

# Patterson Farm Labor Roofing Replacement

**Introduction:** The Housing Authority of the County of Stanislaus (Authority) is seeking bids from Class B General Building Contractors (Contractor) to provide roofing removal and replacement, dry rot repairs, and gutter/downspout replacements, repairs at its property located in Patterson, CA located within Stanislaus County. The Contractor will remove the existing roofing material exposing the solid sheathing; remove and replace any dry-rot material; remove and replace all fascia trim pieces; install 30 lbs. roofing felt underlayment; and then roof with three-tab composition shingles (color to be selected by the Authority). The Contractor shall obtain all required approvals and permitting through the local governing agency, fees shall be paid by the Authority. All local, state and federal codes and regulations shall be followed by the Contractor.

The Authority reserves the right to issue modifications to this IFB at any time, award the proposed project to more than one firm, reject all proposals, and ask for any clarifications or verifications from Proposers at any time. Questions must be submitted in writing to [mramirez@stancoha.org](mailto:mramirez@stancoha.org), or faxed to (209) 557-2011, or delivered by mail or by hand to the HACS Business Office located at 1701 Robertson Road, Modesto, Ca 95351

<b><u>Viewing Jobsite (non-mandatory):</u></b>	10:00 A.M., Monday, October 22, 2018
<b><u>Due Date for IFB:</u></b>	2:00 P.M, Monday, November 5, 2018
<b><u>Anticipated Start Date:</u></b>	November 2018 (Approximate Date)

1.0 **SCOPE OF WORK:** Contractor shall furnish all labor, materials, tools, equipment, transportation and supplies necessary to remove and replace roof; repair damages to eaves and sheathing; and additional work identified within the Scope of Work. Contractor is responsible for verifying quantities for installation. The Authority is not responsible for actual dimension and quantities required to complete the installation. Materials and products used in the repairs are to match existing Authority properties in quality and function.

## 1.1 ROOFING PROJECT:

1.1.1 **Demolition of Existing Roof Material:** Contractor shall furnish all labor, equipment and services, and complete all associated work and pay fees to perform the removal and lawful disposal of existing roofing materials in order to expose existing solid plywood sheathing. Contractor shall review the existing site conditions and include within cost accessibility constraints due to utility lines, trees and other potential obstructions and constraints. Contractor shall then remove water damaged plywood sheathing and properly dispose of material exposing existing manufactured trusses. Removal costs associated with these operations will be included as a cost per square foot line item identified within the



HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS  
BID #206-18  
ROOFING REPLACEMENT PATTERSON FARM LABOR

---

Bid Form. Additional demolition costs and/or disconnect and reconnecting of existing utilities and/or equipment is the responsibility of the Contractor and will be included in the total cost of the project. The removal and replacement of all existing trim will be included within the Contractor's costs. Demolition of miscellaneous material which includes, but is not limit to sheet metal, flashing, roof safes, vents, etc. will be included in the Contractor's costs. These pieces shall also be painted per local codes and common roofing contracting practices.

- 1.1.2 **Inspection of Damaged Material:** When demolition operations have been completed for each building, the Contractor will inspect the roof structure for any rotted, or damaged material in need of replacement. Before the Contractor removes the damaged material, the Authority Authorized Representative will need to inspect and confirm the quantity and approve the costs to repair. The Authority retains the right to have a separate competitively-solicited Contractor perform any, and all unexpected material repairs such as dry-rot repairs and other related, or unrelated construction operations. Unexpected repairs and other construction operations cannot be assumed by the Contractor assigned to the roofing project, even if work is identified within the cost per unit of measure provided in the Contractor's bid.
- 1.1.3 **Repair and Replacement Costs:** Contractor shall provide a price per unit of measure (i.e. square-foot, linear-foot, piece work, etc.) that shall be used in the cost associated with any repairs. If repairs are not identified within this bid, the Contractor shall provide in writing the costs to repair and/or replace and submit to the Authority for approval. This cost can be used as a solicited cost to repair and then used in a comparison with other contractor bids if the Authority chooses. If multiple bids are provided, the responsible low bid provider will then be selected to perform the repairs. Additional costs cannot be assumed, and must be approved by the Authority prior to performance of work. Any removal of material not approved by the Authority shall be at the Contractor's sole cost for its lawful disposal, replacement, labor to install, as well as any designs costs, fees and charges related to its approval.
- 1.1.4 **Dry-rot of Solid Sheathing at Eaves:** Contractor will remove the first section of solid sheathing around the eaves four (4) feet around the entire building's eaves.
- 1.1.4.1 **CCX Plywood Sheathing:** Contractor shall install 15/32 inch CCX plywood sheathing at eaves. The exposed side will be smooth face. Spacing and nailing pattern will follow the Uniform Building Code (UBC) requirements, and approved by the SJC Building Inspector. Contractor is to prime newly installed materials and paint new and existing trim, eaves, etc. to match the existing color of the building.
- 1.1.5 **Dry-rot of Trusses at Eaves:** Contractor may use the provided detail for the replacement of dry-rot located on the manufactured trusses located at the eaves, or provide his/her own option to repair. Contractor is responsible to notify the Authority first as to his/her intentions, and once approved by the Authority, Contractor will submit repair options, with designs if required, to the City of Modesto building department for approval. Any costs associated with the approval process through the building department will be at the sole cost of the Contractor.



HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS  
BID #206-18  
ROOFING REPLACEMENT PATTERSON FARM LABOR

---

- 1.1.6 **California's Title 24 Part 6 Building Energy Efficiency Standards:** Contractor will comply with the California's Building Standard Code Part 6 of Title 24, and the SJC Community Development Department's Cool Roof requirements. Contractor will obtain the "Cool Roof Certificate of Compliance" through the SJC Community Development Department, and install the appropriate roofing material and/or appurtenances necessary in meeting the local, state and federal guidelines associated with re-roofing construction practices. All fees and reporting shall be included within the Contractor's base bid.
- 1.1.7 **Installation of Roofing Material:** Contractor shall furnish all labor, equipment and services, and complete the installation of roofing materials. The materials used shall be:
- 1.1.7.1 Contractor shall install a laminated asphalt shingle roofing system with fiberglass-based asphalt shingles such as those manufactured by Owens Corning Oakridge® shingles, GAF Timberline® HD™ shingles, Tamko Heritage® shingles, or equivalent products from other manufacturers (Color to be selected per building's color palette). Note: Specific brand names as noted herein are used only for establishing design and quality standards any other products that clearly and demonstrably meet the standard are also acceptable. Proposed equivalent material shall be reviewed and approved by Authority staff.
- 1.1.7.1.1 Felt Underlayment - 30# Felt Underlayment
- 1.1.7.1.2 High Style Hip and Ridge, 16½" x 8", Color to match field
- 1.1.7.1.3 Project to include flashing, roof vents, and other roofing material installation necessary for completion of project.
- 1.1.7.1.4 Universal starter shingle to be used where needed.
- 1.1.7.1.5 Painted 2" x 3" drip edge on perimeter. Paint to be semi-gloss enamel. Contractor is to provide a warranty against paint peeling for a minimum of two (2) years.
- 1.1.7.1.6 Leak barrier around new plumbing vents.
- 1.1.7.1.7 Rain gutters to be 5-1/2" galvanized with matching downspouts. Gutters is to be primed and painted by the Contractor. Concrete splashguards to be installed at all downspout locations.
- 1.1.7.1.8 Galvanized (or equivalent product to be approved by Authority staff) metal leaf guards to be installed to match existing galvanized leaf guards.

2.0 **CONSTRUCTION SCHEDULE AND HOURS OF WORK**

- 2.1 Schedules and operations shall be performed to minimize intrusion and potential risks to the residents within the community. Installation hours shall take place between the hours of 7:00 a.m. and 4:00 p.m. Work shall not be performed on weekends or holidays without prior approval from the Authority. The selected Contractor must also coordinate his/her work schedule with other Contractors and/or Contractors on-site (the Authority will act as project coordinator for the job).
- 2.2 The Authority must provide its resident's with 48-hour notice before Contractor may commence work on unit; therefore, the Contractor shall provide written notification to the Authority at least one week in advance before the anticipated start date for each unit.

**HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS**  
**BID #206-18**  
**ROOFING REPLACEMENT PATTERSON FARM LABOR**

---

- 2.3 The exact starting and ending dates for this project have yet to be defined. The Authority estimates that this project will start on October 2017 and will end sixty (60) working days from the Contract date.
- 2.4 Contractor shall be responsible for the disposal of the materials demolished at the site during this project, and such disposal shall be performed in compliance with all applicable laws. All work performed in removing the existing material and installing the new products must be performed by properly licensed personnel.
- 2.5 In performing all services, the Contractor shall comply with all applicable federal, state, county, and city statutes, ordinances, and regulations. If such compliance is impossible for reasons beyond its control, the Contractor shall immediately notify the Authority of that fact and the reasons therefore.
- 2.6 All work shall be inspected and signed off by the Authority Authorized Representative before the work is deemed complete. No payment will be made until all work is completed to the satisfaction of the manager and is deemed complete.

**3.0 PROPERTY DAMAGES**

- 3.1 Contractor shall be responsible for repair of any damages to Authority property and restoration of any area disturbed by installation work to the satisfaction of the Authority Authorized Representative prior to final payment.
- 3.2 Any repair and/or restoration of damaged area shall be performed at no cost to the Authority.

**4.0 SPECIAL PROVISIONS**

- 4.1 Contractor shall supply all safety or warning signs, equipment, plastic covers, barricades and any other specialty items that may be required.
- 4.2 Contractor shall proceed with installation work to be performed in accordance with manufacturer's recommendations and warranty requirements.

**5.0 NOTIFICATION / PRE-CONSTRUCTION CONFERENCE**

- 5.1 Prior to the start of work, a meeting will be scheduled between the Contractor and Authority Authorized Representatives to discuss the project. At this meeting, the Contractor shall present his/her proposed work schedule for the entire project.
- 5.2 Prior to the start of work, the Contractor shall notify the Authority in writing of any surface defects (not covered elsewhere in this specification) which might be detrimental to the proper application of materials. If any defects are found, the Contractor shall delay the project until the repairs can be arranged by the Authority Authorized Representative. This delay shall be at no cost to the Authority.

HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS  
BID #206-18  
ROOFING REPLACEMENT PATTERSON FARM LABOR

---

6.0 **GENERAL REQUIREMENTS**

- 6.1 Maintenance of Work Area: The Contractor shall keep the working area sufficiently clear of equipment, material, and implements of service to prevent endangering persons and damages to the Authority property and to avoid an unsightly condition. Removal of such items shall be performed promptly upon completion of work. The Contractor shall not use Authority facilities for disposal of debris and waste material, whether hazardous or non-hazardous, or asbestos-containing or non-asbestos-containing.
- 6.2 Safety and Security: The Contractor shall comply with all laws, ordinances, rules and regulations applicable to the work. The Contractor shall provide adequate protection for all persons and all Authority personnel within the working area or approaches thereto, and shall furnish and erect temporary barricades where necessary.
- 6.3 Access: The Contractor, its employees, subcontractors, or other representatives, have no tenancy and shall be admitted to the grounds only for the proper execution of the work under this contract. The Contractor, its employees, subcontractors, or other representatives must wear identifying company uniform and employee badge while working on Authority properties.
- 6.4 Workmanship and Labor: All employees of the Contractor, subcontractors or other representatives, shall be skilled in the type of work for which they are employed on the project and shall work under direction of competent superintendent. Should the Authority deem anyone employed in the work incompetent or unfit for his/her duties, the Contractor shall remove such employee from the work and shall not reemploy them on work within the Authority on this project or any other project without written permission from the Authority.
- 6.5 Davis-Bacon and/or State Prevailing Wage Rates: As may apply by statute, regulation or law, if, at any time during the ensuing contract period(s), Authority needs the successful Contractor to provide services that require the successful Contractor to pay Davis-Bacon or State Prevailing Wage Rates for a specific task order pertaining to the ensuing contract, then to compensate the successful Contractor for any amount when the applicable Davis- Bacon or State Prevailing Wage Rates are greater than the portion of the applicable hourly fees listed within that the Contractor actually pays to each such person performing the work, as verified by payroll records the Authority shall pay the difference. As of the date of this document (9/12/17), the applicable wage rates can be found at:

Davis-Bacon: (CA13, Residential, Mod 12 dated 9/28/18)

- 6.6 On-Site Interviews: Inform all workers of prevailing wage rates, position title, and job duties.

7.0 **TREATMENT OF ADJACENT SURFACES AND STRUCTURES, AND TRAFFIC**

- 7.1 Contractor shall take particular care in preserving the integrity of the adjacent sites and ensure consistency of his/her work in order to maintain the overall appearance of the community.
- 7.2 Contractor shall minimize dust from any construction activities and conform to the requirements of San Joaquin Valley Unified Air Pollution Control District.

HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS  
BID #206-18  
ROOFING REPLACEMENT PATTERSON FARM LABOR

---

7.3 At the completion of each working day, Contractor shall clean and make the work site safe, provide security fencing to restrict access to the project site, and make available to existing residents' unobstructed access to the residential units and to common areas.

7.4 Contractor shall provide traffic control and limit impacts on city streets and private parking.

8.0 **ASSIGNMENT OF PERSONNEL**

8.1 The Authority shall retain the right to demand and receive a change in personnel assigned to the work if the Authority believes that such change is in the best interest of the Authority. Contractor shall select and employ the replacement personnel.

9.0 **LICENSING AND INSURANCE REQUIREMENTS** Contractor will ensure all required licensing and insurance requirements listed below are met. Prior to award (but not prior to submission of the proposal) the successful proposer will be required to provide:

9.1 Fees, Permits, Licenses, Patents, Royalties, and Payments Thereof: The Contractor and Contractor's employee and agents shall secure and maintain in force such licenses and permits as are required by law and shall conformed to all federal, state, and local laws, ordinances, and regulations covering the work under the contract. All operations and materials shall be in accordance with applicable laws, ordinances, and regulations.

9.2 Licensing: Contractor must hold a valid California Contractor's License Class B (General Building Contractor) with all appropriate bonding and insurance required by the State of California and have the ability to obtain all required permitting either through local, state and federal agencies and being in good standing with all governing agencies. The Contractor shall provide to the Authority copies of any required current city, state and/or federal licenses. Failure to maintain these licenses in a current status during the term(s) of this contract shall constitute a material breach thereof.

9.3 Proof of Insurance: Contractor shall maintain throughout the course of any Contract resulting from this IFB, at a minimum, insurance coverage shown on the attached "*Authority Insurance Requirements for Contractors*". Proof of such coverage must be presented to the Authority upon request.

10.0 **PERFORMANCE SPECIFICATIONS**

10.1 Contract Service Standards:

10.1.1 All work performed pursuant to this IFB must conform and comply with all applicable local, state and federal codes, statutes, laws and regulations.

10.2 Personnel Standards:

10.2.1 Services shall be performed by personnel who are trained and otherwise qualified to perform tasks assigned.

10.2.2 Contractor's employees shall wear clearly visible identification while performing duties.

HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS  
BID #206-18  
ROOFING REPLACEMENT PATTERSON FARM LABOR

---

10.2.3 All personnel shall be neat in appearance and shall conduct his/her work in a professional manner with minimal disturbance to the contracting party. If any of the Contractor's personnel are not satisfactory to the Authority or its' managers, Contractor shall replace such personnel with those who are satisfactory.

10.2.4 Contractor shall use all reasonable care, consistent with his/her right to manage and control his/her operation, not to employ any persons or use any labor, or use or have any equipment or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, safety issues, disputes or controversies at the owner's place of business or which interfere or are likely to interfere with the operations of business.

10.2.5 Contractor shall immediately give such notice to the Authority to be followed by written reports, as shall be reasonably necessary to advise the manager of any and all impending or existing labor complaints, troubles, disputes, or controversies and the progress thereof that Contractor, in his/her opinion, believes may interfere with the operation of the business. Contractor shall use his/her best efforts to resolve any such complaints, trouble, dispute, or controversy.

10.3 Supervision: Contractor shall furnish the necessary qualified supervision to oversee all operations.

10.4 Equipment: Contractor shall furnish all equipment necessary to perform the services in accordance with these specifications, and warrants that all equipment will be of such type as to cause no hazard or danger.

11.0 CONTRACT CONDITIONS: The following provisions are considered mandatory conditions of any contract award made by the Authority pursuant to this IFB:

11.1 Contract Form: The Authority will not execute a contract on the successful proposer's form. Contract will only be executed on a form supplied by the Authority, and by submitting a bid proposal the successful proposer agrees to do so. However, the Authority will consider any contract clauses or Appendices that the proposer wishes to include. The failure of the Authority to include such clauses or Appendices does not give the successful proposer the right to refuse to execute the Authority's contract form.

11.2 Required Clauses: At a minimum, the attached form "*Authority Purchase Order Terms & Conditions*" will be applicable to any Purchase Order and/or Contract issued by the Authority for these construction-related services.

11.3 Unauthorized Sub-Contracting Prohibited: The successful proposer shall not assign any right, nor delegate any duty for the work proposed pursuant to this IFB (including, but not limited to, selling or transferring the contract) without the prior written consent of the Authority's Executive Director. Any purported assignment of interest or delegation of duty, without the prior written consent of the Authority's Executive Director shall be void. It may result in the cancellation of the contract with the Authority, or may result in the full or partial forfeiture of funds paid to the successful proposer as a result of the proposed contract; either as determined by the Authority's Executive Director.

HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS  
BID #206-18  
ROOFING REPLACEMENT PATTERSON FARM LABOR

---

12.0 **NON-COLLUSION:** Contractor shall complete an affidavit in proof that they have not entered into any collusion with any person in respect to this bid or any other bid or the submitting of bids for the contract for which this bid is submitted.

13.0 **IFB SUBMISSION REQUIREMENTS:**

Firms interested in being considered for selection shall submit sealed bid. Bids will be received at the Housing Authority of the County of Stanislaus, located at 1701 Robertson Road, Modesto, CA 95351 until 2:00 p.m., Monday November 5, 2018, local time, at which time all bids will be publicly opened and read aloud. All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Document Roofing Replacement at Patterson Farm Labor", the bid number, the bidder's name, and the date and time for receipt of the bids.

13.1 **Pricing:** Provide a lump sum costs inclusive of all personnel, travel, per diem, overhead, materials, profit and all other direct or indirect costs to complete the work required. Costs shall be submitted on the Bid Form which is the last page of this IFB document. Pricing submitted in other formats may not be considered and may result in the proposal being determined non-responsive.

14.0 **ATTACHMENTS**

Attachment 1: Patterson Farm Labor - Map & List of Units  
Attachment 2: HUD-5370c I & II  
Attachment 3: Sample contract  
Attachment 4: Authority Insurance Requirements for Contractors  
Attachment 5: Section 3 Business Preference Documentation  
Attachment 6: MWBE Contractor Information Over \$10K  
Attachment 7: USDA Forms



**HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS  
BID #206-18  
ROOFING REPLACEMENT PATTERSON FARM LABOR**

---

**BID FORM**

The Authority is only requesting that this page and the additional documents referenced herein be submitted. A single copy must be submitted **by mail or hand-deliver to the HACS Business Office located at 1701 Robertson Rd., Modesto, CA 95351**. By submitting a bid response, the Contractor agrees to abide by all applicable laws, ordinances, and regulations.

The undersigned, being familiarized with the local conditions affecting the cost of the work and with the specifications, including IFB, the Bid Form, the General Scope of Work, and Addenda, if any thereto, as prepared by and on file in the offices of the Housing Authority of the County of Stanislaus, Modesto, California, hereby proposes to furnish all labor, services and materials required to complete the work, all in accordance with the Specifications, for the amount(s) of:

All labor, materials, tools, equipment, transportation and supplies necessary to repair damages and additional work identified within the Scope of Work.

**PROJECT TOTAL:** \_\_\_\_\_ Dollars (\$\_\_\_\_\_).  
(Write bid amount)

**POTENTIAL CHANGE ORDERS:**

Fixed Rates for demolition and replacement of rotted wood:

Solid Plywood Sheathing	\$ _____/square foot
Plywood Siding Panel T1-11	\$ _____/square foot
2x4 Truss Repair	\$ _____/linear foot
2X6 Fascia Board	\$ _____/linear foot
1X3 Trim Siding	\$ _____/linear foot

In submitting this bid, it is understood that the right is reserved by the Housing Authority of the County of Stanislaus to reject any and all bids. If written notices of the acceptance of this bid are mailed, faxed or delivered to the undersigned within sixty (60) days after the opening thereof, or at any time thereafter before this bid is withdrawn, the undersigned agrees to execute and deliver a contract in the prescribed form within ten (10) days after the contract is presented for signature.

**Bid Submitted By:**

Company: \_\_\_\_\_

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

By (Print Name): \_\_\_\_\_

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

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

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

City, State, Zip: \_\_\_\_\_

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

Signature: \_\_\_\_\_

Authorized Principal or Officer

Bid must be submitted on this form by the due date indicated above.  
Deliver to 1701 Robertson Rd., Modesto, CA 95351



# General Conditions for Non-Construction Contracts

## Section I – (With or without Maintenance Work)

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

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/31/2017)

Public Reporting Burden for this collection of information is estimated to average 0.08 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

**Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:**

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

### Section I - Clauses for All Non-Construction Contracts greater than \$100,000

#### 1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

#### 2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

#### 3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA 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: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA 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 (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

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

- (a) The HA, 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:
    - (i) appeals under the clause titled Disputes;
    - (ii) litigation or settlement of claims arising from the performance of this contract; or,
    - (iii) costs and expenses of this contract to which the HA, 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.

#### 5. Rights in Data (Ownership and Proprietary Interest)

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

#### 6. 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.

#### 7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

#### 8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

#### 9. 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 HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

#### 10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

#### 11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
  - (i) Award of the contract may result in an unfair competitive advantage; or
  - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

#### 12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

### 13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

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

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA 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.

### 15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

---

## 16. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor 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, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

## 17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

## 18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

## 19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD 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 HA employee.

## 20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

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

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

---

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

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

## **22. 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.

# General Conditions for Non-Construction Contracts

## Section II – (With Maintenance Work)

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

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

**Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:**

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

=====  
**Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000**  
=====

### 1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. 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 classifications and wage rates approved by HUD under subparagraph 1(b), 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.
- (b) (i) 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 only when the following criteria have been met:
  - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
  - (2) The classification is utilized in the area by the industry; and
  - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to 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.

### 2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD 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.

### 3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
  - (i) Name, address and Social Security Number;
  - (ii) Correct work classification or classifications;
  - (iii) Hourly rate or rates of monetary wages paid;
  - (iv) Rate or rates of any fringe benefits provided;
  - (v) Number of daily and weekly hours worked;
  - (vi) Gross wages earned;
  - (vii) Any deductions made; and
  - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records 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.

### 4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
  - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of



Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/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;

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
  - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

## 5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
- (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.

- (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

## 6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **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 he or she 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.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), 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 the 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 paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) **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 U.S. 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 paragraph (b) of this clause.

## 7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II 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 the provisions contained in these clauses.

## 8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

**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

### Table of Contents

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

### 1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

### 2. Explanations and Interpretations to Prospective Bidders

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

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

### 3. Amendments to Invitations for Bids

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

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

### 4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

- (1) Integrity;
- (2) Compliance with public policy;
- (3) Record of past performance; and
- (4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

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

(a) Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the PHA/IHA will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

## 6. Bid Opening

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

## 7. Service of Protest

(a) Definitions. As used in this provision:

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

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

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

[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.

# Housing Authority of the County of Stanislaus

## NOTICE OF AWARD

### Contract #

TO: TBD

FOR: Bid #

Your Bidder's Proposal dated TBD is accepted for the following item(s) at the following price(s):

Item(s)

Price

1. The following documents will need to be submitted prior to the issuance of the Notice to Proceed:
  - a. Insurance endorsements for general liability, vehicle coverage and worker's compensation.
  - b. Performance and payment bonds as described in the Bid Packet.
2. No work shall commence until the Notice to Proceed has been issued.
3. Sign and return one copy of this document along with the documents specified above within ten days from the date of mailing this notice.

Housing Authority of the County of Stanislaus

Owner

\_\_\_\_\_  
Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Contractor Signature

Barbara S Kauss

Printed Name

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

Executive Director

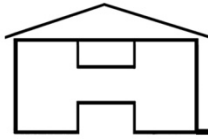
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date





# Housing Authority of the County of Stanislaus

*...also serving Alpine ▪ Amador ▪ Calaveras ▪ Inyo ▪ Mariposa ▪ Mono ▪ Tuolumne Counties.*

## CONTRACTUAL AGREEMENT

This Agreement, made the \_ day of \_\_\_\_\_, by and between the Housing Authority of the county of Stanislaus, hereinafter called the "OWNER", and

Contractor: TBD

hereinafter called the "CONTRACTOR";

### WITNESSETH:

That whereas the OWNER intends to provide for construction of the \_\_\_\_\_, hereinafter called the PROJECT, in accordance with the Contract Documents prepared by The Housing Authority of the County of Stanislaus. Now, therefore, the parties of these presents, each in consideration of the Agreement on the part and behalf of the other herein contained, have mutually agreed, and hereby mutually agree, the OWNER, for itself and its successors, and the Contractor for Itself and its successors and assigns, as follows:

1. The Contractor agrees to furnish all the necessary labor, materials, equipment, tools, and services to perform and complete in a workmanlike manner and in strict and full accord with the specifications prepared by the Owner and attached hereto, all work required for the Construction of the PROJECT, in strict compliance with the Contract Documents herein mentioned, which are hereby made a part of the Contract, including the following Addenda:

Addendum No.	Dated
1	
_____	_____
_____	_____
_____	_____

2. The CONTRACTOR agrees that Work under this Agreement shall be commenced upon receipt of written Notice to Proceed, and shall complete all work within 60 calendar days of the commencement of the Contract Time from the date established in the Notice to Proceed.
3. The CONTRACTOR agrees to bind every subcontractor by the terms of the Contract Documents. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the OWNER.

4. The OWNER agrees to pay and the CONTRACTOR agrees to accept as full compensation for the complete performance of this Contract, the amount of: \$\_\_\_\_\_ (dollars) subject to additions and deductions as provided in the Contract Documents; the above amount to cover the cost of all work, services, labor, materials, tools, equipment, plans, and appliances of every name or description to complete the entire Work as specified and the removal of all debris, temporary work, and appliances. Progress payments will be made in accordance with the General Conditions of the Contract.
5. All work shall be done under the general supervision of the OWNER or its assignee. The OWNER shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, work performed, rate of progress of the work, interpretation of the Contract Documents, and all questions as to the acceptable fulfillment of the Contract on the part of the CONTRACTOR.
6. All changes to work that are made or required during the course of construction for unforeseen circumstances other than those that would have been or should have been included during the normal construction procedures will be considered as a Change Order. 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. The CONTRACTOR agrees that such equitable adjustment shall be for actual cost of services and materials and shall be limited to no greater than a 12% mark-up for profit and overhead for the total cost of the Change Order
7. The CONTRACTOR further agrees that he and his sureties shall be liable and shall pay to the OWNER, the sum of One Hundred and Fifty Dollars (\$150.00) per day, as fixed, agreed and liquidated damages for each calendar day of delay (not beyond the control of the CONTRACTOR) until the Work is completed and his sureties shall be liable for the amount thereof; provided that the right of the CONTRACTOR to proceed shall not be terminated or the CONTRACTOR charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to, Acts of God, or of the Public Enemy, Acts of the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors due to such causes. Provided further, that the CONTRACTOR shall within five days from the beginning of any such delay notify the OWNER in writing, of the causes of any such delay. The OWNER shall ascertain the fact and the extent of the delay and shall extend the time for completing the Contract within the findings of fact justify such extension.

No payment or compensation of any kind shall be made to the CONTRACTOR because of hindrance or delay from any cause in the progress of the Work, whether such delay be avoidable or unavoidable and extension of the time will be granted only as provided above.

8. The CONTRACTOR represents and warrants that:

- A. It is financially solvent, it is experienced in and competent to perform the type of Work contemplated by this Contract, the facts stated or shown in the papers accompanying its proposal are true, and it is authorized to do business in the State of California.
  - B. It has carefully examined the Contract Documents and the site and it has satisfied itself from its own investigations as to the nature and location of the work and facilities needed for the performance of the Work, the general and local conditions, and all other matters which may in any way affect the Work.
  - C. The conditions at the site of the Work are such that the Work can be carried on and completed in accordance with the Contract Documents in their present form, and accordingly, it accepts all conditions as they may be eventually found to exist, and undertakes that all work required because of any unforeseen condition shall be wholly at its own cost and expense, everything in this Contract or the Contract Documents to the contrary, notwithstanding.
  - D. The CONTRACTOR agrees to comply with all the Federal, State, Municipal Laws, Ordinances, and Regulations which may in any way affect the Work.
9. The OWNER may withhold from the CONTRACTOR so much of payments due him as may in the judgment of the OWNER be necessary:
- A. To assure the payment of just claims then due and unpaid of any persons supplying labor or materials for the Work.
  - B. To protect the OWNER from loss due to defective work not remedied.
  - C. To protect the OWNER from loss due to injury to persons or damage to property caused by the act or neglect of the CONTRACTOR.
10. The foregoing provisions shall be construed solely for the benefit of the OWNER and shall not require the OWNER to determine or adjust any claims or disputes between the CONTRACTOR and his Subcontractors or material men, or to withhold any moneys for their protection unless the OWNER elects to do so. The failure or refusal of the OWNER to withhold any moneys from the CONTRACTOR shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Contract.
11. This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the OWNER and the CONTRACTOR respectively and his partners, successors, assigns, and legal representatives. Neither the OWNER nor the CONTRACTOR shall have the right to assign, transfer, or sublet his interests or obligations hereunder without written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed, the day and year first above written.

Housing Authority of the County of Stanislaus

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
BY

\_\_\_\_\_  
BY

\_\_\_\_\_  
Executive Director  
TITLE

\_\_\_\_\_  
TITLE

1701 Robertson Road  
Modesto, CA 95351

\_\_\_\_\_  
BUSINESS ADDRESS

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

1701 Robertson Rd • P.O.Box 581918  
Ph:(209)557-2000 ▪ Fax: (209)557-2011



Modesto, CA 95358-0033  
TDD: (209)557-2012 ▪ [www.stancoha.org](http://www.stancoha.org)

**General Conditions of the Contract for Construction**

## Conduct of Work

### 1. Definitions

(a) "**Contract**" means the contract entered into between the AUTHORITY 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, these General Conditions of the Contract for Construction, the applicable wage rate determinations from either the U.S. Department of Labor or State, 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.

(b) "**Contracting Officer**" means the person delegated the authority by the AUTHORITY 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 AUTHORITY in all dealings with the Contractor.

(c) "**Contractor**" means the person or other entity entering into the contract with the AUTHORITY to perform all of the work required under the contract.

(d) "**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.

(e) "**State**" 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. State has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the AUTHORITY, 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 State may be required to authorize changes in the work or for release of funds to the AUTHORITY for payment to the Contractor. Notwithstanding State's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and State.

(f) "**Project**" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.

(g) "AUTHORITY" means the Public Housing Agency or Indian Housing Authority organized under applicable State or tribal law which is a party to this contract.

(h) "**Specifications**" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.

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

### 2. Contractor's Responsibility for Work

(a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the AUTHORITY 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 Authority.

**(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 AUTHORITY, 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 AUTHORITY 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 AUTHORITY and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.

**(h)** The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

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

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

**(b)** The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.

**(c)** The Architect's duties and responsibilities may include but shall not be limited to:

**(1)** Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;

**(2)** Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;

**(3)** Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other

equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,

(4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

#### **4. Other Contracts**

The AUTHORITY 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 AUTHORITY 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 AUTHORITY employees.

### **Construction Requirements**

#### **5. Preconstruction Conference and Notice to Proceed**

(a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the AUTHORITY, its Architect, and other interested parties convened by the AUTHORITY. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The AUTHORITY will provide the Contractor with the date, time, and place of the conference.

(b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

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

(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 AUTHORITY. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

**(c)** Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified In the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the **Default** clause of this contract.

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

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

**(b)** The AUTHORITY assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the AUTHORITY. Nor does the AUTHORITY 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 AUTHORITY 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", "designation", "prescription", 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 AUTHORITY 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 (1.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 AUTHORITY 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 order requirements and shall indicate his 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 re-submission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the AUTHORITY'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 AUTHORITY 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 AUTHORITY 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 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 AUTHORITY 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 re-testing 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) Prohibition against use of lead-based paint. The Contractor shall comply with the prohibition against the use of 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 AUTHORITY 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 29CFR 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.327 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 24 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 AUTHORITY, 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 AUTHORITY in the condition and at the time required by the specifications.

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

(a) The AUTHORITY 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 AUTHORITY or, where the utility is produced by the AUTHORITY, 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 AUTHORITY, 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 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 AUTHORITY 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 AUTHORITY 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 AUTHORITY. 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 Construction**

**(a)** Definitions. As used in this clause -

**(1)** "Acceptance" means the act of an authorized representative of the AUTHORITY by which the AUTHORITY approves and assumes ownership of the work performed under this contract. Acceptance may 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 AUTHORITY inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance With the terms of the contract.

**(c)** AUTHORITY inspections and tests are for the sole benefit of the AUTHORITY 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) attest the continuing rights of the AUTHORITY after acceptance of the completed work under paragraph j) below.

**(d)** The presence or absence of the AUTHORITY 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 AUTHORITY 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 AUTHORITY 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 AUTHORITY 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 AUTHORITY not to conform to contract requirements, unless the AUTHORITY 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 AUTHORITY 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 AUTHORITY, 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 AUTHORITY 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 equable 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 AUTHORITY will promptly arrange for the inspection. Unless otherwise specified in the contract, the AUTHORITY 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 AUTHORITY'S right under any warranty or guarantee.

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

**(a)** The AUTHORITY 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 AUTHORITY 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 AUTHORITY's possession or use shall not be deemed an acceptance of any work under the contract.

**(b)** While the AUTHORITY 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 AUTHORITY'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 there for. If parlor possession or use by the AUTHORITY 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 Construction**

**(a)** In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (l) 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 (1) one year (unless otherwise indicated) from the date of final acceptance of the work. Warranty period for roofing shall be for a period of (3) three years. If the AUTHORITY 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 AUTHORITY 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 AUTHORITY 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** 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 AUTHORITY 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 AUTHORITY; and,

**(3)** Enforce all warranties for the benefit of the AUTHORITY.

**(g)** In the event the Contractor's warranty under paragraph (a) of this clause has expired, the AUTHORITY 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 AUTHORITY nor for the repair of any damage that results from any defect in AUTHORITY furnished material or design.

**(l)** Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and © 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 AUTHORITY'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 AUTHORITY'S property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

### **Administrative Requirements**

#### **25. Contract Period**

The Contractor shall complete all work required under this contract within sixty (60) 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 Precedence**

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

#### **27. Payments**

**(a)** The AUTHORITY shall pay the Contractor the price as provided in this contract.

**(b)** The AUTHORITY 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 AUTHORITY 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 State. 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 AUTHORITY, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than 7 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 accordance with the terms and conditions of the subcontract.

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**(f)** Except as otherwise provided in State law, the AUTHORITY shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect determines that the Contractor's performance and progress are satisfactory, the AUTHORITY 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 AUTHORITY 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 AUTHORITY'S interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the AUTHORITY.

**(h)** All material and work covered by progress payments made shall at the time of payment become the sole property of the AUTHORITY, 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 AUTHORITY 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 AUTHORITY in the course of their employment, the Contractor shall restore such damaged work without cost to the AUTHORITY and to seek redress for its damage only from those who directly caused it.

**(i)** The AUTHORITY 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 AUTHORITY 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 AUTHORITY 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 AUTHORITY to withhold moneys from the Contractor shall in no way 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 AUTHORITY 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 State prior to its issuance (e.g., a change order that exceeds the AUTHORITY'S approved threshold), such modification shall not be effective until the required approval is received by the AUTHORITY.

## **29. Changes**

**(a)** A Change Order is a written order to the Contractor signed by the Owner and the Architect and issued after the execution of the Contract, authorizing a Change in the work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

**(b)** The Owner, without invalidating the Contract, may order changes in the work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the work shall be authorized by Change Order, and shall execute under the applicable conditions of the Contract Document. Change Orders shall be signed by the Contractor, in addition to the Owner and Architect.

**(c)** The cost or credit to the Owner resulting from a change in the work shall be determined in one or more of the following ways:

1. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. By unit prices stated in the Contract Documents, Form of Proposal or subsequently agreed upon;
3. By costs to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or,
4. By the method provided in Subparagraph (d).

5. For all changes in the work, the allowance for overhead, profit and bond combined, included in the total cost to the Owner, shall be based upon the following schedule: For the Contractor, for any work performed by his own force, twelve percent (12%) of the cost;  
For each subcontractor involved, work performed by his own forces, twelve percent (12%) of the cost;
6. Change order mark-up fee not to exceed 12%  
For the Contractor, for work performed by his subcontractor, six percent (6%) of the amount due the subcontractor;  
Cost shall be limited to the following: cost of materials, including sales tax and cost of delivery, cost of labor, including Social Security, Old Age and Unemployment Insurance (labor cost may include a prorated share of foreman charge); worker's Compensation Insurance; Rental cost of power tools and equipment.

**(d)** If none of the methods set forth in Clauses 29. (a), (b), (c), is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined by the Architect on the basis of the reasonable expenditures and savings of those performing the work attributable to the change, including, in the case of an increase in the Contract Sum, an allowance for overhead and profit in accordance with the schedule set forth above.

In such case, and also under Clauses (a) and (b) above, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following:

1. Cost of materials, including sales tax and cost of delivery.
2. Cost of labor, including social security, old age and unemployment insurance and fringe
3. Worker's compensation insurance.
4. Bond premiums.
5. Rental cost of equipment and machinery
6. Additional cost of supervision and field office personnel directly attributable to the change.

**(e)** Pending final determination of cost to the Owner, payments on account shall be made on the Architect's Certificates for Payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any with respect to that change.

**(f)** 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/IHA-furnished facilities, equipment, materials, services, or site; or,
- (4) Directing the acceleration in the performance of the work.

**(g)** 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.

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.

**(h)** 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 adjustments and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change

under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA/IHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

**(i)** 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.

**(j)** 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.

**(k)** The Contracting Officer shall act on proposals within 30 days after the receipt, or notify the Contractor of the date when such action will be taken.

**(l)** 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.

**(m)** 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 AUTHORITY.

**(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)** 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 AUTHORITY against the Contractor shall be subject to a written decision by the Contracting Officer.

**(d)** The Contracting Officer shall, within 60 days (unless otherwise indicated) 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 AUTHORITY in accordance with the AUTHORITY's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within 30 days (unless otherwise indicated) 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 AUTHORITY 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 AUTHORITY resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the AUTHORITY 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 AUTHORITY or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the AUTHORITY, (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 10 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 AUTHORITY.

### **33. Liquidated Damages**

(a) If the contractor fails to complete the work within the time specified in the clause entitled Default of this Contract, both the Contractor and the AUTHORITY agree that the AUTHORITY will suffer damages for the delay in completion of any phase of the work and that the actual amount of AUTHORITY damages would be extremely difficult and impracticable to calculate or otherwise ascertain. **By placing their initials here, Contractor\_\_\_\_\_ and the AUTHORITY\_\_\_\_\_** agree that such damages shall be liquidated and that the Contractor shall pay the AUTHORITY the sum of **\$150.00** for each and every day and every unit that is not completed of any phase of the work is delayed beyond the time set forth for the completion of that phase of the work unless the Contractor's delay is excused under another clause in this Contract. Contractor and AUTHORITY further agree that the amount of liquidated damages is reasonable considering all the circumstances existing on the date of the execution of this Contract and that these liquidated damages are a reasonable approximation by the Contractor and the AUTHORITY in view of their inability to calculate actual damages.

(b) If the AUTHORITY terminates the Contractor's right to proceed, the assessment of the liquidated damages shall continue until such reasonable time as may be required for final completion of the work together with any increased cost incurred by the AUTHORITY in completing the work.

(c) If the AUTHORITY does not terminate the Contractor's right to proceed, liquidated damages will be assessed until the Contractor's work is completed and accepted by the AUTHORITY.

(d) The imposition of liquidated damages by the AUTHORITY shall not preclude other AUTHORITY claims for damages against the Contractor caused other than by Contractor's delay in completion of the work.

### **34. Termination for Convenience**

(a) The Contracting Officer may terminate this contract in whole, or in part whenever the Contracting Officer determines that such termination is in the best interest of the AUTHORITY. 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 AUTHORITY shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the AUTHORITY 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 AUTHORITY 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 AUTHORITY; and (5) an amount consulting 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 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 AUTHORITY 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 AUTHORITY with endorsements 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 one million dollars 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 Section 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 one million dollars per occurrence.

**(b)** Before commencing work, the Contractor shall furnish the AUTHORITY with an endorsement 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 AUTHORITY 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 AUTHORITY shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the AUTHORITY. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the super-structure 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 AUTHORITY. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the AUTHORITY. 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 AUTHORITY'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 endorsements 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 serves 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 State 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 AUTHORITY or between the subcontractor and State.

**NOTICE TO PROCEED**

TBD  
TBD  
TBD

Contract No:  
Date:  
Project:

CNW Construction:

Pursuant to the terms of your contract date \_\_\_\_\_, \_\_\_\_\_ you are hereby notified to commence work hereunder at the start of business on TBD. The time for completion set forth in the Contract is **60** calendar days including the starting date, which establishes TBD as the completion date.

You are informed that Barbara S Kauss has been designated Contracting Officer to administer your contract for, and in the name of, the Housing Authority of the County of Stanislaus.

You have previously been given one executed set of the Contract documents.

Please acknowledge receipt of the following required documents:

1. Workman's Compensation Coverage.
2. Manufacturer's and Contractor's Public Liability (with bodily injury and property damage limits of not less than one million dollars).

Please acknowledge receipt of this notice by signing and dating and return one copy promptly to this office.

ACCEPTED:

CNW Construction

Housing Authority of the County of Stanislaus

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

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

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

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

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

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

**CERTIFICATE AND RELEASE**

FROM: TBD

TO: The Housing Authority of the County of Stanislaus  
Reference: CONTRACT #

BETWEEN: THE HOUSING AUTHORITY OF THE COUNTY OF STANISLAUS  
HEREINAFTER CALLED THE LOCAL AUTHORITY (LA)  
AND

HEREINAFTER CALLED THE CONTRACTOR  
OF  
LOCATED IN

KNOWN ALL MEN BY THESE PRESENTS:

1. The undersigned hereby certifies that there is due and payable under the contract and duly approved change orders and modifications the undisputed balance of \$\_\_\_\_\_.

2. The undersigned further certifies that in addition to the amount set forth in paragraph one(1), hereof, there are outstanding and unsettled the following items which he claims are just and due and owing by the Local Authority to the Contractor.

(A)\_\_\_\_\_

(B)\_\_\_\_\_

(C)\_\_\_\_\_

(Itemized claims and amounts claimed. If none, so State.)

3. The undersigned further certifies that all work required under this contract including work required under Change Orders numbered \_\_\_\_\_ has been performed in accordance with the terms thereof, and that there are no claims of laborers or mechanics for unpaid wages arising out of the performance of this contract, and that the wage rates paid by the Contractor and all Subcontractors were in conformity with the contract provisions relating to said wage rates.

4. Except for the amounts Stated in paragraph 1 and 2 hereof the undersigned has received from the Local Authority all sums of money payable to the undersigned under or pursuant to the aforementioned contract or any change or modifications thereof.

5. That in consideration of the payment of the amount Stated in paragraph 1 hereof the undersigned does hereby release the Local Authority from any and all claims arising under or by virtue of this contract except the amounts listed in paragraph 2 hereof; provided, however, that if for any reason the Local Authority does not pay in full the amount Stated in paragraph 1 hereof, said deduction shall not effect the validity of this release, but the amount so deducted shall be automatically included under paragraph 2 as an amount which the Contractor has not released by will release upon payment thereof. The Contractor further certifies that upon payment of the amounts listed in paragraph 2 hereof, and of any amount which may be deducted from paragraph 1 hereof, he will release the Local Authority from any and all claims of any nature whatsoever arising out of said contract or modification thereof, and will execute such further releases or assurances as the Local Authority may request.

6. The Contractor assigns all guarantees and warranties to the Local Authority effective today.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

By:

Title:

I, \_\_\_\_\_ being first duly sworn on oath, deposes and says, first, that he is the \_\_\_\_\_ of the \_\_\_\_\_ second that he \_\_\_\_\_ (title) \_\_\_\_\_ (company) has read the foregoing CERTIFICATE AND RELEASE by him subscribed as the \_\_\_\_\_ (title) of the \_\_\_\_\_ (company).

Affiant further States that the matters and things Stated therein are, to the best of his knowledge and belief, true.

Signature

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

Signature

MY COMMISSION EXPIRES \_\_\_\_\_ COMPLETED, assignment of all guarantees and warranties to the Local Authority, and final periodical estimate to be submitted.

The Housing Authority of the County of Stanislaus

By: \_\_\_\_\_  
Barbara S Kauss

Title: \_\_\_\_\_ Executive Director

**CERTIFICATE OF COMPLETION**

THIS IS TO CERTIFY that all work and materials have been carefully inspected by duly authorized representative or agents of the Housing Authority of the County of Stanislaus, hereinafter called the Local Authority(LA), and that \_\_\_\_\_, hereinafter called the Contractor, has furnished all labor, material, and services required for the \_\_\_\_\_ in accordance with the requirements of the Specifications and Drawings and Contract # \_\_\_ between the Local Authority and the Contractor.

**THIS IS TO CERTIFY:**

- 1. That all work covered by this contract, originally required to be completed on TBD was actually completed on \_\_\_\_\_.
- 2. That all changes permitted or required to be made, except minor modifications and field adjustments, have been authorized by written and duly approved Change Orders, and all stop order have been confirmed and listed in writing;
- 3. That all proceed orders have been supported by approved Change Orders equitable adjusting the contract price and/or time, where adjustment is indicated;
- 4. That Change Orders # \_\_\_\_\_ constitute the only amendments to the contract price and/or time, and that all Change Orders issued in connection with this contract are listed on the attached schedule;
- 5. That all certificates, bonds, guarantees, warranties, insurance and tests are required under the contract have been furnished or performed;
- 6. That the Local Authority has obtained from the Contractor the attached Certificate and Release releasing the Local Authority in full from all further claims under this contract;
- 7. That all laborers and mechanics have been paid not less than the minimum wage rates as established in said contract, and that there have been no claims made for infringement of any patent;
- 8. That no claims of any nature by any laborers, mechanic, subcontractor, material, and or vendor are outstanding against the Local Authority; and

9. That;

Date for completion fixed in contract: TBD

Date for completion as extended: \_\_\_\_\_

Actual completion date of contract work: \_\_\_\_\_

Original contract price: \_\_\_\_\_

Authorized Change Orders: \_\_\_\_\_

Subtotal: \_\_\_\_\_

Authorized deductions excluding liquidated damages:

ADJUSTED CONTRACT PRICE: \_\_\_\_\_

LESS Total payments to contractor: \_\_\_\_\_

Total amount of liquidated damages assessed.

BALANCE: \_\_\_\_\_

10. That the final payment of \_\_\_\_\_ is due and payable.

Housing Authority Representative: \_\_\_\_\_ Date: \_\_\_\_\_

Contractor: \_\_\_\_\_ Housing Authority of the County of Stanislaus

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

Title: \_\_\_\_\_ Title: Executive Director

# General Insurance Requirements

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of or failure to perform the work hereunder by the Contractor, its agents, representatives, employees or sub-contractors.

## MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability Code 1 (*any auto*), [*require if scope of work includes driving on Authority property*].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.

## MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.

**NOTE:** These limits can be attained by individual policies or by combining primary and umbrella policies.

## DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the Authority. At the option of the Authority, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Authority guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

## OTHER INSURANCE PROVISIONS

The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations and with respect to liability arising out of work or operations performed by the Contractor; or arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an appropriate endorsement to the Contractor's insurance or as a separate Owner's policy.
2. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Contractor.

## ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+VI. Bidders must provide written verification of their insurer's rating.

## VERIFICATION OF COVERAGE

Contractor shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before work commences to permit Contractor to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

## SUB-CONTRACTORS

Use of sub-contractors must be pre-approved by the Authority. Contractor shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverage's for sub-contractors shall be subject to all of the requirements stated above.

**NOTE:** The General Contractor's Commercial General Liability insurance should not include CG 2294 or CG 2295 as these endorsements will eliminate the General Contractor's insurance coverage for its work where the damaged work or the work out of which the damage arises was performed by a sub-contractor.

Notwithstanding this provision, Contractor shall indemnify the Authority for any claims resulting from the performance or non-performance of the Contractor's sub-contractors and/or their failure to be properly insured.

(Attachment 5)

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

NAME OF BUSINESS: \_\_\_\_\_

ADDRESS OF BUSINESS: \_\_\_\_\_

TYPE OF BUSINESS:      Corporation      Partnership      Sole Proprietorship      Joint Venture

Attached is the following documentation as evidence of status:

**For business claiming status as a Section 3 resident-owned Enterprise:**

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

**For the business entity as applicable:**

- |  |   |
|--|---|
| <input type="checkbox"/> Copy of Articles of Incorporation                                       | <input type="checkbox"/> Certificate of Good Standing |
| <input type="checkbox"/> Assumed Business Name Certificate                                       | <input type="checkbox"/> Partnership Agreement        |
| <input type="checkbox"/> List of owners/stockholder and % of each                                | <input type="checkbox"/> Corporation Annual Report    |
| <input type="checkbox"/> Latest Board minutes appointing officers                                | <input type="checkbox"/> Additional documentation     |
| <input type="checkbox"/> Organization chart with names and titles and brief functional statement |   |

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

List of subcontracted Section 3 business and subcontract amount

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

- |  |   |
|--|---|
| <input type="checkbox"/> List of all current full time employees                           | <input type="checkbox"/> List of all employees claiming Section 3 status                                |
| <input type="checkbox"/> PHA Residential lease (less than 3 years from date of employment) | <input type="checkbox"/> Other evidence of Section 3 status (less than 3 years from date of employment) |

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

- |   |  |
|---|--|
| <input type="checkbox"/> Current financial statement    | <input type="checkbox"/> List of owned equipment                                       |
| <input type="checkbox"/> Statement of ability to comply | <input type="checkbox"/> List of all contracts for the past 2 years with public policy |

**Corporate Seal**

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

\_\_\_\_\_  
Notary

\_\_\_\_\_  
Title

My term expires: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

(Attachment 5)

SUGGESTED AFFIRMATIVE ACTION PLAN FOR UTILIZATION OF PROJECT AREA BUSINESSES

Number Of All Contracts Proposed: \_\_\_\_\_

Name Of Company: \_\_\_\_\_

Dollar Value Of All Contracts Proposed: \_\_\_\_\_

Project: \_\_\_\_\_

To The Greatest Extent Feasible, Contracts Will Be Awarded Through Negotiation Or Proposal To Qualified Project Area Businesses.

Goal Of These Contracts For Project Area Businesses:

PROPOSED TYPE OF CONTRACT	APPROX. COST	PROPOSED TYPE OF CONTRACT	APPROX. COST

Outline The Program To Achieve These Goals For Economically And Socially Disadvantaged:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTE: To Complete The Affirmative Action Plan, Follow Steps Outlines In Attached Exhibit.**

(INSERT THIS DOCUMENT IN PROPOSAL DOCUMENTS AND WITH PROPOSAL) DATE: \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_ Printed Name \_\_\_\_\_



(Attachment 5)

SUGGESTED AFFIRMATIVE ACTION PLAN FOR UTILIZATION OF PROJECT AREA BUSINESSES  
(con'd)

SUGGESTED SECTION 3 PRELIMINARY WORKFORCE STATEMENT UTILIZATION OF LOWER INCOME PROJECT AREA RESIDENTS AS REGULAR, PERMANENT EMPLOYEES, TRAINEES, APPRENTICES.

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

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

PROJECT: \_\_\_\_\_

	PRESENT PERMANENT EMPLOYEES (At Time of Contract Signing)	SECTION 3 WORKFORCE PROJECTION (Residents)	TOTAL PROJECTED WORKFORCE INCREASE
TRAINEES			
APPRENTICES			
JOURNEYPERSONS			
LABORERS			
SUPERVISORY			
SUPERINTENDENT			
PROFESSIONAL			
CLERICAL			

**NOTE: RESIDENTS ARE THOSE LOWER INCOME PROJECT AREA RESIDENTS WHO HAVE BEEN QUALIFIED AS ELIGIBLE.**

\_\_\_\_\_  
Signature Date Printed Name

## SECTION 3 BUSINESS PREFERENCE CLAUSE (Attachment 5)

*This contract is subject to the following conditions under Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).*

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor or organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The contractor will certify that any vacant employment positions, including training positions that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprise. 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).

## PREFERENCE FOR SECTION 3 BUSINESS CONCERNS IN CONTRACTING OPPORTUNITIES

### (Attachment 5)

The HA has established the following priority for preference when providing contracting opportunities to Section 3 Businesses:

#### Priority I

##### Category 1a Business

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.

#### Priority II

##### Category 1b Business

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.

#### Priority III

##### Category 2a Business

Business concerns that are 51 percent or more owned by residents of any other housing development or developments.

#### Priority IV

##### Category 2b Business

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.

#### Priority V

##### Category 3 Business

Business concerns participating in HUD Youth-build programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended.

#### Priority VI

##### Category 4a Business

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.

#### Priority VII

##### Category 4b Business

Business concerns that subcontract in excess of 25 percent of the total amount of subcontracts to Section 3 business concerns.

#### Eligibility for Preference

A business concern seeking to qualify for a Section 3 contracting preference shall certify or submit evidence that the business concern is a Section business concern.



# Housing Authority of the County of Stanislaus

*...also serving Alpine ▪ Amador ▪ Calaveras ▪ Inyo ▪ Mariposa ▪ Mono ▪ Tuolumne Counties.*

## Vendor/Contractor Information

Dear Vendor/Contractor,

Please provide the information below:

Company Name: \_\_\_\_\_

Owner/President Name: \_\_\_\_\_

Co-Owner/Vice President Name: \_\_\_\_\_

Business/Contractor License #: \_\_\_\_\_

Contractor Section 3 Status: Yes \_\_\_\_\_ No \_\_\_\_\_

Sub-Contractor Company Name: \_\_\_\_\_

Sub-Contractor Owner/President Name: \_\_\_\_\_

Sub-Contractor Co-Owner/Vice President Name: \_\_\_\_\_

Sub-Contractor Business/Contractor License #: \_\_\_\_\_

Sub-Contractor Section 3 Status: Yes \_\_\_\_\_ No \_\_\_\_\_

**If contract over \$10,000.00, please check all that apply:**

a. Minority-Owned Business Enterprise (MBE):

- 1. White Americans \_\_\_\_\_
- 2. Black Americans \_\_\_\_\_
- 3. Native Americans \_\_\_\_\_
- 4. Hispanic Americans \_\_\_\_\_
- 5. Asians/Pacific Americans \_\_\_\_\_
- 6. Hasidic Jews \_\_\_\_\_

b. Woman-Owned Business Enterprises (WBE): \_\_\_\_\_

Thank you for your cooperation.

Housing Authority of the County of Stanislaus  
1701 Robertson Rd.  
Modesto, CA 95351



**U.S. DEPARTMENT OF AGRICULTURE**

---

**Certification Regarding Debarment, Suspension, Ineligibility  
and Voluntary Exclusion - Lower Tier Covered Transactions**

---

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)**

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

---

Organization Name

PR/Award Number or Project Name

---

Name(s) and Title(s) of Authorized Representative(s)

---

Signature(s)

Date

**Instructions for Certification**

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transaction and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(title)

oOo

**CONTRACT PROVISIONS FOR ANCILLARY CONTRACTS AND/OR AGREEMENTS:**

**A. Contract provisions.** In addition to provisions defining a sound and complete contract and in accordance with RD Instruction 1942.18(n), any recipient of Rural Development funds shall include the following contract provisions or conditions in all contracts.

(1) **Remedies.** Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should also be included.

(2) **Termination.** All contracts exceeding \$10,000, shall contain suitable provisions for termination by the owner including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) **Surety.** In all contracts for construction or facility improvements exceeding \$100,000, the owner shall require bonds, a bank letter of credit or cash deposit in escrow assuring performance and payment each in the amount of 100 percent of the contract cost, unless otherwise agreed by the Owner and Agency.

(4) **Equal Employment Opportunity.** All contracts awarded in excess of \$10,000 by owners shall contain a provision requiring compliance with Executive Order 11246, entitled, "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR Part 60.

(5) **Anti-kickback.** All contracts for construction shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report suspected or reported violations to USDA.

(6) **Records.** All negotiated contracts (except those of \$2,500 or less) awarded by owners shall include a provision to the effect that the owner, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for 3 years after owners make final payments and all other pending matters are closed.

(7) **State Energy Conservation Plan.** Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

(8) **Change orders.** The construction contract shall require that all contract change orders are subject to approval by a representative of USDA.

(9) **USDA concurrence.** All contracts must contain a provision that they shall be subject to concurrence by a representative of USDA.

(10) **Retainage.** All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor.

(11) **Other compliance requirements.** Contracts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR Part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to Rural Development and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 4 CFR Part 15.4 (c).



**B. Additional Provisions:**

- (1) Contract Administration.** Owners shall be responsible for maintaining a contract administration system to monitor the contractor' performance and compliance with the terms, conditions and specifications of the contracts or agreements and shall provide monitoring reports to USDA upon request.
- (2) Architectural Barriers.** All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (P.L. 90-480) as implemented by the General Services Administration regulations 41 CFR 101-19.6 and Section 504 of the Rehabilitation Act of 1973.
- (3) Compliance.** All facilities must meet the requirements of Federal, State and local agencies having the appropriate jurisdiction.
- (4) Any problems, delays or adverse conditions** that will materially affect the project shall be disclosed to the Agency along with a statement of action taken or contemplated to resolve the situation.
- (5) The following information is to be provided to the Agency for each Agreement.** Submit items 1-5 together via email. Submit items 6-8 as they occur. For multiple agreements, provide a tracking sheet.
  1. Purpose of the work
  2. Procurement Method (see note below)
  3. Contractor name, Firm Name, CA Contractor's License number, DUNS or EIN number
  4. Three forms required by the Agency to be executed by the Contractor as noted
    - a. RD Form 400-6 if the work is for \$10,000 and above
    - b. Form AD-1048 if the work is for \$25,000 and above
    - c. RD Instruction 1940-Q, Exhibit A-1 if the work is for \$100,000 and above
  5. Copy of the Contract or Letter of Engagement including Agency required Contract Provisions
  6. Copy of any Change Orders
  7. Copy of invoices (as necessary) and payments made including lien releases
  8. Statement that the work is complete to the satisfaction of the County and paid in full

Note to #2: Per this Agency's requirements, if the work is below the Simplified Acquisition Threshold (currently \$150,000), formal bidding is not required. Quotes, invoices or letter of engagement is permitted provided the Owner considers the price to be reasonable; however, all procurement shall be conducted in a manner that provides maximum open and free competition. Note that CA law may vary and may be more stringent.

**COMPLIANCE STATEMENT**

This statement relates to a proposed contract with \_\_\_\_\_

\_\_\_\_\_  
*(Name of borrower or grantee)*

who expects to finance the contract with assistance from either the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), or the Rural Utilities Service (RUS) or their successor agencies, United States Department of Agriculture (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance). I am the undersigned bidder or prospective contractor, I represent that:

1. I  have,  have not, participated in a previous contract or subcontract subject to Executive Order 11246 (regarding equal employment opportunity) or a preceding similar Executive Order.
2. If I have participated in such a contract or subcontract, I  have,  have not, filed all compliance reports that have been required to file in connection with the contract or subcontract.  
 If the proposed contract is for \$50,000 or more: or  If the proposed nonconstruction contract is for \$50,000 or more and I have 50 or more employees, I also represent that:
3. I  have,  have not previously had contracts subject to the written affirmative action programs requirements of the Secretary of Labor.
4. If I have participated in such a contract or subcontract,  I have,  have not developed and placed on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor.

I understand that if I have failed to file any compliance reports that have been required of me, I am not eligible and will not be eligible to have my bid considered or to enter into the proposed contract unless and until I make an arrangement regarding such reports that is satisfactory to either the RHS, RBS or RUS, or to the office where the reports are required to be filed.

I also certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity clause in my contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms 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 which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications for proposed subcontractors for specific time periods) I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

---

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays the valid OMB control number. The valid OMB control number for this information collection is 0575-0018. The time required to complete this information collection is estimated to average 10 minutes 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.

---

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR  
CERTIFICATIONS OF NON-SEGREGATED FACILITIES**

A certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32F.R. 7439, may 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$ 10,000 which is not exempt from the provisions of the Equal Opportunity clause. 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 offers is prescribed in 18 U.S.C. 1001.

DATE \_\_\_\_\_

\_\_\_\_\_  
*(Signature of Bidder or Prospective Contractor)*

\_\_\_\_\_  
*Address (including Zip Code)*