furnish a **Performance Bond** in an amount equal to **one hundred percent (100%) of the total amount of the contract** before commencement of work and conforming to the contract documents.

**3. Subcontractors and Suppliers**

The selected Contractor shall be responsible under the Contract for the acts and omissions of all subcontractors, suppliers, and persons employed by them, either directly or indirectly, as fully as the Contractor is for the acts and omissions of Contractor employees. Nothing in the Contract shall create any contractual relations between any subcontractor or supplier and HAWS, or any obligation on the part of HAWS to pay or cause to be paid any money to any subcontractor or supplier.

The Successful Bidder shall be required to provide a list of the names of persons or entities proposed as subcontractors and material and equipment providers prior to or at the time of signing the Contract.

**4. Accessibility**

The Contractor shall fully inform himself/herself regarding any peculiarities and limitations of the spaces available for the performance of work under this contract. He/She shall exercise due ad particular caution to determine that all parts of his/her work are made quickly and easily accessible.

**5. Contact with the Agency**

It is the responsibility of the bidder to address all communication and correspondence pertaining to this IFB process to the Procurement Officer only. Bidders must not make inquiry or communicate with any other Agency staff member or official (including

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members of the Board of Commissioners) pertaining to this IFB. Failure to abide by this requirement may be cause for the Agency to not consider a bid submittal received from any bidder who may not have abided by this directive.

**Addenda.** All questions and requests for information must be addressed in writing to the Procurement Officer. The Procurement Officer will respond to all such inquiries in writing by addendum to all prospective bidders (i.e. firms or individuals that have obtained the IFB Documents). During the IFB solicitation process, the Procurement Officer will NOT conduct any *ex parte* (a substantive conversation—“substantive” meaning, when decisions pertaining to the IFB are made—between the Agency and a prospective bidder when other prospective bidders are not present) conversations that may give one prospective bidder an advantage over other prospective bidders. This does not mean that prospective bidders may not call the Procurement Officer—it simply means that, other than making replies to direct the prospective bidder where his/her answer has already been issued within the solicitation documents, the Procurement Officer may not respond to the prospective bidder’s inquiries but will direct him/her to submit such inquiry in writing so that the Procurement Officer may more fairly respond to all prospective bidders in writing by addendum.

### **9. Proposer’s Responsibilities-Equal Employment Opportunity and Supplier Diversity**

Both the Contractor and the Agency have, pursuant to HUD regulation, certain responsibilities pertaining to the hiring and retention of personnel and subcontractors.

#### **Within 2 CFR §200.321 it states:**

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. The non-federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations

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as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**Within HUD Procurement Handbook 7460.8 REV 2 it states:**

**Section 15.5.A, Required Efforts.** Consistent with Presidential Orders 11625, 12138, and 12432, the [Agency] shall make every effort to ensure that small businesses, MBEs, WBEs, and labor surplus area businesses participate in [Agency] contracting.

**Section 15.5.B, Goals.** [The Agency] is encouraged to establish goals by which they can measure the effectiveness of their efforts in implementing programs in support of contracting with disadvantaged firms. It is important to ensure that the means used to establish these goals do not have the effect of limiting competition and should not be used as mandatory set-aside or quota, except as may otherwise be expressly authorized in regulation or statute. Some localities have adopted minority contracting set-aside policies or geographic limitations, which may be in conflict with Federal requirements for full and open competition.

**Within our Agency Procurement Policy it states that our Agency will:**

**Assistance to Small and Other Business, Required Efforts:**

- (1) Including such firms, when qualified, on solicitation mailing lists;
- (2) Encouraging their participation through direct solicitation of bids or bids whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- (5) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- (6) Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for Section 3 workers and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR Part 75 (so-called Section 3 firms);
- (7) Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above and
- (8) Section 3 efforts to ensure that employment, training, contracting and other economic opportunities generated by certain HUD financial



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assistance are directed to low and very low income persons, particularly those who receive government assistance for housing and for business to provide economic opportunities to low and very low income persons.

- Outreach efforts to generate job applicants who are targeted Section 3 workers;
- Direct on-the-job training (including apprenticeships);
- Indirect training such as arranging for, contracting for or paying tuition for, off-site training technical assistance to help Section 3 workers; and
- Outreach efforts to identify and secure bids from Section 3 business concerns.

### 10. Submittal Instructions and Deadlines

In order to be considered responsive to this IFB, the Contractor must do the following;

**Submit your bid in its entirety in a sealed package by 2:00 PM (EST) on Monday, January 16, 2023 to:**

**Housing Authority of the City of Winston-Salem  
Attn: Nancy Thomas, Vice President/CFO  
500 West Fourth St. Suite 300  
Winston-Salem, NC 27101**

### 11. Submittal Contents

1. The Bid shall clearly identify all tasks that are to be performed by the Contractor, and all cost components must be itemized on form **HUD-51000 Schedule of Amounts for Contract Payments**, and be coordinated with a full construction time-line schedule for completing the entire job.

**NOTE:** The Housing Authority of the City of Winston-Salem may be required to obtain its Board of Commissioners approval for this contract prior to the start of the project; therefore if required, the commencement of the work will occur after approval of the contract and issuance of a **Notice to Proceed**.

2. Bidders must submit the **Profile of Firm Form** as part of the bid packet.
1. Bidders shall furnish all other information require by the solicitation (found in the **Documents to be Returned Section VI** of this packet). All bid documents shall be sealed in an envelope or package which shall be clearly marked with the words **“Bid Documents”**, the solicitation number, the bidders name, and the date and time for receipt of bids.

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4. No oral, electronic, facsimile or telephonic bids will be considered.

### 12. **Pre-Bid Conference**

A Pre-Bid Conference of the proposed project is scheduled at 500 West Fourth Street, Suite 300 Third Floor Conference Room on **Thursday, December 15, 2022 at 10:00 AM (EST)**.

Contractors are encouraged to confirm their attendance to the Pre-Bid Conference and walk through by contacting Nancy Thomas at [nthomas@haws.org](mailto:nthomas@haws.org)

### 13. **Question and Answer Period**

All questions must be submitted no later than close of business on **Wednesday at 5:00 PM December 21, 2022 (EST)**.

All questions must be submitted in writing to Nancy Thomas [nthomas@haws.org](mailto:nthomas@haws.org) All questions will be answered in writing and an addendum issued and posted to the HAWS website if applicable. No questions will be responded to after the question and answer period has expired. The HAWS website can be accessed at [www.haws.org](http://www.haws.org). At the top of the home page click on the three bars and click on Vendors. From the next page scroll down until you see the Bid Opportunities.

### 14. **Amendments to the IFB**

If a change to the IFB solicitation (e.g. specification, plans, date or time for bid opening, etc.) becomes necessary after it has been issued, a written amendment will be issued to all prospective bidders. The amendment will indicate the solicitation number, project title, issue date of the original IFB, and formally detail each change.

If this IFB solicitation is amended, then all terms and conditions which are not modified remain unchanged.

### 15. **Late Submissions, Modifications, and Withdrawal of Bids**

1. Any bid received at the place designated in this solicitation after the exact time specified for receipt will not be considered.
2. The only acceptable evidence to establish the time of receipt at HAWS is the time/date stamp of HAWS on the proposal package submittal.
3. Bidders shall be permitted to withdraw their bids in writing prior to bid opening. The written notice may be forwarded to Nancy Thomas at 500 West Fourth St,

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Suite 300 Winston-Salem, NC. The notice must be received at any time before **Monday, January 16, 2023 at 2:00 PM (EST)**.

4. Bidders shall be permitted to modify their bids in writing prior to bid opening. The written notice may be forwarded to Nancy Thomas at 500 West Fourth St, Suite 300 Winston-Salem, NC. The notice must be received at any time before **Monday, January 16, 2023 at 2:00 PM (EST)**.

### 16. **Bid Opening**

All bids received by the date and time of receipt specified in this IFB will be opened publicly on **Monday, January 16, 2023 at 2:00 PM (EST)**, at the **Housing Authority of the City of Winston-Salem 500 West Fourth St, Suite 300 Winston-Salem, NC 27101**.

### 17. **Contract Award**

The apparent low bid will be evaluated according to the procedures outlined below.

#### 1. **Determining Responsiveness and Contractor Responsibility**

##### **-Responsiveness**

To be considered responsive, a bid must conform to the material requirements of the IFB. If the bid does not conform to the solicitation, it may be rejected and the next lowest bid will be examined for responsiveness.

##### **-Responsibility**

After determining responsiveness of the low bid, HAWS will determine if the bidder is responsible. A responsible bidder must:

1. Have adequate financial resources to perform the contract, or the ability to obtain them;
2. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; as it relates to the construction of this type and scale of project.
3. Have the necessary production, construction and technical equipment and facilities, or the ability to obtain them;
4. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's existing commercial and governmental business commitments;
5. Have a satisfactory performance record;
6. Have a satisfactory record of integrity and business ethics;

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7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD imposed LDP; and
8. Provides a bid which covers all aspects of the plans & spec's for this project.

Before a bid is considered for award, HAWS may request that the bidder submit a statement or other documentation regarding any of the items in the paragraph above (Responsibility). Failure by the bidder to provide such additional information shall render the bidder non-responsible and ineligible for award.

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

### **2. Award**

HAWS will evaluate bids in response to this solicitation without discussions and will award a contract to the lowest responsive and responsible bidder whose bid, conforming to this solicitation, will be most advantageous to the HAWS considering only price and any price-related factors specified in the solicitation. Bid must adequately cover all aspects of the plans and specs.

If **no bid** is within the HAWS available funding, HAWS shall conduct an analysis to determine if there is a problem in either the specifications or the HAWS cost estimate. If both are determined adequate, HAWS may cancel the solicitation and re-solicit.

If **only one** responsive bid is received from a responsible bidder, award may not be made unless the price can be determined to be reasonable, based on a cost or price analysis and HUD approve the award.

If **equal** low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method.

HAWS may reject any and all bids, except a bid other than the lowest bid, where the Housing Authority determines in its sole discretion that the lowest bid does not sufficiently cover all aspects of the plans and specs (e.g. the apparent low bid is unreasonably low), in accordance with HAWS written policy and procedures.

## IFB 22-1121 Sunrise Towers Elevator Upgrade

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HAWS may reject any bid as non-responsive 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 the other work.

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.

### **18. Cancellation of Solicitation**

- A. The IFB may be cancelled before bids/offers are due if:
  - 1. The supplies, services or construction are no longer required;
  - 2. The funds are no longer available;
  - 3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
  - 4. Other similar reasons
  
- B. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
  - 1. The supplies or services (including construction) are no longer required;
  - 2. Ambiguous or otherwise inadequate specification were part of the solicitation;
  - 3. All factors of significance to HAWS were not considered;
  - 4. Prices exceed available funds and it would not be appropriated to adjust quantities to come within available funds;
  - 5. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
  - 6. For good cause of a similar nature when it is in the best interest of HAWS;
  
- C. A notice of cancellation shall be sent to all bidders solicited and, if appropriated, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.

### **19. Protests**

It is HAWS policy to resolve all contractual issues informally and without litigation, and in accordance with Section 15.0 Appeals and Remedies of the HAWS Procurement Policy. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

## IFB 22-1121 Sunrise Towers Elevator Upgrade

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- a. **Bid Protest.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of HAWS Procurement Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contractor receives notice of the contract award, or the protest will not be considered. All bid protests shall be submitted in writing to the HAWS Procurement Officer. The written protest submission shall include the following information; The name address and phone number(s) of the protestor, the solicitation number and the project title, a detailed statement of the basis for the protest, and supporting evidence or documents to substantiate any arguments, and the form of relief requested. The Contracting Officer will decide the protest and shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
  
- b. **Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in HAWS. Contractor claims shall be governed by the changes clause in the form HUD-5370.

### RECAP OF BID TIME-LINE

**Pre-Bid Conference – Thursday, December 15, 2022 at 10:00 AM**

**Last Day for Questions – Wednesday, December 21, 2022 at 5:00 PM**

**Q&A Addendum Release – Wednesday, December 28, 2022**

**Bids Due – Monday, January 16, 2023 at 2:00 PM**

## Section IV – Terms and Conditions

### A. Agreement

Submission of a signed bid will be interpreted to mean bidder hereby agrees to all the terms and conditions set forth in all the pages of this Notice to Contractors / bid solicitation, including the terms and conditions specified in Form HUD-5370 and HAWS Agreement, both attached to this notice. Bidder's signed bid and HAWS written acceptance shall constitute acceptance to enter into contract.

**B. Assignment of Rights or Obligations**

Except as noted hereunder, the Successful Bidder may not assign, transfer or sell any rights or obligations resulting from this bid without first obtaining the specific written consent of the HAWS.

**C. Authority of the HAWS**

Subject to the power and authority of the HAWS as provided by law in this contract, HAWS shall in all cases determine the quantity, quality, and acceptability of the work, materials and supplies for which payment is to be made under this contract. HAWS shall decide the questions that may arise relative to the fulfillment of the contract or the obligations of the contractor hereunder.

**D. Changes in Work**

HAWS may, at any time work is in progress, by written order and without notice to the sureties, make alterations in the terms of work as shown in the plans and specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the HAWS may find necessary or desirable. The Contractor shall not claim forfeiture of contract by reason of such changes by HAWS.

**E. Cleanup**

During performance and upon completion of work on this project, Contractor will remove all unused equipment and instruments of service, all excess or unsuitable material, trash, rubbish, and debris, and legally dispose of same, unless otherwise directed by these specifications. Contractor shall leave the entire project area in a neat, clean, and acceptable condition as approved by HAWS.

**F. Contractor Definition**

The term "Contractor" refers to the party entering into a contract with HAWS as a result of this solicitation.

**G. Cooperation Between Contractors**

HAWS reserves the right to contract for and perform other or additional work on or near the work covered by these plans and specifications. When separate contracts are let within the limits of any one project, each Contractor shall conduct his work so as not to

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interfere with or hinder the progress or completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed. Each Contractor involved shall assume all liability, financial or otherwise, in connection with his contract and shall protect and save harmless the HAWS from any and all damages or claims that may arise because of inconvenience, delays, or loss experience by him because of the presence and operation of other Contractors working within the limits of the same project.

### **H. Coordination with Agencies**

The Contractor shall coordinate activities with the proper regulatory agencies and have representatives on site at the proper times.

### **I. Damage**

The Contractor shall be held responsible for any breakage, loss of the HAWS equipment or supplies through negligence of the Contractor or Contractor employee(s) while working on HAWS premises. The Contractor shall be responsible for restoring or replacing any equipment, facilities, etc. so damaged. The Contractor shall immediately report to HAWS any damages to the premises resulting from services performed under this contract. Failure or refusal to restore or replace such damaged property to the satisfaction of HAWS will be a breach of this contract.

### **J. Force Majeure**

If execution of this contract shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the Contractor, the Contractor shall notify HAWS, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to Acts of God, war, or act of public enemy, fires, floods, epidemics, strikes, and unusually severe weather.

### **K. Hold Harmless**

The Successful Bidder agrees to indemnify, defend, and hold harmless the HAWS, its governing body, officers, employees, and insurance carriers, individually and collectively, from all losses, claims, suits, demands, expenses, subrogation, attorneys' fees, or actions of any kind in nature resulting from person injury (including bodily injury and death), or damage to any property, arising or alleged to have arisen out of Bidder's negligent acts, errors, omissions, or performance of the work to be performed under the terms of the contract if awarded. The amount and type of insurance coverage



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requirements set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph.

### **L. Laws – Adherence to All Local, State, and Federal Laws and Requirements**

The Contractor shall adhere to all applicable federal, state, and local laws, codes and ordinances, including but not limited to those promulgated by NC-OSHA, FED-OSHA, EPA, the NC State Department of Health Services, and the Forsyth County Environmental Health Department.

### **M. Laws Governing Contract**

This contract shall be in accordance with the laws of the State of North Carolina. The parties stipulate that this contract was entered into in the County of Forsyth, in the state of North Carolina. The parties further stipulate that the County of Forsyth, North Carolina, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.

### **N. Pre-Construction Meeting**

The Contractor shall not commence work until a meeting between representatives of the Contractor and HAWS is held. The meeting will be held at HAWS, at a time and date late to be established.

### **O. Rejection of Work**

Contractor agrees that HAWS has the right to make all final determinations as to whether the work has been satisfactorily completed.

### **P. Rights Reserved**

**Rejection of Work.** Contractor agrees that HAWS has the right to make all final determinations as to whether the work has been satisfactorily completed.

**Completion of Work.** If Contractor fails to comply with the conditions of the contract, or fails to complete the required work or furnish the required materials within the time stipulated, HAWS reserves the right to purchase in the open market, or to complete the required work, at the expense of the Contractor, including but not limited to, by recourse to provisions of the performance bond if such bond is required under this bid.

**Q. Warranty of the Bidder**

Successful Bidder shall fully warrant all materials equipment, and service against poor and inferior quality or workmanship for a period of not less than one (1) year from date of final acceptance by HAWS. Time is of the essence of this contract. Successful Bidder shall repair or replace any inoperable materials or equipment in a timely manner during warranty period. Written warranties per the Project Manual are required.

**R. Unknown Obstructions**

Should any unknown obstruction be encountered during the course of this contract, the Contractor shall immediately bring this obstruction to the attention of HAWS. The Contractor shall be responsible for the protection of all existing assets, or utilities encountered within the work area.

## **SECTION V – Additional Terms and Conditions**

In addition to the terms and conditions enumerated in Section IV of this IFB, the terms and conditions listed in form HUD-5369, 5369-A and 5370 are incorporated herein as part of this solicitation. This entire IFB No. 22-1120 HAWS, and all plans and specifications issued thereto, and all its requirements are hereby incorporated by reference into any subsequent contract executed for the performance of all associated work.

**Insurance**

HAWS must be listed as an additional insured for all general comprehensive liability insurance.

Before commencing work, the Contractor and each subcontractor shall furnish HAWS with Certificates of Insurance. The following are the minimum levels of coverage.

- Worker's Compensation Coverage: \$1,000,000.00
- Commercial General Liability Insurance: \$1,000,000.00 (General Contractor)  
Subcontractors – Equal to the value of their contract
- Automobile Liability Insurance: \$1,000,000.00 (General Contractor)  
Subcontractors – (\$500,000.00)

Contract Completion:

**The awardee of this contract will have an agreed upon amount of time to complete this project as will be noted in the Notice to Proceed.**

Liquidated Damages:

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Liquidated Damages will be assessed against the awardee of this contract at a rate of **(\$25.00) Twenty-Five Dollars** per day for each day exceeding the allotted time-line for project completion.

### **SECTION VI – Bid Documents to be Returned**

**Attachment A:** Bid Form

**Attachment B:** Profile of Firm Form

**Attachment C:** Contractor's Certification

**Attachment D:** Non-Collusive Affidavit

**Attachment E:** Section 3 Contractor Certification Statement, (if applicable, or complete Exhibit H Section 3 Submittal Form)

**Attachment F:** Form HUD-5369-A Representations, Certifications, and Other Statements of Bidders

**Attachment G:** Bid (Security Bond) Performance (Bond)

**Attachment H:** Form HUD-2530

**Attachment I:** Work Plan – Full job completion schedule & Form HUD-51000

**Attachment J:** Iran Divestment Act Certification

### **SECTION VII – Exhibits for Reference**

**Exhibit A:** Form HUD-5369 Instructions to Bidders for Contracts

**Exhibit B:** Form HUD-5370 General Contract Conditions for Small Construction / Development Contracts

**Exhibit C:** Form HUD-4010 Federal Labor Standards Provision

**Exhibit D:** Davis Bacon Act Wage Determinations

**Exhibit E:** Payroll Instructions

**Exhibit F:** Payroll Form

**Exhibit G:** Form HUD-51001 Periodic Estimate for Partial Payments

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**Exhibit H:** Form HUD-51002 Schedule of Change Orders

**Exhibit I:** Section 3 Explanation and Submittal Form

**Exhibit J:** HUD Table 5.1

**Exhibit K:** HAWS Sample Contract

**ATTACHMENT  
A**

**Bid Form**

# Bid Form

Bid Number: IFB 22-1110 HAWS

To: Housing Authority of the City of Winston-Salem (HAWS)

Pursuant to and in compliance with your invitation for bids, the undersigned, being familiar with the Contract Documents and Specifications issued November 10, 2022 and addenda, if any thereto, hereby proposes to perform the work an/or deliver the material, all in conformity with said invitation for bids and with said Contract documents and specifications, according to the prices provided in the Bid Form.

The above bid includes all labor, materials and equipment required by the Contract Documents, Plans and Specifications.

In submitting this bid, it understood that the right is reserved by the Housing Authority of the City of Winston-Salem to reject any and all bids, to accept that bid which best corresponds to the requirements in quality, fitness, and capacity, and to waive any informality in any bid received.

Attached hereto are the following (place an X on the blank line next to each required document accompanying this bid);

- A.  Bid Form
- B.  Profile of Firm Form
- C.  Contractor's Certification
- D.  Non-Collusive Affidavit
- E.  Section 3 Certification Statement, if applicable
- F.  Section 3 Submittal Form, if applicable

State Contractor's license classification is as follows; Classification \_\_\_\_\_, and State

Contractor's License Number, \_\_\_\_\_.

The undersigned has checked carefully all of the above figures and understands that (HAWS) will not be responsible for any errors or omissions on the part of the undersigned making up this bid.

\_\_\_\_\_  
DATED OFFICIAL ADDRESS

\_\_\_\_\_  
NAME OF BIDDER BY

\_\_\_\_\_  
TITLE PHONE AND FAX NUMBERS

Email \_\_\_\_\_

I certify that to the best of my knowledge, the information above is correct and accurate.

\_\_\_\_\_  
Bid Submission Representative Name Date

**ATTACHMENT**

**B**

**Profile of Firm**

**Form**

**PROFILE OF FIRM FORM  
(Attachment B)**

(1) Prime \_\_\_\_ Sub-contractor \_\_\_\_ (This form must be completed by and for each).

(2) Name of Firm: \_\_\_\_\_ Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

(3) Street Address, City, State, Zip: \_\_\_\_\_

(4) Please attached a brief biography/resume of the company, including the following information:

(a) Year Firm Established; (b) Year Firm Established in [JURISDICTION]; (c) Former Name and Year Established (if applicable); (d) Name of Parent Company and Date Acquired (if applicable).

(5) Identify Principals/Partners in Firm

NAME	TITLE	% OF OWNERSHIP

(6) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; (Do not duplicate any resumes required above):

NAME	TITLE

(7) Proposer Diversity Statement: You must circle all of the following that apply to the ownership of this firm and enter where provided the correct percentage (%) of ownership of each:

Caucasian American (Male) \_\_\_\_\_%     
  Public-Held Corporation \_\_\_\_\_%     
  Government Agency \_\_\_\_\_%     
  Non-Profit Organization \_\_\_\_\_%

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise (Qualifies by virtue of 51% or more ownership and active management by one or more of the following:

Resident-Owned\* \_\_\_\_\_%   
  African American \_\_\_\_\_%   
  Native American \_\_\_\_\_%   
  Hispanic American \_\_\_\_\_%   
  Asian/Pacific American \_\_\_\_\_%   
  Hasidic Jew \_\_\_\_\_%   
  Asian/Indian American \_\_\_\_\_%

Woman-Owned (MBE) \_\_\_\_\_%   
  Woman-Owned (Caucasian) \_\_\_\_\_%   
  Disabled Veteran \_\_\_\_\_%   
  Other (Specify): \_\_\_\_\_%

WMBE Certification Number: \_\_\_\_\_

Certified by (Agency): \_\_\_\_\_

(NOTE: A CERTIFICATION/NUMBER NOT REQUIRED TO PROPOSE – ENTER IF AVAILABLE)

\_\_\_\_\_  
**Signature    Date    Printed Name    Company**



PROFILE OF FIRM FORM  
(Attachment B)

(This Form must be fully completed.)

(8) Federal Tax ID

No.: \_\_\_\_\_

(9) [APPROPRIATE JURISDICTION] Business License

No.: \_\_\_\_\_

(10) State of \_\_\_\_\_ License Type and No.: \_\_\_\_\_

(11) Worker's Compensation Insurance Carrier: \_\_\_\_\_

Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

(12) General Liability Insurance Carrier: \_\_\_\_\_

Policy No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_

(13) Professional Liability Insurance Carrier: \_\_\_\_\_

Policy No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_

(14) Debarred Statement: Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of \_\_\_\_\_, or any local government agency within or without the State of \_\_\_\_\_? Yes  No   
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

(15) Disclosure Statement: Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the HA? Yes  No   
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

(16) Non-Collusive Affidavit: The undersigned party submitting this proposal hereby certifies that such proposal is genuine and not collusive and that said proposer entity has not colluded, conspired, connived or agreed, directly or indirectly, with any proposer or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price of affiant or of any other proposer, to fix overhead, profit or cost element of said proposal price, or that of any other proposer or to secure any advantage against the HA or any person interested in the proposed contract; and that all statements in said proposal are true.

(17) Verification Statement: The undersigned proposer hereby states that by completing and submitting this form he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and agrees that if the HA discovers that any information entered herein is false, that shall entitle the HA to not consider nor make award or to cancel any award with the undersigned party.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Company

**ATTACHMENT  
C**

**Contractor's Certification**

**CONTRACTOR'S CERTIFICATION**

The undersigned further certifies that the Bidder who submitted the Bid to which this certification is attached, is appropriately licensed by, and in good standing with, the North Carolina Contractors' State License Board, and is not listed on the federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

SIGNATURE OF:

Bidder if Bidder is an individual:

---

(Name of Bidder)

Partner if Bidder is a partnership:

---

(Name of Partner)

Officer if Bidder is a corporation:

---

(Name of Officer)

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

**NOTARY PUBLIC, STATE OF** \_\_\_\_\_

**MY COMMISSION EXPIRES** \_\_\_\_\_

END OF CONTRACTOR'S CERTIFICATION

**ATTACHMENT  
D**

**Non-Collusive  
Affidavit**

**NON-COLLUSIVE AFFIDAVIT**

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

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

That he or she is \_\_\_\_\_ of the firm of \_\_\_\_\_  
(Firm Name)

The party making the foregoing bid; that such bids are genuine and not collusive or sham; that said bidder has not colluded, conspired, connived, or agreed, directly or indirectly, sought by agreement of collusion, or communication or conference, with any person, to fix the bid price or affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of any other bidder, or to secure any advantage against the Sponsor or any person interested in the proposed Contract; and that all statements in said bid are true.

That neither Members of Congress, Local or State Public Officials, or any employee or representative of the Sponsor is in any manner interested, directly or indirectly in the bid to which this Non-Collusive Affidavit is attached, nor in the Contract which may be made pursuant to said bid, nor in any expected profits which may arise there from.

SIGNATURE OF:

Bidder if Bidder is an individual:

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

Partner if Bidder is a Partnership

\_\_\_\_\_  
(Name of Partner)

Officer if Bidder is a corporation:

\_\_\_\_\_  
(Name of Officer)

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

PUBLIC, STATE OF NC. \_\_\_\_\_ My Commission Expires\_\_\_\_\_.

**END OF AFFIDAVIT**

**ATTACHMENT  
E**

**Section 3 Certification Statement**

## Section 3 Contractor Certification Statement (If Applicable)

**The undersigned Bidder hereby declares that:**

1. He/She is not submitting a Section 3 Business Preference Submittal Form.
  
2. He/She is aware that if he/she receives an award as the result of this competitive solicitation, even though he/she may not receive a Preference from HAWS as a result of this submittal, he/she will still be required to, to the greatest extent feasible, implement a Section 3 Plan, including a commitment to interview and consider hiring Section 3 persons (most specifically, residents of HAWS) whenever the successful bidder has need to hire additional employees during the term of the ensuing contract.

The undersigned individual representing ( \_\_\_\_\_ )  
Name of Company,  
does hereby attest a commitment to the above listed certification statement.

---

Name & Title of Individual signing – Please sign and print your name

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

PUBLIC, STATE OF NC. \_\_\_\_\_ My Commission Expires \_\_\_\_\_.

**ATTACHMENT**

**F**

**Form HUD-5369-A Representations,  
Certifications, and Other Statements  
of Bidders Public and Indian  
Housing Programs**



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

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

# Representations, Certifications, and Other Statements of Bidders

## Public and Indian Housing Programs

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### 1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

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

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

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

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

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

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

[ ] [Contracting Officer check if following paragraph is applicable]

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

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

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

### 2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

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

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

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

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

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

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

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

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

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

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

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

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

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

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

#### 4. Organizational Conflicts of Interest Certification

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

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

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

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

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

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

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

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

#### 6. Minimum Bid Acceptance Period

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

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

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

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

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

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

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

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

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

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

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

(Check the block applicable to you)

- [ ] Black Americans
- [ ] Asian Pacific Americans
- [ ] Hispanic Americans
- [ ] Asian Indian Americans
- [ ] Native Americans
- [ ] Hasidic Jewish Americans

#### 8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

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

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

**9. Certification of Eligibility Under the Davis-Bacon Act** (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

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

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

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

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

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

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

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

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

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

The bidder certifies that:

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

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

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

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

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

(b) A fully executed "Previous Participation Certificate" [ ] is, [ ] is not included with the bid.

**13. Bidder's Signature**

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

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

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

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

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

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

**ATTACHMENT**

**G**

**Bid (Security Bond)  
Performance (Bond)**

**BID BOND**

KNOW ALL PEOPLE BY THESE PRESENTS, that we the undersigned \_\_\_\_\_ as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto, hereinafter called the Sponsor, in the penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) DOLLARS in lawful money of the United States of America for the payment of which, well and truly to be made, we hereby bind ourselves and ours and each of our successors and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above-named Principal is about to hand in and submit a bid or proposal in accordance with those certain Contract Documents, Plans and Specification entitled CRYSTAL TOWERS LOBBY RENOVATION.

Dated \_\_\_\_\_, and filed in the office of said Sponsor.

NOW, THEREFORE, if the above-named Principal is awarded the Contract, and shall fail to enter into a Contract to perform said Contract and to furnish any and all bonds in the form and in the amounts required under said Contract Document, Plans and Specifications at the time of executing said Contract, within Ten (10) days after the Contract is presented for signature, then the amount herein, the penalty of this bond which accompanies the bid, shall be declared forfeited and the full penal sum paid to the **HOUSING AUTHORITY OF THE CITY OF WINSTON-SALEM, NC 27101**.

IN WITNESS THEREOF, said Principal and said Surety have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_  
PRINCIPAL

By \_\_\_\_\_  
SURETY

(Power of Attorney for person signing for Surety Company, or certified copy thereof must be attached. Signature of Person executing for the Surety must be acknowledged).

Housing Authority of the City of Winston-Salem

## IFB PERFORMANCE Bond Form

Procurement Department

STATE OF NORTH CAROLINA

CITY OF WINSTON-SALEM

FORSYTH COUNTY

Known all by these presents:

We,

---

(Legal Name of the Bidder and Address)

(hereinafter called "Bidder") and

---

(Legal Name and Address of Surety Company)

(hereinafter called "Surety") are held and firmly bound unto Housing Authority of the City of Winston-Salem (herein called the "Authority") in the sum of:

\_\_\_\_\_ Dollars and NO/100

(\$ \_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind our self, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents:

WHEREAS, the "Bidder": contemplates submitting or has submitted a Bid Response to the "Authority", for: **Solicitation #: IFB No. 22-1110 HAWS Crystal Towers Lobby Upgrade**

WHEREAS, it was a condition precedent to the submission of said Bid Response that a certified check, cashier's check Bid Bond in the amount of five percent (5%) of the total amount of your Bid price to be submitted with said Bid Response as a guarantee that the "Bidder" will, if awarded the Contract, enter into an a written Contract agreement with the "Authority" and furnish a Performance and Payment Bond in the amount equal to one-hundred percent (100%) of the total Contract amount for the performance of the entire work for said Contract, within ten (10) consecutive calendar days after a written preliminary "Notice of Contract Award" furnished to the "Bidder" from the "Authority".

NOW, THEREFORE, the conditions of this obligation are such, that if the Bid Response and the Bidder" herein be accepted and said "Bidder" within ten (10) consecutive calendar days after receipt of the written "Notice of Contract Award" from the "Authority", will enter into a written Contract agreement with the "Authority" and will furnish a Performance and Payment Bond in the amount equal to one-hundred percent (100%) of the total amount of the Contract, to the satisfaction of the "Authority", then the "Surety" herein agrees to pay said sum immediately upon demand of said "Authority", in good and lawful money of the United States of America, as liquidated damages for failure thereof of said "Bidder":

In WITNESS THEREOF, the said:

---

**(Legal Name of the Bidder and Address)**

as "Bidder" herein, has caused these presents to be signed in its name by its:

---

**(Signature and Title of Bidder Authorized Representative)**

under its corporate seal and the said:

---

**(Legal Name of the Surety Company and Address)**

as "Surety" herein, has caused these presents to be signed in its name by its

\_\_\_\_\_ under its corporate seal, the

\_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_.



**Legal Name of the Bidder:**

\_\_\_\_\_

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

**(Authorized Signature of Bidder)**

\_\_\_\_\_

\_\_\_\_\_

**(Printed or Typed Name of the Authorized Representative)**

\_\_\_\_\_

**(Title)**

\_\_\_\_\_

**(Date)**

**Company Seal:**

Attested By:

\_\_\_\_\_

**(Signature)**

\_\_\_\_\_

\_\_\_\_\_

**(Legal Name of the Surety Company and Address)**

\_\_\_\_\_

\_\_\_\_\_

**(Legal Name and Address of the Attorney in Fact)**

**ATTACHMENT  
H**

**FORM  
HUD-2530**

**US Department of Housing and Urban Development**  
Office of Housing/Federal Housing Commissioner

**US Department of Agriculture**  
Farmers Home Administration

<b>Part I to be completed by Controlling Participant(s) of Covered Projects</b> <i>(See instructions)</i> Reason for submission:	<b>For HUD HQ/FmHA use only</b>		
1. Agency name and City where the application is filed	2. Project Name, Project Number, City and Zip Code		
3. Loan or Contract amount \$	4. Number of Units or Beds	5. Section of Act	6. Type of Project (check one) <input type="checkbox"/> Existing <input type="checkbox"/> Rehabilitation <input type="checkbox"/> Proposed (New)

**7. List all proposed Controlling Participants and attach complete organization chart for all organizations showing ownership %**

Name and address ( Last, First, Middle Initial) of controlling participant(s) proposing to participate	9. SSN or IRS Employer Number (TIN)

Certifications: The controlling participants(s) listed above hereby apply to HUD or USDA FmHA, as the case maybe, for approval to participate as controlling participant(s) in the role(s) and project listed above. The controlling participant(s) certify that the information provided on this form and in any accompanying documentation is true and accurate. I/we acknowledge that making, presenting, or submitting a false, fictitious, or fraudulent statement, representation, or certification may result in criminal, civil, and/or administrative sanctions, including fines, penalties, and imprisonment. The controlling participants(s) further certify to the truth and accuracy of the following:

1. Schedule A contains a listing, for the last ten years, of every project assisted or insured by HUD, USDA FmHA and/or State and local government housing finance agencies in which the controlling participant(s) have participated or are now participating.
2. For the period beginning 10 years prior to the date of this certification, and except as shown on the certification:
  - a. No mortgage on a project listed has ever been in default, assigned to the Government or foreclosed, nor has it received mortgage relief from the mortgagee;
  - b. The controlling participants have no defaults or noncompliance under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project;
  - c. There are no known unresolved findings as a result of HUD audits, management reviews or other Governmental investigations concerning the controlling participants or their projects;
  - d. There has not been a suspension or termination of payments under any HUD assistance contract due to the controlling participant's fault or negligence;
  - e. The controlling participants have not been convicted of a felony and are not presently the subject of a complaint or indictment charging a felony. (A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less);
  - f. The controlling participants have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;
  - g. The controlling participants have not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond;
  3. All the names of the controlling participants who propose to participate in this project are listed above.
4. None of the controlling participants is a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in Standards of Ethical Conduct for Employees of the Executive Branch in 5 C.F.R. Part 2635 (57 FR 35006) and HUD's Standard of Conduct in 24 C.F.R. Part 0 and USDA's Standard of Conduct in 7 C.F.R. Part 0 Subpart B.
5. None of the controlling participants is a participant in an assisted or insured project as of this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification, have not been filed with HUD or FmHA.
6. None of the controlling participants have been found by HUD or FmHA to be in noncompliance with any applicable fair housing and civil rights requirements in 24 CFR 5.105(a). (If any controlling participants have been found to be in noncompliance with any requirements, attach a signed statement explaining the relevant facts, circumstances, and resolution, if any).
7. None of the controlling participants is a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.
8. Statements above (if any) to which the controlling participant(s) cannot certify have been deleted by striking through the words with a pen, and the controlling participant(s) have initialed each deletion (if any) and have attached a true and accurate signed statement (if applicable) to explain the facts and circumstances.

<b>Name of Controlling Participant</b>	<b>Signature of Controlling Participant</b>	<b>Certification Date (mm/dd/yyyy)</b>	<b>Area Code and Tel. No.</b>
<b>This form prepared by (print name)</b>		<b>Area Code and Tel. No.</b>	

**Schedule A: List of Previous Projects and Section 8 Contracts.** Below is a complete list of the controlling participants' previous participation projects and participation history in covered projects as per 24 CFR, part 200 §200.214 and multifamily Housing programs of FmHA, State and local Housing Finance Agencies, if applicable. **Note:** Read and follow the instruction sheet carefully. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If no previous projects, write by your name, "No previous participation, First Experience".

1. Controlling Participants' Name (Last, First)	2. List of previous projects (Project name, project ID and, Govt. agency involved)	3. List Participants' Role(s) (indicate dates participated, and if fee or identity of interest participant)	4. Status of loan (current, defaulted, assigned, foreclosed)	5. Was the Project ever in default during your participation <b>Yes No If yes, explain</b>	6. Last MOR rating and Physical Insp. Score and date

**Part II- For HUD Internal Processing Only**

Received and checked by me for accuracy and completeness; recommend approval or refer to Headquarters after checking appropriate box.

Date (mm/dd/yyyy)	Tel No. and area code	<input type="checkbox"/> A. No adverse information; form HUD-2530 approval recommended. <input type="checkbox"/> B. Name match in system <input type="checkbox"/> C. Disclosure or Certification problem <input type="checkbox"/> D. Other (attach memorandum)
Staff	Processing and Control	
Signature of authorized reviewer	Signature of authorized reviewer	Approved <input type="checkbox"/> Yes <input type="checkbox"/> No Date (mm/dd/yyyy)

### **Instructions for Completing the Previous Participation Certificate, form HUD-2530**

Carefully read these instructions and the applicable regulations. A copy of the regulations published at 24 C.F.R. part 200, subpart H, § 200.210-200.222 can be obtained on-line at [www.gpo.gov](http://www.gpo.gov) and from the Account Executive at any HUD Office. Type or print neatly in ink when filling out this form. Incomplete form will be returned to the applicant.

Attach extra sheets as you need them. Be sure to indicate "Continued on Attachments" wherever appropriate. Sign each additional page that you attach if it refers to you or your record. **Carefully read the certification before you sign it.** Any questions regarding the form or how to complete it can be answered by your HUD Account Executive.

**Purpose:** This form provides HUD/USDA FmHA with a certified report of all previous participation in relevant HUD/USDA programs by those parties submitting the application. The information requested in this form is used by HUD/USDA to determine if you meet the standards established to ensure that all controlling participants in HUD/USDA projects will honor their legal, financial and contractual obligations and are of acceptable risks from the underwriting standpoint of an insurer, lender or governmental agency. HUD requires that you certify and submit your record of previous participation, in relevant projects, by completing and signing this form, before your participation can be approved.

**HUD approval of your certification is a necessary precondition for your participation in the project and in the capacity that you propose. If you do not file this certification, do not furnish the information requested accurately, or do not meet established standards, HUD will not approve your certification.**

**Note that approval of your certification does not obligate HUD to approve your project application, and it does not satisfy all other HUD program requirements relative to your qualifications.**

**Who Must Sign and File Form HUD-2530:** Form HUD-2530 must be completed and signed by all Controlling Participants of Covered Projects, as such terms are defined in 24 CFR part 200 §200.212, and as further clarified by the Processing Guide (HUD notice H 2016-15) referenced in 24 CFR §200.210(b) and available on the HUD website at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/prevparticipation](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/prevparticipation).

**Where and When Form HUD-2530 Must Be Filed:** The original of this form must be submitted to the HUD Office where your project application will be processed at the same time you file your initial project application. This form must be filed with applications for projects listed in 24 CFR §200.214 and for the Triggering Events listed at 24 CFR §200.218.

**Review of Adverse Determination:** If approval of your participation in a HUD project is denied, withheld, or conditionally granted on the basis of your record of previous participation, you will be notified by the HUD Office. You may request reconsideration in accordance with 24 CFR §200.222 and further clarified by the Processing Guide. Request must be made in writing within 30 days from your receipt of the notice of determination.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by law 42 U.S.C. 3535(d) and by regulation at 24 CFR 200.210. This information is needed so that principals applying to participate in multifamily programs can become HUD-approved controlling participants. The information you provide will enable HUD to evaluate your record with respect to established standards of performance, responsibility and eligibility. Without prior approval, a controlling participant may not participate in a proposed or existing multifamily or healthcare project. HUD uses this information to evaluate whether or not controlling participants pose an unsatisfactory underwriting risk. The information is used to evaluate the potential controlling participants and approve only individuals and organizations that will honor their legal, financial and contractual obligations.

**Privacy Act Statement:** The Housing and Community Development Act of 1987, 42 U.S.C. 3543 requires persons applying for a Federally-insured or guaranteed loan to furnish his/her Social Security Number (SSN). HUD must have your SSN for identification of your records. HUD may use your SSN for automated processing of your records and to make requests for information about you and your previous records with other public agencies and private sector sources. HUD may disclose certain information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. You must provide all of the information requested in this application, including your SSN.

**Purpose:** The information collected by form HUD-2530 is required for principals applying to participate in multifamily programs to become HUD-approved controlling participants. The information you provide will enable HUD to evaluate your record with respect to established standards of performance, responsibility, and eligibility.

**Routine Use:** The information collected by this form will not be otherwise disclosed outside of HUD, except to public agencies and private sector sources for automated processing of your records and for requesting information about you for participant approval; to appropriate agencies, entities, and persons when it is reasonably necessary to mitigate a breach or related incident; to Federal, state and/or local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions or for other inquiries.

**Disclosure:** Providing the information is voluntary. You must provide all information requested in this application, including your SSN. Without prior approval or information, a controlling participant may not participate in a proposed or existing multifamily or healthcare project.

SORN ID/URL:<https://www.govinfo.gov/content/pkg/FR-2016-07-29/pdf/2016-18026.pdf>

**Public reporting burden** for this collection of information is estimated to average three hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

A response is mandatory. Failure to provide any of the information will result in your disapproval of participation in this HUD program.

**ATTACHMENT  
I**

**Work Plan – Full job completion schedule  
&  
Completed form HUD-51000**



# Schedule of Amounts for Contract Payments

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

OMB Approval No. 2577-0157  
(Exp. 11/30/2023)

No progress payments shall be made to the contractor unless a schedule of amounts for contract payments in accordance with the construction contract is received.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number. Construction practices and HUD administrative requirements establish the need that HAs maintain certain records or submit certain documents in conjunction with the oversight of the award of construction contracts for the construction of new low-income housing developments or modernization of existing developments. These forms are used by HAs to provide information on the construction progress schedule and schedule of amounts for contract payments. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

Project Name and Location	Project Number
---------------------------	----------------

Name, Address, and Zip Code of Contractor
---

Nature of Contract	Contract Number
--------------------	-----------------

Approved for Contractor by	Title	Date (mm/dd/yyyy)
----------------------------	-------	-------------------

Approved for Architect by	Title	Date (mm/dd/yyyy)
---------------------------	-------	-------------------

Approved for Owner by	Title	Date (mm/dd/yyyy)
-----------------------	-------	-------------------

Item No. (1)	Description of Item (2)	Quantity (3)	Unit of Measure (4)	Unit Price in Place (5)	Amount of Sub-Item (6)	Amount of Principal Item (7)

<b>Total Amount of Contract or Carried Forward</b>	\$
--	----

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.  
**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Signature of authorized representative	Date signed (mm/dd/yyyy)
--	--------------------------

## Instructions for Preparation of form HUD-51000

1. A separate breakdown is required for each project and prime contract instructions for preparation are given below.
  - a. **Heading.** Enter all identifying information required for both forms.
  - b. **Columns 1 and 2.** In column 1, enter the item numbers starting with No. 1, and in column 2 enter each principal division of work incorporated in the contract work.
    - (1) **Master List.** The Master list contains the basic items into which any construction contract may be subdivided for the purpose of preparing the Construction Progress Schedule and the Periodical Estimates for Partial Payments. Only those items shall be selected which apply to the particular contract. To ensure uniformity, no change shall be made in the item numbers. Generally, about 25 to 40 major items appear in a contract.
    - (2) **Items Subdivided.** In the Contractor's breakdown, against which all periodical estimates will be checked prior to payment, each major item must be subdivided into sub-items pertinent to the project involved and in agreement with the Contractor's intended basis for requesting monthly payments.
  - c. **Column 3.** Enter the total quantity for each sub-item of each principal division of work listed in the breakdown.
  - d. **Column 4.** Enter the appropriate unit of measure for each sub-item of work opposite the quantities described in column 3, such as "sq. ft.," "cu. yd.," "tons," "lb.," "lumber per M/BM," "brickwork per M," etc., applicable to the particular sub-item. Items shown on "lump sum" or equivalent basis will be paid for only on completion of the whole item and not on a percentage of completion basis.
  - e. **Column 5.** Enter the unit price, in place, of each sub-item of work.
  - f. **Column 6.** Enter the amount of each sub-item obtained by multiplying the quantities in column 3 by the corresponding unit prices in column 5.
  - g. **Column 7.** Enter the amount of principal item only, obtained by adding the amounts of all sub-items of each principal division of work listed in column 6. Continue with the breakdown on form HUD-51000.
  - h. The "Schedule of Amounts for Contract Payments" shall be signed and dated in the space provided at the bottom of each sheet of the form by the individual who prepared the breakdown for the Contractor.
2. The minimum number of copies required for each submission for approval is an original and two copies. When approved, one fully approved copy will be returned to the Contractor.

### Master List of Items

Item No.	Division of Work	Item No.	Division of Work	Item No.	Division of Work
1	Bond	20	Rough Carpentry		
2	General Conditions	21	Metal Bucks	44	Retaining Walls
3	Demolition & Clearing	22	Caulking	45	Storm Sewers
	<b>Structures</b>	23	Weatherstripping	46	Sanitary Sewers
4	General Excavation	24	Lath & Plastering-Drywall	47	Water Distribution System
5	Footing Excavation	25	Stucco	48	Gas Distribution System
6	Backfill	26	Finish Carpentry	49	Electrical Distribution System
7	Foundation Piles & Caissons	27	Finish Hardware	50	Street & Yard Lighting
8	Concrete Foundations	28	Glass & Glazing	51	Fire & Police Alarm System
9	Concrete Superstructures	29	Metal Doors	52	Fire Protection System
10	Reinforcing Steel	30	Metal Base & Trim	53	Street Work
11	Waterproofing & Dampproofing	31	Toilet Partitions	54	Yard Work
12	Spandrel Waterproofing	32	Floors	55	(Other)
13	Structural Steel	33	Painting & Decorating	56	(Other)
14	Masonry	34	Screens		
15	Stonework	35	Plumbing		<b>Equipment</b>
16	Miscellaneous & Ornamental Metal	36	Heating	57	Shades & Drapery Rods
17	Metal Windows	37	Ventilating System	58	Ranges
18	Roofing	38	Electrical	59	Refrigerators
19	Sheet Metal	39	Elevators	60	Kitchen Cabinets & Work Tables
		40	Elevator Enclosures—Metal	61	Laundry Equipment
		41	Incinerators—Masonry & Parts	62	(Other)
		42	(Other)		
		43	(Other)	63	<b>Punch List</b> 12
				64	Lawns & Planting

1 General Conditions should be 3% to 5% of contract amount.

2 Punch List should be approximately 1/2 of 1% or \$30 per dwelling unit, whichever is greater.

**Attachment  
J**

**Iran Divestment Act Certification  
Required By N.C.G.S. 143C-6A-5(a)**

Name of Company:

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## IRAN DIVESTMENT ACT CERTIFICATION REQUIRED BY N.C.G.S. 143C-6A-5(a)

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As of the date listed below, the entity listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4.

The undersigned hereby certifies that he or she is authorized by the entity listed above to make the foregoing statement.



---

Signature

Date

---

Printed Name

Title

**Exhibit A**

**Form HUD-5369  
Instructions to Bidders for Contracts**

**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, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.



(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

**9. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)**

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

**10. Assurance of Completion**

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[ ] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[ ] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[ ] (3) a 20 percent cash escrow;

[ ] (4) a 25 percent irrevocable letter of credit; or,

[ ] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, 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.

**Exhibit B**

**Form HUD-5370  
General Conditions for Construction Contract – Public Housing  
Programs**

# General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban  
Development  
Office of Public and Indian Housing  
OMB Approval No. 2577-0157 (exp. 11/30/2023)

**Applicability. This form is applicable to any  
construction/development contract greater than \$250,000.**

Public reporting burden for this collection of information is estimated to average 1 hour. This includes the time for collecting, reviewing, and reporting the data. The information requested is required to obtain a benefit. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 75. The form is required for construction contracts awarded by Public Housing Agencies (PHAs). The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, PHAs would be unable to enforce their contracts. There are no assurances of confidentiality. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

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## 1. Definitions

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

## 2. Contractor's Responsibility for Work

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

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

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

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

#### 4. Other Contracts

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

### Construction Requirements

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

of the work, and that it has investigated and satisfied itself

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

#### 6. Construction Progress

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

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

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

reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

- (b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

## 8. Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the

Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

## 9. Specifications and Drawings for Construction

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

promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown" "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

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

#### 10. As-Built Drawings

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

#### 11. Material and Workmanship

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

machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

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

#### 12. Permits and Codes

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



waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer.

Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

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

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

(a) In performing this contract, the Contractor shall:

- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
- (2) Protect the lives, health, and safety of other persons;
- (3) Prevent damage to property, materials, supplies, and equipment; and,
- (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
- (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

### 14. Temporary Heating

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

### 15. Availability and Use of Utility Services

(a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

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

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

(b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

(d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

(e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

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

## 17. Temporary Buildings and Transportation of Materials

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

## 18. Clean Air and Water

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

## 19. Energy Efficiency

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

## 20. Inspection and Acceptance of

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

- (f) The PHA may conduct routine inspections of the construction site on a daily basis.
- (g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.
- (i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the **Construction PHA** considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right under any warranty or guarantee.

## 21. Use and Possession Prior to Completion

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

occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

## 22. Warranty of Title

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

## 23. Warranty of

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

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

**24. Prohibition Against Liens**

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

**Administrative Requirements**

**25. Contract Period**

this contract within \_\_\_\_\_ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

**26. Order of Provisions**

accordance with the terms and conditions of the

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

**27. Payments**

retain ten (10) percent of the amount of progress (a) The PHA shall pay the Contractor the price as provided in this contract.

(b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.

(c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a

basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

(d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved

submitted not later than \_\_\_\_\_ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

(e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in subcontract.

**Name:**

Title:

Date:

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

payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

(g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.

Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

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

## 28. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or

responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

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

## 29. Changes

- (a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) PHA-furnished facilities, equipment, materials, services, or site; or,
  - (4) Directing the acceleration in the performance of the work.
- (b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for 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.

### 30. Suspension of Work

- (a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have

- been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.
- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

### 31. Disputes

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

### 32. Default

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

proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the **Convenience** Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

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

### 33. Liquidated Damages

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

completion of the work together with any increased costs occasioned the PHA in completing the work.

- (c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

### 34. Termination for

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

### 35. Assignment of Contract

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

### 36. Insurance

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

### 37. Subcontracts

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

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

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

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

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

### 39. Equal Employment Opportunity

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

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



(c) The Contractor/Seller agrees to post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(d) The Contractor/Seller shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor/Seller shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor/Seller shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor/Seller shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor/Seller shall permit

access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a that the Contractor/Seller is in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor/seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(i) The contractor/seller will include the provisions of paragraphs (a) through (h) 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 sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

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

(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 75, 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 75 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 prioritization requirements and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04).

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, 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 75. 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 75.

(e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

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#### 41. Interest of Members of Congress

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

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

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

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

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

#### 44. Royalties and Patents

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

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

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

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

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

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

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 taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (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 classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the

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

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

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
  - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
  - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to

make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

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

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

- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.
- (j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
  - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause. DOL posts current fines at: <https://www.dol.gov/whd/govcontracts/cwhssa.htm#cmp>
  - (3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.
- (k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

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47. Non-Federal Prevailing Wage Rates

(a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;

(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or

(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

( ) 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.

**Exhibit C**

**Form HUD-4010 Federal Labor Standards Provision**

## Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, 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 I(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 particular 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 on 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.

**(ii) (a)** Any class of laborers or mechanics 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 the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 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. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** 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 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. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, 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.

**(iii)** 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.

**(iv)** 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. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** 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 on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, 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. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. 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 any 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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, 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 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** 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:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) 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;

(3) 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.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) 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 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, sponsor, applicant or owner, 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.

#### **4. Apprentices and Trainees.**

(i) **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, or with a State Apprenticeship Agency recognized by the Office, 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 the Office of Apprenticeship Training, Employer and Labor Services 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 above, 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 journeymen 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 determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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.

(ii) **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 on 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 on 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 on the wage determination for the 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 on 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.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. 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

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract 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 HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** 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 Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**Exhibit D**

**Davis-Bacon Act Wage Determination  
NC202288 02/25/2022 NC88**

"General Decision Number: NC20220101 02/25/2022

Superseded General Decision Number: NC20210101

State: North Carolina

Construction Type: Residential

County: Forsyth County in North Carolina.

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

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

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

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

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

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

\* SUNC2016-010 02/22/2019

	Rates	Fringes
BRICKLAYER.....	\$ 18.62	0.00
CARPENTER.....	\$ 15.71	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 15.52	0.00
DRYWALL HANGER.....	\$ 14.00 **	0.00
ELECTRICIAN, Includes Low Voltage Wiring and Alarm Installation.....	\$ 20.08	0.00
FLOOR LAYER: SOFT FLOORS.....	\$ 12.63 **	0.00
HVAC MECHANIC (HVAC Duct Installation Only).....	\$ 18.49	0.97
HVAC MECHANIC (HVAC Pipe Installation Only).....	\$ 13.54 **	0.00
IRONWORKER, ORNAMENTAL.....	\$ 15.71	0.00
IRONWORKER, STRUCTURAL.....	\$ 16.89	0.00
LABORER: Common or General.....	\$ 12.55 **	0.00
LABORER: Landscape.....	\$ 9.08 **	0.00
LABORER: Mason Tender - Brick...	\$ 13.00 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 13.49 **	0.00
LABORER: Pipelayer.....	\$ 12.17 **	0.00
LABORER: Demolition.....	\$ 10.71 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 18.50	1.47
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 18.50	1.56
OPERATOR: Bulldozer.....	\$ 16.83	0.00
OPERATOR: Grader/Blade.....	\$ 15.83	0.00
OPERATOR: Loader.....	\$ 15.12	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 17.45	0.00
OPERATOR: Roller.....	\$ 13.55 **	0.00
PAINTER (Brush and Roller).....	\$ 13.85 **	0.00
PAINTER: Spray.....	\$ 15.06	0.00
PLUMBER.....	\$ 19.73	0.00

ROOFER.....	\$ 15.14	0.00
SHEET METAL WORKER.....	\$ 16.43	0.00
SPRINKLER FITTER (Fire Sprinklers).....	\$ 14.38 **	0.00
TRUCK DRIVER: Dump Truck.....	\$ 15.13	0.48
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 14.77 **	0.00

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

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

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

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

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were



prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

#### Survey Rate Identifiers

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

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

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter

\* a conformance (additional classification and rate) ruling

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISIO"

**Exhibit E**

**US Dept. of Labor**

**Instructions For Completing Payroll Form, WH-347**

## Wage and Hour Division (WHD)

### Instructions For Completing Payroll Form, WH-347

- [WH-347](#) (PDF)  
OMB Control No. 1235-0008, Expires 01/31/2015.

**General:** Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

**Contractor or Subcontractor:** Fill in your firm's name and check appropriate box.

**Address:** Fill in your firm's address.

**Payroll No.:** Beginning with the number "1", list the payroll number for the submission.

**For Week Ending:** List the workweek ending date.

**Project and Location:** Self-explanatory.

**Project or Contract No.:** Self-explanatory.

**Column 1 - Name and Individual Identifying Number of Worker:** Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

**Column 2 - No. of Withholding Exemptions:** This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

**Column 3 - Work Classifications:** List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown or hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

**Column 4 - Hours worked:** List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

**Column 5 - Total:** Self-explanatory

**Column 6 - Rate of Pay (Including Fringe Benefits):** In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "\$12.25/.40" would reflect a \$12.25 base hourly rate plus \$0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds \$100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the

contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

**Column 7 - Gross Amount Earned:** Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "\$163.00/\$420.00" would reflect the earnings of a worker who earned \$163.00 on a Federally assisted construction project during a week in which \$420.00 was earned on all work.

**Column 8 - Deductions:** Five columns are provided for showing deductions made. If more than five deduction are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

**Column 9 - Net Wages Paid for Week:** Self-explanatory.

**Totals** - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

**Statement Required by Regulations, Parts 3 and 5:** While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

**Items 1 and 2:** Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "*See Deductions column in this payroll.*" *See* "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

**Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits:** If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

**Contractors who pay no fringe benefits:** If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

### **Use of Section 4(c), Exceptions**

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4(b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

---

**Public Burden Statement:** We estimate that it will take an average of 55 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**Note:** In order to view, fill out, and print PDF forms, you need Adobe® Acrobat® Reader® version 5 or later, which you may download for free at [www.adobe.com/products/acrobat/readstep2.html](http://www.adobe.com/products/acrobat/readstep2.html). To save the completed forms on your workstation, you need to use the "Save As" method to save the file.

For example, move your mouse cursor over the PDF link and click on your "RIGHT" mouse button. This will cause a menu to be displayed, from which you will select the proper save option -- depending upon which browser you are using:

- For Microsoft IE users, select "Save Target As"
- For Netscape Navigator users, select "Save Link As"

Once you've selected the proper save option for your browser, and have saved the file to a location you specified, go to your program menu and start the Adobe Acrobat® Reader. Once open, locate the PDF file you saved and open it directly in Acrobat®.

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**Exhibit F**

**US Dept. of Labor  
Payroll Form WH-347**





**Exhibit G**

**Form HUD-51001  
Periodic Estimate for Partial Payments**

# Periodic Estimate for Partial Payment

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

OMB Approval No. 2577-0157  
(exp. 11/30/2023)

Submit original and one copy to the Public Housing Agency.  
Complete instructions are on the back of this form.

Public reporting burden for this collection of information is estimated to average 3.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number. This information is collected under the authority of Section 6(c) of the U.S Housing Act of 1937 and HUD regulations. HAs are responsible for contract administration to ensure that the work for project development is done in accordance with State laws and HUD requirements. The contractor/subcontractor reports provide details and summaries on payments, change orders, and schedule of materials stored for the project. The information will be used to ensure that the total development cost s, identified in the ACC, are kept as low as possible and consistent with HUD construction requirements. Responses to the collection are necessary to obtain a benefit. The information requested does not lend itself to confidentiality.

Name of Public Housing Agency	Periodic Estimate Number	Period From (mm/dd/yyyy) To (mm/dd/yyyy)
-------------------------------	--------------------------	---

Location of Project	Project Number
---------------------	----------------

Name of Contractor	Contract Number
--------------------	-----------------

Item Number (1)	Description of Item (2)	Completed to Date (3)
		\$

<b>Value of Contract Work Completed to Date (Transfer this total to line 5 on back of this sheet)</b>	<b>\$</b>
---	-----------

**Instructions**

**Headings.** Enter all identifying data required. Periodic estimates must be numbered in sequence beginning with the number 1.

**Columns 1 and 2.** The "Item Number" and "Description of Item" must correspond to the number and descriptive title assigned to each principal division of work in the "Schedule of Amounts for Contract Payments", form HUD-51000.

**Column 3.** Enter the accumulated value of each principal division of work completed as of the closing date of the periodic estimate. Enter the total in the space provided.

**Certifications.** The certification of the contractor includes the analysis of amounts used to determine the net balance due. In the first paragraph, enter the name of the Public Housing Agency, the contractor, and the date of the contract. Enter the calculations used in arriving at the "Balance Due This Payment" on lines 1 through 16.

Enter the contractor's name and signature in the certification following line 16.

The latter portion of this certification relating to payment of legal rates of wages, is required by the contract before any payment may be made. However, if the contractor does not choose to certify on behalf of his/her subcontractors to wage payments made by them, he/she may modify the language to cover only himself /herself and attach a list of all subcontractors who employed labor on the site during the period covered by the Periodic Estimate, together with the individual certifications of each.

**Certification of the Contractor or Duly Authorized Representative**

According to the best of my knowledge and belief, I certify that all items and amounts shown on the other side of this form are correct; that all work has been performed and material supplied in full accordance with the items and conditions of the contract between the (name of owner)

\_\_\_\_\_ and (contractor) \_\_\_\_\_

dated (mm/dd/yyyy) \_\_\_\_\_, and duly authorized deviations, substitutions, alterations, and additions; that the following is a true and correct statement of the Contract Account up to and including the last day of the period covered by this estimate, and that no part of the "Balance Due This Payment" has been received.

1. Original Contract Amount \$ \_\_\_\_\_

**Approved Change Orders:**

2. Additions (Total from Col. 3, form HUD-51002) \$ \_\_\_\_\_  
3. Deductions (Total from Col. 5, form HUD-51002) \$ \_\_\_\_\_ (net) \$ \_\_\_\_\_  
4. Current Adjusted Contract Amount (line 1 plus or minus net) \$ \_\_\_\_\_

**Computation of Balance Due this Payment**

5. Value of Original Contract work completed to date (from other side of this form) \$ \_\_\_\_\_

**Completed Under Approved Change Orders**

6. Additions (from Col. 4, form HUD-51002) \$ \_\_\_\_\_  
7. Deductions (from Col.5, form HUD-51002) \$ \_\_\_\_\_ (net) \$ \_\_\_\_\_  
8. Total Value of Work in Place (line 5 plus or minus net line 7) \$ \_\_\_\_\_  
9. **Less:** Retainage, \_\_\_\_\_ % \$ \_\_\_\_\_  
10. Net amount earned to date (line 8 less line 9) \$ \_\_\_\_\_  
11. **Less:** Previously earned (line 10, last Periodic Estimate) \$ \_\_\_\_\_  
12. Net amount due, work in place (line 10 less line 11) \$ \_\_\_\_\_

**Value of Materials Properly Stored**

13. At close of this period (from form HUD-51004) \$ \_\_\_\_\_  
14. **Less:** Allowed last period \$ \_\_\_\_\_  
15. Increase (decrease) from amount allowed last period \$ \_\_\_\_\_  
16. **Balance Due This Payment** \$ \_\_\_\_\_

I further certify that all just and lawful bills against the undersigned and his/her subcontractors for labor, material, and equipment employed in the performance of this contract have been paid in full in accordance with the terms and conditions of this contract, and that the undersigned and his/her subcontractors have complied with, or that there is an honest dispute with respect to, the labor provisions of this contract.

Name of Contractor \_\_\_\_\_ Signature of Authorized Representative \_\_\_\_\_ Title \_\_\_\_\_ Date (mm/dd/yyyy) \_\_\_\_\_

**Certificate of Authorized Project Representative and of Contracting Officer**

Each of us certifies that he/she has checked and verified this Periodic Estimate No. \_\_\_\_\_; that to the best of his/her knowledge and belief it is a true statement of the value of work performed and material supplied by the contractor; that all work and material included in this estimate has been inspected by him/her or by his/her authorized assistants; and that such work has been performed or supplied in full accordance with the drawings and specifications, all applicable accessibility requirements (including Section 504 and Title II of the Americans with Disabilities Act; and the Fair Housing Act and Title III of the Americans with Disabilities Act, if applicable), the terms and conditions of the contract, and duly authorized deviations, substitutions, alterations, and additions, all of which have been duly approved.

We, therefore, approve as the "Balance Due this Payment" the amount of \$ \_\_\_\_\_

Authorized Project Representative \_\_\_\_\_ Date (mm/dd/yyyy) \_\_\_\_\_ Contracting Officer \_\_\_\_\_ Date (mm/dd/yyyy) \_\_\_\_\_

I certify the information on this form and in any accompanying documentation is true and accurate. I acknowledge making, presenting, or submitting a false, fictitious, or fraudulent statement, representation, or certification may result in criminal, civil, and/or administrative sanctions, including fines, penalties, and confinement for up to 5 years, (18 U.S.C. §§ 287, 1001 and 31 U.S.C. §3729)

**Exhibit H**

**Form HUD-51002  
Schedule of Change Orders**

# Schedule of Change Orders

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

OMB Approval No. 2577-0157  
(exp. 11/30/2023)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

This information is collected under the authority of Section 6(c) of the U.S Housing Act of 1937 and HUD regulations. HAs are responsible for contract administration to ensure that the work for project development is done in accordance with State laws and HUD requirements. The contractor/subcontractor reports provide details and summaries on payments, change orders, and schedule of materials stored for the project. The information will be used to ensure that the total development costs, identified in the ACC, are kept as low as possible and consistent with HUD construction requirements. Responses to the collection are necessary to obtain a benefit. The information requested does not lend itself to confidentiality.

**Instructions:** Contractors use this form for reporting the details of approved Change Orders. Attach an original (or a copy) to each copy of the Periodic Estimate for Partial Payment (form HUD-51001) submission, and send to the Public Housing Agency. Complete all entries. Only Change Orders which bear the signatures required by the contract are to be recorded.

Name of Public Housing Agency	Supporting Periodic Estimate for Partial Payment Number	Period From (mm/dd/yyyy) to (mm/dd/yyyy)
Location of Project		Project Number
Name of Contractor		Contract Number

Approved Change Orders		Additions		Deductions
Change Order Number (1)	Dated (mm/dd/yyyy) (2)	Total Amount of Change Order (3)	Value of Work Completed to Date (4)	Total Amount of Change Order (5)
		\$	\$	\$
<b>Totals</b>		\$	\$	\$

Authorized Project Representative	Date (mm/dd/yyyy)
-----------------------------------	-------------------

I certify that the information provided on this form and in any accompanying documentation is true and accurate. I acknowledge that making, presenting, or submitting a false, fictitious, or fraudulent statement, representation, or certification may result in criminal, civil, and/or administrative sanctions, including fines, civil penalties, and confinement for up to 5 years. (18 U.S.C. §§ 287, 1001 and 31 U.S.C. §3729)



# **Exhibit I**

## **Section 3 Explanation**

1.0 Introduction: The purpose of this document is to, in simplified terms, explain to bidders/proposers major issues pertaining to the Section 3 Business Preference program required by the HA's funding source, the U.S. Department of Housing and Urban Development (HUD). Also, hereinafter, a Section 3 Business Preference will be referred to as "Preference."

2.0 What is Section 3?

2.1 Section 3 is a provision of the Housing and Urban Development Act of 1968, which recognizes that HUD funds are typically one of the largest sources of federal funding expended in communities, including Forsyth County, NC. Section 3 is intended to ensure that when a contractor has need to hire additional people as the result of receiving a contract from the Housing Authority of Winston Salem (HA), preference must be given to low- and very low-income persons residing in Forsyth County, NC (Section 3 resident), or Section 3 business concerns.

2.2 The requirements pertaining to Section 3 apply only to purchases and contracts the HA completes for work--the requirements of Section 3 DO NOT apply to purchases or contracts the HA completes solely for commodities or equipment; meaning, "no work provided, no Section 3 required."

2.3 Section 3 is race and gender neutral in that preferences are based on income-level and location.

3.0 What does the term "Section 3 resident" mean?

3.1 A "Section 3 resident" is:

- 3.1.1 a public housing resident of the HA; or
- 3.1.2 a low- or very low-income resident of Forsyth County, NC.
  - 3.1.2.1 Low- and very low-income within Forsyth County, NC, is defined as residents within the following income levels for FY 2019 (Median Income = \$61,900.):

Income Limit Category	(1) Person	(2) Persons	(3) Persons	(4) Persons	(5) Persons	(6) Persons	(7) Persons	(8) Persons
Very Low (50%)	\$21,700	\$24,800	\$27,900	\$30,950	\$33,450	\$35,950	\$38,400	\$40,900
Extremely Low (30%)	\$13,000	\$16,910	\$21,330	\$25,750	\$30,170	\$34,590	\$38,400	\$40,900
Low (80%)	\$34,650	\$39,600	\$44,550	\$49,500	\$53,500	\$57,450	\$61,400	\$65,350

Income Limit figures are based on FY2019 Fair Market Rent (FMR). For a detailed account of how these limits are derived, please see the (HUD FY2019 FMR documentation system) website report.

#### 4.0 What does the term "Section 3 business concern" mean?

- 4.1 A "Section 3 business concern" is a business that can provide evidence that it meets one of the following:
  - 4.1.1 It is 51% or more owned by a Section 3 resident; or
  - 4.1.2 At least 30% of its full time employees include person that are currently Section 3 residents, or within 3 years of the date of first employment with the business concern were Section 3 residents; or

4.1.3 Provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications within the preceding 3.1.1 or 3.1.2.

5.0 Is participation in Section 3 optional?

5.1 Except for purchases or contracts solely for commodities and equipment, as a part of the solicitation the HA will offer all bidders and proposers the option of a Preference.

5.2 In response to a competitive solicitation (quotes; bids; RFQ's), bidders and proposers are not required to respond to the HA with a claim of a Preference (meaning, such claim is optional and failure to respond with a claim of a Preference will not cause the bidder or proposer to be deemed non-responsive); however, if a bidder or proposer does claim a Preference, then the HA will consider, investigate, and determine the validity of each such claim for a Preference.

5.3 Regardless of whether or not a bidder or proposer claims a Preference in response to a solicitation, the recipient of the award will be required to, "to the greatest extent feasible," implement the requirements of Section 3 during the ensuing awarded contract term.

6.0 Must a contractor receiving an award from the HA take part in the Section 3 program?

6.1 The short answer is "Yes," as detailed following, each contractor must, "to the greatest extend feasible," take part in the program.

6.1.1 If the contractor wishes, he/she may claim a Preference during the competitive solicitation process (please see Attachment H-1, most specifically Section 2.0 thereon).

6.1.1.1 Pertaining to Quotations for Small Purchases (QSP's), the HA will give a Preference of 10% to any quoter deemed to be eligible to receive such Preference ("deemed," based on information the quoter submits in response to the QSP issued). This means that for a quoter deemed eligible to receive a Preference, though he/she, for example, submits a quote of \$10,000, such quote will be considered by the HA to be \$9,000 (10% less), even though, if awarded, the HA will pay the quoter the full \$10,000 originally quoted.

6.1.1.2 Pertaining to Invitations For Bids (IFB's), the HA will give a Preference based upon the following:

Preference = lesser of:	
When the lowest responsive bid is less than \$100,000	10% of that bid or \$9,000
<b>When the lowest responsive bid is:</b>	
<b>At least \$100,000 but less than \$200,000</b>	<b>9% of that bid, or \$16,000</b>
<b>At least \$200,000 but less than \$300,000</b>	<b>8% of that bid, or \$21,000</b>
<b>At least \$300,000 but less than \$400,000</b>	<b>7% of that bid, or \$24,000</b>
<b>At least \$400,000 but less than \$500,000</b>	<b>6% of that bid, or \$25,000</b>
<b>At least \$500,000 but less than \$1,000,000</b>	<b>5% of that bid, or \$40,000</b>
<b>At least \$1,000,000 but less than \$2,000,000</b>	<b>4% of that bid, or \$60,000</b>

<b>At least \$2,000,000 but less than \$4,000,000</b>	<b>3% of that bid, or \$80,000</b>
<b>At least \$4,000,000 but less than \$7,000,000</b>	<b>2% of that bid, or \$105,000</b>
<b>\$7,000,000 or more</b>	<b>1 1/2% of lowest responsive bid, with no dollar limit</b>

6.1.1.3 Pertaining to Request For Proposals (RFQ's) and Request For Qualifications (RFQ/QBS), the HA will give a Preference based upon the following:

MAX POINT VALUE	FACTOR TYPE	FACTOR DESCRIPTION
	Objective	SECTION 3 BUSINESS PREFERENCE PARTICIPATION: (NOTE: A maximum of 15 points awarded).
15 points		Priority I, Category 1a: Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3-covered assistance is expended.
13 points		Priority II, Category 1b: Business concerns whose workforce includes 30 percent of residents of the housing development for which the Section 3-covered assistance is expended, or within three (3) years of the date of first employment with the business concern, were residents of the Section 3-covered housing development.
11 points		Priority III, Category 2a: Business concerns that are 51 percent or more owned by residents of any other housing development or developments.
9 points		Priority IV, Category 2b: Business

		concerns whose workforce includes 30 percent of residents of any other public housing development or developments, or within three (3) years of the date of first employment with the business concern, were "Section 3" residents of any other public housing development.
7 points		Priority V, Category 3: Business concerns participating in HUD Youth-build programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended.
5 points		Priority VI, Category 4a: Business concerns that are 51 percent or more owned by Section 3 residents in the metropolitan area, or whose permanent, full-time workforce includes no less than 30 percent of Section 3 residents in the metropolitan area, or within three (3) years of the date of employment with the business concern, were Section 3 residents in the metropolitan area.
3 points		Priority VII, Category 4b: Business concerns that subcontract in excess of 25 percent of the total amount of subcontracts to Section 3 business concerns.
15 points		Maximum Available Preference Points (Additional)

6.1.2 It is possible that a contractor may demonstrate, to the HA's satisfaction, that he/she has made a good faith and reasonable effort to comply with the requirements of Section 3, but it is not feasible to implement any portion of the Section 3 program. Such failure must be fully documented by the contractor and approved by the HA or that contractor may be deemed not responsible by the HA and the contract may be, at the HA's discretion, not awarded or terminated.

- 7.0 Be aware that, as detailed within §138.38, the following Section 3 Clause will be a part of every applicable contract the HA executes, and when a contractor executes the contract he/she is thereby agreeing to comply with the following:

SECTION 3 CLAUSE

- A. The work to be performed under this contract is project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and 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 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the Section 3 covered project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
- C. The contractor will send to each labor organization or representative of workers with which s/he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- D. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of



the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135, the contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of this regulation.

- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided and to such sanctions as are specified by 24 CFR, Part 135.
  
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
  
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**Exhibit I (continued)**

**Section 3 Submittal**

1.0 Introduction: This form must be fully completed, accompanied by all required attachments, for any bidder/proposer claiming a Section 3 Business Preference (hereinafter, "Preference").

1.1 This fully completed form and any attachments thereto, will become a part of any ensuing contract.

1.2 Each bidder/proposer shall mark an "X" where provided following for all that apply to his/her claim of a Preference.

1.3 The bidder/proposer shall provide as an attachment to this completed form a detailed work plan clearly explaining how each following "denoted effort" or "claim" will be accomplished). Failure on the part of the bidder/proposer to include any such required attachment fully explaining the claim of the bidder/proposer shall result in the HA not considering the claim for a Preference (though the HA will, if awarded, later require the bidder/proposer to submit the information to satisfy the Section 3 requirements of the ensuing contract).

1.4 Please note that, even if a bidder/proposer does not complete and submit this form claiming a Preference, the HA may require this form to be completed by the successful bidder/proposer as an attachment to the ensuing contract to document the Section 3 Plan required for the ensuing contract.

2.0 Current Section 3 Status: The undersigned bidder/proposer hereby claims that it is a Section 3 business concern and claims such preference in that he/she can provide evidence that (the bidder/proposer has attached justifying documentation for each item following marked with an "X"):

2.1 \_\_\_ It is 51% or more owned by a Section 3 resident:

2.1.1 \_\_\_ HA resident lease;

2.1.2 \_\_\_ Evidence of participation in a public assistance program;

2.1.3 \_\_\_ Articles of Incorporation;

2.1.4 \_\_\_ Fictitious or Assumed Business Name Certificate;

2.1.5 \_\_\_ List of owners/stockholders and % of each;

- 2.1.6 \_\_\_ Latest Board minutes appointing officers;
  - 2.1.7 \_\_\_ Organization chart with names and titles and brief functional statement;
  - 2.1.8 \_\_\_ Partnership Agreement;
  - 2.1.9 \_\_\_ Corporation Annual Report.
- 2.2 \_\_\_ At least 30% of its full time employees include persons that are currently Section 3 residents, or within 3 years of the date of first employment with the business concern were Section 3 residents:

2.2.1

(1) Classification	(2) Total Number of Current Permanent Employees	(3) Total Number of Section 3 Resident Employees
Trainees		
Apprentices		
Journeypersons		
Laborers		
Supervisory		
Superintendent		
Professional		
Clerical		
Other:		

To justify this claim, please see the immediate following:

- 2.2.2 Attach a listing of all employees listed within column (3) above, including name and total annual income.

2.3 \_\_\_\_He/she has a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to a Section 3 business concern.

2.3.1 To justify this claim, please see the immediate following:

(1)	(2)	(3)
Name of Section 3 Firm Receiving the Subcontract	Total Amount of Subcontract(s)	Percentage the Subcontract(s) is/are of the Total Proposed Contract Amount
	\$	%
	\$	%
	\$	%

2.3.2 Attach for each firm listed immediately above:

2.3.2.1 A detailed description of the subcontracted activity; and

2.3.2.2 A fully completed Profile of Firm form.

3.0 Section 3 Preference Claim, Training and Employment Opportunities: The undersigned bidder/proposer hereby claims that it will, as detailed within 24 CFR §135.34, provide such "opportunities" as denoted following; to:

3.1 \_\_\_\_ Residents of the housing development or developments for which the section 3 covered assistance is expended (category 1 residents);

3.2 \_\_\_\_ Residents of other housing developments managed by the HA that is expending the section 3 covered housing assistance (category 2 residents);

3.3 \_\_\_ Participants in HUD Youth-build programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 residents);

3.4 \_\_\_ Other section 3 residents.

4.0 Section 3 Preference Claim, Section 3 Business Concerns: The undersigned bidder/proposer hereby claims that it will, as a result of the contract award, and as detailed within 24 CFR §135.36, provide such "opportunities" as denoted following; to:

4.1 \_\_\_ Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses);

4.2 \_\_\_ Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HA that is expending the section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

4.3 \_\_\_ HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 businesses).

PRIORITY CLAIMED (Mark "X")	MAX POINT VALUE	FACTOR TYPE	FACTOR DESCRIPTION
		Objective	SECTION 3 BUSINESS PREFERENCE PARTICIPATION: (NOTE: A maximum of 15 points awarded).
	15 points		Priority I, Category 1a: Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3-covered assistance is expended.
	13 points		Priority II, Category 1b: Business concerns whose workforce includes 30 percent of residents of the housing development for which the Section 3-covered assistance is expended, or within three (3) years of the date of first employment with the

			business concern, were residents of the Section 3-covered housing development.
	11 points		Priority III, Category 2a: Business concerns that are 51 percent or more owned by residents of any other housing development or developments.
	9 points		Priority IV, Category 2b: Business concerns whose workforce includes 30 percent of residents of any other public housing development or developments, or within three (3) years of the date of first employment with the business concern, were "Section 3" residents of any other public housing development.
	7 points		Priority V, Category 3: Business concerns participating in HUD Youth-build programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended.
	5 points		Priority VI, Category 4a: Business concerns that are 51 percent or more owned by Section 3 residents in the metropolitan area, or whose permanent, full-time workforce includes no less than 30 percent of Section 3 residents in the metropolitan area, or within three (3) years of the date of employment with the business concern, were Section 3 residents in the metropolitan area.
	3 points		Priority VII, Category 4b: Business concerns that subcontract in excess of 25 percent of the total amount of subcontracts to Section 3 business concerns.

4.4 \_\_\_ Business concerns that are 51 percent or more owned by section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

5.0 As further detailed herein, which of the following priority are you claiming? (NOTE: Mark with an "X" the highest claimed Priority only.)

- 6.0 As detailed within 24 CFR §135, Appendix I, ***Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents***, denote the "efforts" your firm hereby formally commits to implement if you are awarded a contract:
- 6.1 \_\_\_ Entering into "first source" hiring agreements with organizations representing Section 3 residents.
  - 6.2 \_\_\_ Sponsoring a HUD-certified "Step-Up" employment and training program for section 3 residents.
  - 6.3 \_\_\_ Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other section 3 residents in the building trades.
  - 6.4 \_\_\_ Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in §135.34) reside.
  - 6.5 \_\_\_ Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.
  - 6.6 \_\_\_ Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.
  - 6.7 \_\_\_ Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category



2 persons reside or in the neighborhood or service area of the section 3 covered project.

- 6.8 \_\_\_ Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside and in the neighborhood or service area in which a section 3 project is located.
- 6.9 \_\_\_ Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.
- 6.10 \_\_\_ Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.
- 6.11 \_\_\_ Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.
- 6.12 \_\_\_ Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.
- 6.13 \_\_\_ Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
- 6.14 \_\_\_ Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the HA or contractor intends to fill.
- 6.15 \_\_\_ For an HA, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by

section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR §905.102, and §905.201(a)(6).)

- 6.16 \_\_\_ Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.
  - 6.17 \_\_\_ Undertaking job counseling, education and related programs in association with local educational institutions.
  - 6.18 \_\_\_ Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents previously hired for employment opportunities.
  - 6.19 \_\_\_ After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.
  - 6.20 \_\_\_ Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.
- 7.0 As detailed within 24 CFR §135, Appendix II, ***Examples of Efforts To Award Contracts to Section 3 Business Concerns***, denote following the "efforts" your firm hereby formally commits to implement if you are awarded a contract:
- 7.1 \_\_\_ Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).
  - 7.2 \_\_\_ In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.
  - 7.3 \_\_\_ Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.

- 7.4 \_\_\_ Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.
- 7.5 \_\_\_ For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.
- 7.6 \_\_\_ Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.
- 7.7 \_\_\_ Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.
- 7.8 \_\_\_ Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.
- 7.9 \_\_\_ Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.
- 7.10 \_\_\_ Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- 7.11 \_\_\_ Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.
- 7.12 \_\_\_ Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.
- 7.13 \_\_\_ Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.

- 7.14 \_\_\_ Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.
- 7.15 \_\_\_ Developing a list of eligible section 3 business concerns.
- 7.16 \_\_\_ For HAs, participating in the "Contracting with Resident-Owned Businesses" program provided under 24 CFR part 963.
- 7.17 \_\_\_ Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.
- 7.18 \_\_\_ Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns.
- 7.19 \_\_\_ Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.
- 7.20 \_\_\_ Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.
- 7.21 \_\_\_ Actively supporting joint ventures with section 3 business concerns.
- 7.22 \_\_\_ Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

8.0 The undersigned bidder/proposer hereby declares:

- 8.1 The information within this completed form (and any attachments) is, to the best of his/her knowledge, true and accurate.

8.2 He/she is aware that if the HA discovers that any such information is not true and accurate, such shall allow the HA to:

8.2.1 NOT award the bidder/proposer a Preference; and

8.2.2 If the HA deems such is warranted (e.g. in the case of submitting information the bidder/proposer knows to be untrue), declare such bidder/proposer to be nonresponsive and not allow the bidder/proposer to receive an award.

8.3 He/she is aware that if he/she receives an award as the result of this competitive solicitation, even though he/she may not receive a Preference from the HA as a result of this submittal, he/she will still be required to, to the greatest extent feasible, implement a Section 3 Plan, including a commitment to interview and consider hiring Section 3 persons (most specifically, residents of the HA) whenever the successful bidder/proposer has need to hire additional employees during the term of the ensuing contract.

**Exhibit J**

**HUD TABLE 5.1**

## Handbook No. 7460.8 REV 2

5-6

2/2007

### TABLE 5.1 MANDATORY CONTRACT CLAUSES FOR SMALL PURCHASES OTHER THAN CONSTRUCTION

The following contract clauses are required in contracts pursuant to **24 CFR 85.36(i)** and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. HUD is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy. The PHA and contractor is also subject to other Federal laws including the U.S. Housing Act of 1937, as amended, Federal regulations, and state law and regulations.

**Examination and Retention of Contractor's Records.** The PHA, 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.

- **Right in Data and Patent Rights (Ownership and Proprietary Interest).** The PHA 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 the Contract.

**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.

#### **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.

#### **Termination for Cause and for Convenience (contracts of \$10,000 or more).**

(a) The PHA may terminate this contract in whole, or from time to time in part, for the PHA's convenience or the failure of the Contractor to fulfill the contract obligations (cause/default). The PHA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the PHA all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.

(b) If the termination is for the convenience of the PHA, the PHA shall be liable only for payment for services rendered before the effective date of the termination.

(c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (cause/default), the PHA may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the PHA, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract of otherwise, and the Contractor shall be liable for any additional cost incurred by the PHA; and (3) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by the PHA by the Contractor. In the event of termination for cause/default, the PHA shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

**Exhibit K**

**HAWS Contract**



**AGREEMENT BETWEEN THE HOUSING AUTHORITY OF THE  
CITY OF WINSTON-SALEM AND GENERAL CONTRACTOR  
(SAMPLE)**

This contract (the “Contract”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between \_\_\_\_\_, (hereinafter, the “Contractor”) and the Housing Authority of the City of Winston Salem (hereinafter, “HAWS” or the “Authority”).

**SCOPE OF CONTRACT:** The parties to this Contract hereby acknowledge and agree that all documents comprising the “Invitation for Bid to Select a Contractor for the Elevator Upgrade at Sunrise Towers issued by HAWS on \_\_\_\_\_, 2022 and identified as IFB 22-1121 HAWS are hereby incorporated into this Contract by reference and are made a part of this Contract as if fully set forth herein (hereinafter said documents to be collectively referred to as the “Contract Documents”). **The Contractor hereby warrants that it has read and is familiar with all of the Contract Documents; and the Contractor agrees to be bound by the terms of the Contract Documents, specifically and expressly including the General Conditions for Construction Contracts (HUD-5370).**

**SECTION 1. General Scope of Work:** The Contractor shall furnish all labor, material, equipment and services required to construct and complete the Scope of Work described in IFB 22-1121 HAWS and the Contractor shall do so in full and strict accordance with all of the specifications, plans, and requirements cited therein.

**SECTION 2. Contract Amount:**

- A. HAWS shall pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions only as provided for by the General Conditions for Construction Contracts (HUD-5370), which document is incorporated into the Contract by reference as if fully set forth herein. The total not-to-exceed value of the Contract (the “Contract Amount”) is: \_\_\_\_\_ (\$XXX,XXX.XX)
  
- B. The Contract Amount is derived from the proposed fee schedule (the “Fee Schedule”) submitted by the Contractor in response to IFB 22-1121 HAWS, which Fee Schedule shall apply throughout the duration of the Contract unless amended by agreement of the parties.

**SECTION 3. Invoices and Payments:**

- A. HAWS will make progress payments pursuant to an approved HUD 51001, Periodic Estimate for Partial Payment submitted by the contractor. These payments will be

determined by the contractor's submission of the HUD 51000, Schedule of Amounts for Contract Payments.

B. Periodic estimates and payment requests shall be submitted to:

Housing Authority of the City of Winston Salem  
Attn: Jessica Moore-Lane  
500 West Fourth Street, Suite 300  
Winston-Salem, NC, 27101

**SECTION 4. Notices:**

A. Any notices, claims, requests, or similar communications made for the purpose of providing material information to HAWS, requesting Contract modification, or raising a dispute under the Contract must be submitted in writing to:

Housing Authority of the City of Winston Salem  
Attn: Nancy Thomas, Vice President / CFO  
500 West Fourth Street, Suite 300  
Winston-Salem, NC, 27101

B. Any notices, claims, requests, or similar communications made for the purpose of providing material information to the Contractor, requesting Contract modification, or raising or responding to a dispute under the Contract must be submitted in writing to:

Name of Sales Rep, Title  
Company Name  
Company Address  
Winston-Salem, NC 27105

**SECTION 5. Warranties:**

Any express warranties provided by the Contractor, including those recited in the Contract Documents, shall be in addition to and not in lieu of any and all warranties inuring to the benefit of HAWS, be they express or implied, under North Carolina law. The provision by the Contractor of any express warranties does not waive or abdicate in any way HAWS' protection under any and all implied warranties.

**SECTION 6. Compliance:**

A. It is the Contractor's responsibility to ensure that all goods and services provided under the Contract conform to all local, state, and federal laws concerning health, safety, and environmental conditions. The Contractor hereby agrees to be responsible for all costs

incurred in complying with any such laws. No time extensions will be granted or financial consideration given by HAWS to the Contractor for time or monies lost due to violations of any such laws. The Contractor hereby agrees to indemnify and hold harmless HAWS from any costs (including fines) incurred by HAWS as a result of the Contractor's violations of any such laws.

- B. The Contractor understands and agrees that HAWS has made no representation regarding the presence or absence of any hazardous materials on, in, or around the job site. Furthermore, the Contractor agrees that HAWS had made no representation or assessment regarding the need for environmental testing or abatement on, in, or around the job site. The Contractor hereby agrees to indemnify and hold harmless HAWS from any costs (including fines) incurred by HAWS as a result of the Contractor's failure to conduct any required environmental testing and/or abatement in the performance of the Contract.

#### **SECTION 7. Indemnification:**

The Contractor shall indemnify, defend, and hold HAWS (including its Commissioners, officers, and employees) harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs, and other expenses of any kind and character, which are caused by, arise out of, or occur due to any action or failure to act by the Contractor, including the failure of the Contractor to abide by the applicable professional standards within its industry or to comply with the terms, conditions, or covenants of this Contract. It is expressly agreed that the Contractor shall, at its own expense, defend HAWS (including its Commissioners, officers, and employees) against any and all claims, suits, or actions brought against it as a result of, by reason of, arising out of, on account of, or in consequence of any action or failure to act by the Contractor, including the failure of the Contractor to abide by the applicable professional standards within its industry or to comply with the terms, conditions, or covenants of this Contract.

The Contractor shall indemnify, defend, and hold HAWS (including its Commissioners, officers, and employees) harmless from and against any and all claims of lien filed by any subcontractor of any tier, which claims of lien arise out of work performed under the Contract.

Any money due to the Contractor under this Contract, which HAWS believes must be withheld from the Contractor to protect HAWS, may be retained by HAWS so long as it is reasonably necessary to ensure HAWS' protection; or, either in addition or in the alternative, at HAWS' sole discretion, the Contractor's surety may be held.

#### **SECTION 8. Miscellaneous:**

- A. This Contract shall be governed and determined by the laws of the United States and the State of North Carolina.

- B. Any action or proceeding related to or arising out of this Contract shall be resolved only in a court of competent jurisdiction in the City of Winston-Salem, North Carolina (or the court of competent jurisdiction closest to the City of Winston-Salem if no court of competent jurisdiction resides in the City of Winston-Salem, NC), and the parties expressly waive any right they may have to cause any such action or proceeding to be brought or tried elsewhere.
- C. The invalidity of any provision of this Contract, as determined by a court of competent jurisdiction and/or HUD, shall in no way affect the validity of any other provision herein.
- D. It is agreed by and between HAWS and the Contractor that in no event shall any individual (or group of) Commissioners, official, officer, or employee of HAWS be personally liable or responsible for any covenant or agreement contained in the Contract Documents. Contractor hereby waives any right to pursue any claim or cause of action against any individual (or group of) Commissioner, official, officer, or employee of HAWS for any action or failure to act regarding this Contract.
- E. A waiver by either party of any term or condition of the Contract Documents in any one instance shall not be deemed or construed as a waiver of any such term or condition in any other instances.
- F. In no event shall HAWS be liable to the Contractor for any indirect, incidental, consequential, or exemplary damages.
- G. Signature page continued on next page.

**THE UNDERSIGNED REPRESENTATIVE OF EACH PARTY HEREBY ACKNOWLEDGES BY SIGNATURE BELOW THAT THEY HAVE REVIEWED THE FOREGOING AND AGREE TO ABIDE BY THEIR RESPECTIVE OBLIGATIONS:**

**HOUSING AUTHORITY OF THE CITY OF WINSTON-SALEM (“HAWS”)**

By: \_\_\_\_\_ (SEAL)

Print Name: \_\_\_\_\_

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

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

**Company Name (“Contractor”)**

By: \_\_\_\_\_ (SEAL)

Print Name: \_\_\_\_\_

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

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