



# The Housing Authority of The City of Fort Myers

## REQUEST FOR PROPOSALS

RFP No. 20-62, Security System Firm to  
Provide Innovative Multi-Community Wireless  
Security Camera Systems

**Release Date: April 5, 2020**

**Housing Authority of the City of Fort Myers, Florida  
4224 Renaissance Preserve Way  
Fort Myers, FL 33916**

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## **Required Forms:**

- 1. Attachment A – Proposers Check List**
- 2. The prices offered have been reviewed and checked thoroughly**
- 3. The price extensions and totals have been checked**
- 4. 5369 Instruction to Bidders**
- 5. 5369A - Representations, Certifications, and Other Statements of Bidders**
- 6. 5370 General Conditions for Construction Contracts**
- 7. Special Conditions**
- 8. Davis Bacon Wage Determination Summary**
- 9. Disclosure of Lobbying Activities**
- 10. Non-Collusion Affidavit of Contractor**
- 11. Section 3 Policy and Certification**
- 12. Public Entity Crime Form**
- 13. Wage & Hour – WH347 Form**

**ADVERTISEMENT**  
**RFP No. 20-62, Security System Firm to Provide Innovative  
Multi-Community Wireless Security Camera Systems**

The Housing Authority of the City of Fort Myers (HACFM) is seeking proposals from qualified and experienced firms who have a demonstrated record of accomplishment in successfully providing Security Camera Systems.

The proposed project includes but is not limited to the installation of Multi-Community Wireless Security Camera Systems with centralized monitoring to be located at HACFM's central office. The selected vendor shall provide all labor, materials, equipment, cabling, conduit, ancillary materials, appurtenances, and other details as required for a fully functional turnkey networked digital camera and monitoring panic button system. Every effort shall be made to install cameras/equipment in locations specified. The selected vendor shall also provide training on all system components and software to enable HACFM staff to operate and maintain the newly installed system efficiently and effectively. The new systems must also be able to communicate/interface with the City of Fort Myers Police Departments current system.

The solicitation documents may be examined and/or obtained online at: [www.hacfm.org](http://www.hacfm.org).

**For a site visit please contact Laurie Victory @ 239-344-3241 / [laurie@hacfm.org](mailto:laurie@hacfm.org) no later than April 16, 2020 EOB.**

This project is required to comply with Prevailing Wage Determination Rates, HUD Section 3, Equal Employment Opportunity, and any other applicable local, state, and federal regulations.

**Projects exceeding \$100,000 will be subject to performance and payment bonds for 100 % of the contract price. An acceptable surety company is one that is authorized to do business in the State of Florida. The surety must be listed on the most recently published U.S. Treasury Circular 570.**

HACFM will receive Sealed Proposals at 4224 Renaissance Preserve Way, Fort Myers, FL 33916 on or before **May 19, 2020 @ 4:00 P.M.** Late submissions shall not be accepted.

The owner reserves the right to waive formalities in any proposal; to reject any or all proposals with or without cause. The owner reserves the right to select one or more vendors to provide the services and to select the proposal(s) that, in its judgment, will be in the best interest of the Housing Authority of the City of Fort Myers.

***HACFM encourages Minority and Section 3 participation.  
TTY #(800) 995-8771***

**Dates Advertised 04/5/2020 & 04/12/2020**

The Housing Authority of the City of Fort Myers (HACFM), Florida is requesting competitive sealed proposals and qualifications for **RFP No. 20-62, Security System Firm to Provide Innovative Multi-Community Wireless Security Camera Systems**

**Proposals must be delivered to HACFM, 4224 Renaissance Preserve Way, Fort Myers, FL 33916 on or before May 19, 2020 @ 4:00 P.M.**

Submit proposals in a SEALED OPAQUE ENVELOPE. Envelope shall be clearly marked with the firm's name, request for proposal number, address, and telephone number. The representative who is authorized to bind the vendor to the submitted proposal shall sign proposals. Provide two (2) hard copies marking one "Original" and one "Copy" and one (1) electronic flash drive set of the entire submission.

The sites affected by this RFP are currently occupied and HACFM is currently teleworking due to COVID-19. Site visits, if needed, can be scheduled. Please contact Laurie Victory @ 239-344-3241 / laurie@hacfm.org for coordination

The time clock located at HACFM is the "Official Time" that shall be used in identifying the actual closing time. Any submittals received after the date and time specified herein shall not be accepted. HACFM shall not be responsible or liable for any lost or misdirected responses. Submissions are the responsibility of the proposer.

QUESTIONS: All questions about the meaning or intent of the RFP documents are to be directed to Laurie Victory, e-mail: [laurie@hacfm.org](mailto:laurie@hacfm.org). Questions received less than ten (10) days prior to solicitation dues date may not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

**This project is required to comply with Prevailing Wage Determination Rates, HUD Section 3, Equal Employment Opportunity, and any other applicable local, state, and federal regulations.**

**Projects exceeding \$100,000 will be subject to performance and payment bonds for 100 % of the contract price. An acceptable surety company is one that is authorized to do business in the State of Florida. The surety must be listed on the most recently published U.S. Treasury Circular 570.**

**Timeline:**

*Timeline is provided as a guideline only and is subject to change at the discretion of HACFM.*

<b>Action</b>	<b>Estimated Date of Completion</b>
RFP Issued and made available	<b>April 5, 2020</b>
Site Visit Deadline – Contact HACFM	<b>Deadline for request: April 16, 2020 EOB</b>
Deadline for submitting questions	<b>May 7, 2020</b>
Proposal submission deadline	<b>May 19, 2020 @ 4:00 p.m.</b>
Contract Award	<b>June 1, 2020</b>
Notice to Proceed	<b>June 8, 2020</b>

***There is no obligation on the part of the HACFM to select and award any submitting response or to any firm or individual submitting a response. No work is guaranteed.***

## **PART I – GENERAL BACKGROUND INFORMATION**

### **1.1 BACKGROUND:**

#### *The Housing Authority of the City of Fort Myers*

The Housing Authority of the City of Fort Myers (the “Authority” or HACFM) is a public housing authority (PHA) created pursuant to Chapter 421 of the Florida Statutes of 1969. Being a municipal dependent special district, the Authority has general statutory authority to operate within the City limits of Fort Myers (the “City”), Lee County, Florida. The Authority develops, owns, and manages public and affordable housing. The Authority is responsible for the administration/management of 570 units of low rent Public Housing (PH) and manages 2310 total vouchers under its authority.

The City of Fort Myers has a diverse population and the Authority provides affordable housing for the low-income individuals and families who cannot afford housing in the private market. The Authority has partnered with the City, the Lee County Housing Finance Authority (the “County”), other local profit, and not-for-profit groups and citizens of the community desiring to provide more affordable housing options within the City: to rehab units; to redevelop PH; to create new housing (inclusive of new PH units); to support development of community services and resources for the citizens and to seek out new funding sources for the Authority. The Authority and its partners are committed to preserving the community historical roots while building and redeveloping a community that is affordable and viable in the present.

The Southwest Florida Affordable Housing Choice Foundation, Inc., an affiliate nonprofit 501(c)(3) corporation of the HACFM was formed in 2006 to provide, develop and manage affordable housing opportunities on behalf of the HACFM, who currently manage 142 units and requires coverage under this proposal as well. Other future sites or units that may be added.

### **1.2 INTRODUCTION/PROJECT OVERVIEW**

The intent of this RFP is to solicit innovative approach(es) to installing high-definition security camera systems in conventional multi-family public housing, newly constructed and/or significantly rehabilitated residential structures of various types.

Security Systems Firms must have a documented track record of providing the required materials and services. HACFM is requiring that each Respondent submit a proposal that provides for a detailed description of the equipment proposed. Respondent should make every effort to recommend a system **which incorporates the Fort Myers Police Department’s current video surveillance systems or make recommendations.**

In addition, the proposal shall demonstrate the respondent’s capacity and readiness to perform the required Scope of Services expeditiously. Finally, the proposal shall include evidence of the respondent’s previous experience and qualifications relative to the provision of such services, particularly the long-term warranty, on-going maintenance and technical assistance.

The selected Security Systems Firm will be responsible for developing a comprehensive and sustainable video surveillance system that seamlessly connects to the HACFM central office monitoring system. The selected Security Systems Firm will be responsible, at a minimum, for installation and warranty of the equipment installed for at-least three (3) years.

### **1.3 HACFM - Multiple Affordable Housing Sites - Maps**

The Security Systems Firm will provide **individual cost estimates for each site** (See Exhibit B MAPS. The expectation is that qualified respondents will have a thorough understanding of the various sites and how to properly install security camera system specific to the needs of each “individual” site.

## PART II – SCOPE OF SERVICES

### 2.1 Summary of Services

1. The proposed project shall include but not be limited to the installation of Multi-Community Wireless Security Camera Systems with centralized monitoring to be located at HACFM's central office. The selected vendor shall provide all labor, materials, equipment, cabling, conduit, ancillary materials, appurtenances, and other details as required for a fully functional turnkey networked digital camera and monitoring panic button system. (i.e.: servers, storage, cameras, housings, software, network infrastructure, cabling, wiring, point to point and access points). The intent is for the system to be cloud based and not have to store servers on site and/or any other offsite locations.
2. Outline of camera locations, connectivity, equipment and cost, recording for wireless video surveillance, cloud recording/storage, network video recording (NVR), site surveys, equipment, and site development. To include labor, installation, project management & required engineering services. Day/night surveillance cameras, motion activated recording, IP assignment, wireless network configuration, Camera image settings configuration (focus, exposure, frames), and system training.
3. Milestones, deliverables, timelines, subcontractor plans, risk management, quality assurance, quality control, inspection testing and acceptance shall be negotiated once a Security Firm has been selected.
4. Security Firm Security Firm shall include a minimum three-year standard manufacture warranty to include all associated camera equipment, software, hardware, back-up and storage. Full infrastructure design, project management, implementation, full system deployment, network switches need to be layer 3 with camera vlan creation, segregation and integration, and Lifecycle management of the video system
5. Every effort shall be made to install cameras/equipment in locations specified. The selected staff vendor shall also provide training on all system components and software to enable HACFM staff to operate and maintain the newly installed system efficiently and effectively.
6. HACFM will entertain innovative solutions, alternative equipment, etc.
7. Proposer must propose and supply a product line that, to the best of its knowledge, is not obsolete or near obsolete. Only equipment and/or product models that have been satisfactorily demonstrated and that have a demonstrated record of successful deployment by other agencies/law enforcement agencies, in similar sized communities shall be used.
8. The Proposer must document successful deployments by including the names and telephone numbers of contact persons as part of the reference requirements of this RFP. The equipment supplied must be of new manufacture (not used or demo units) and best quality and installed in accordance with approved recommendations of the manufacturer.
9. **Firm must have a minimum of five (5) continuous years of experience to date.**



## 2.2 General Information for Security Cameras

1. Purchase, install and configure a minimum of 4 power over Ethernet (POE) fixed network cameras at specified locations. Three of these should have a minimum of 2-megapixel resolution and one should be mounted at about 125 feet from the workstation.
2. The cameras should be:
  - a. At least 2-megapixel resolution indoor and at least 5-megapixel resolution outdoor;
  - b. H. 264 capable;
  - c. Able to generate 1080p HD video output;
  - d. Rated for indoor/outdoor use;
  - e. Capable of filming in day and night conditions;
  - f. Wide dynamic range.
3. Purchase, install and configure one 16 channel 4 TB hybrid network video recorder (NVR)/server with a 12-volt DC power supply and 4 to 6-hour UPS backup. The hybrid NVR will allow configuration and tie in all our existing analog cameras by the selected vendor, if recommend keeping existing equipment. The server and all related peripherals will be located on site in the Fraud/Security Manager's office.
4. Purchase, install and configure video converter, if needed.
5. Configure all cameras to connect to the network video recorder/server via a wired or wireless local area network.
6. Install and configure a management workstation with video management software which:
  - a. Allows local or remote viewing of video from multiple devices simultaneously;
  - b. Capable of retrieving up to 30 days recorded video data from the cameras at a minimum of 7 frames per second;
  - c. Archives and records motion only;
  - d. Video data must be exportable to flash drive or DVD.
7. If a wired LAN is installed, vendor will purchase and install CAT 6 (IEEE standard) cables and conduit materials to run from 16 single or 8 double POE ports to all camera locations. The cables cannot be exposed. Vendor is to provide POE switches.
8. Purchase and install network cables from the network source(s) to all systems. This may include wiring in the interior of the management office to provide a connection to the server and/or management workstation.
9. Purchase and install power cables from the power source(s) to all systems as necessary.
10. Provide power to all cameras and all other network equipment using existing power source(s).

11. Vendor shall provide protection of the equipment from power spikes, surges and tampering. If protection is needed as part of the power run, the Vendor shall advise HACFM staff before conduit or power is run. Also, surge/power protection for the cameras and local control equipment and accessories shall be the responsibility of the Vendor.

### **2.3 Design of Security Systems**

1. The Contractor shall provide a design for both the infrastructure and network configurations of the camera installation. In addition, the Contractor shall produce the supporting documentation.

### **2.4 Cameras Placements**

1. The locations will require fixed cameras for a fixed view setting. The locations and types of cameras shall be identified in the plans during the design phase of the project.
2. Cameras must be color, digital, and utilize IR illumination or comparable capabilities.
3. Cameras must deliver a minimum 30 frames per second in resolutions up to 1080p HD.
4. The cameras will have a minimum 6 - 12 mm wide angle lens with varifocal lenses and built in infrared illumination.
5. The cameras will have digital pan/tilt/zoom capabilities while using the video management software.
6. All cameras must be mounted and housed in a vandal resistant housing dome, or other protective device, that will obscure them from public view but still retain full functionality.
7. Cameras and enclosures must be rated for use in outside locations, if applicable.
8. Cameras must have automatic restart and return to operation capabilities in the event of power failures or fluctuations.
9. Camera enclosures shall be impact and vandal resistant and tinted so that a person standing under the camera cannot see the device within. Tinting or enclosure must not obscure or prevent unlimited visibility of the necessary field of view.

### **2.5 Role of HACFM.**

1. The intent of this request is for HACFM to maintain complete oversight of all operations and equipment proposed by the Security Systems Firm.
2. The Security Systems Firm should propose exactly how HACFM will maintain sole proprietorship over any Security equipment installed, as appropriate (e.g. special Manufacturing Warranties and Equipment Servicing/Maintenance Contracts, etc.) as long as it does not negatively impact the underlying warranties of the equipment installed.

### **2.6 Ongoing Maintenance Services Fees and Cost Limitations.**

1. HUD's Cost Control and Safe Harbor Guidelines will be the basis for negotiating business terms. These guidelines set limits for contractor's fees and extended warranty fees, govern the use of equipment purchased with federal funding, and determines how much public housing funding can be provided to fund a development.

## PART III – SUBMISSION REQUIREMENTS

Interested firms should include the following information in their proposals. The following format and sequence should be followed in order to provide consistency in firm's responses and to ensure each proposal receives full consideration. All pages should be consecutively numbered.

Title page, showing Request for Proposal Number, Firms name and address, closing date and time, telephone number, and a contact person.

- A. Letter of Interest in which the firm agrees to be bound by the requirements of the HACFM request and the firm's response. The letter must list the development team members and identify the primary contact person. Provide number of years in business, number of years involved with services as proposed, total number of employees and number of signed contracts in progress at time of submitting this proposal. Include phone number(s), and e-mail addresses.
- B. This letter should include the respondent's statement of understanding for the scope of work outlined in this RFP, the commitment to perform the work expeditiously, a brief statement indicating why the respondent believes itself to be best qualified to perform the engagement. The letter must be signed by an authorized principal of the Security Systems Firm 's firm and include a statement that the response is firm and irrevocable for ninety (90) days. **Team Description (Organizational Structure and Key Staffing)**: Provide a detailed description of the organizational structure and staffing of the Respondent. List the members of the Respondent's team; provide resumes, indicate their areas of specialization and specific contribution to the team. Provide a brief description of previous collaboration among the members of the Respondent's team. Additionally, for each discipline represented on the Respondent's team, indicate if familiarity with state or local rules, practices or conditions is important to the effective accomplishment of the development and indicate the extent of and basis for the team's familiarity.

Firms using subcontractors to meet qualifications must be specific as to whom has the experience on behalf of the team.

- 1) Contact person, title, telephone/facsimile numbers and e-mail address;
- 2) Name of Security Systems Firm, address of office where work will be performed out of, phone numbers, and e-mail addresses;
- 3) Address and phone numbers of office from which services will be provided, if different from above;
- 4) Description of the firm size, number of employees, and a description of type, location, scheduled completion and dollar value of the projects in the pipeline;
- 5) Proposed role of Security Systems Firm within development team;
- 6) Identify the individual who will serve as project manager for the development team and who will direct and coordinate the development effort through completion. Describe the project manager's prior experience with projects of similar scope and size, with emphasis on experience directing a multi- disciplinary team and facilitating a community involvement process;

- 7) Provide an organization chart of the development team. All entities that comprise the team must be identified including consultants, contractors, and attorneys, indicating their specialization(s), specific contribution to the team, and whether they are an M/WBE/Section 3 business. Please provide information on the development team's prior experience working together;
  - 8) Provide examples of the team's prior experience in the planning and installation of video surveillance projects of comparable size and complexity in urban areas within the past five (5) years. Also discuss the team's experience in obtaining, structuring, and implementing security systems that can be monitored remotely.
  - 9) Provide a narrative description of the team's previous experience in integrating local law enforcement remote monitoring system with a housing authority's own security camera monitoring system;
  - 10) Indicate whether the team has experience working with local Lee County City/Government authorities which regulate the permits and utilities necessary for the equipment installation. Additionally, indicate if familiarity with state or local rules, practices or conditions is important to the effective accomplishment of the development and, if so, indicate the extent of and basis for the team's familiarity;
  - 11) For team members not directly employed by the Security Systems Firm, provide a narrative overview of their experience within their respective disciplines on the planning, development, and operation of mixed-income, mixed-finance, and mixed-use developments of comparable size and complexity in urban areas; and
  - 12) Provide a narrative description of the team's previous experience in successfully utilizing M/WBE/Section 3 businesses and achieving goals for utilization;
  - 13) Termination: Indicate whether the Security Systems Firm and any team member has ever been terminated from a contract, and if so, describe the circumstances and outcome; and
- C. Litigation: Indicate whether the Security Systems Firm and any team member has ever been sued or been sued, and if so, describe the circumstances and the outcome.

**D. Describe Approach:**

The firm's approach for design of the video surveillance network and location of cameras throughout the project. Include implementation plan and deployment.

- 1) Quality Assurance – Describe your approach for providing quality assurance for maintenance and camera and network extension. Include a description of your quality assurance processes.
- 2) System Maintenance Planning – Describe your system maintenance plan.
- 3) IP Camera and Wireless Network Architecture Plan – Demonstrate your ability to provide an architecture design as it relates to managing an IP Camera and Wireless Network supported by multiple NVR sites o Data network infrastructure for backhaul of video.

- 4) Describe, server storage arrays and back-up storage solutions.
- 5) Provide a project plan that indicates how you will develop the required deliverables and services. This plan must address the following:
  - i. Task to be performed
  - ii. Number of hours each task will require
  - iii. Deliverables created by each task
  - iv. Dates by which each task will be completed (dates should be indicated in terms of elapsed time from project inception)
  - v. Resources assigned to each task
  - vi. Required Public Safety personnel support

**E. PRICING INFORMATION PRICING** All equipment prices shall include a breakdown of major equipment. Equipment shall be sorted by installation location site. Sorted site equipment list should include all equipment necessary for install (camera, housing, access point, power). Equipment proposed to be installed at each physical location shall be clearly identified by part and/or model number, quantity and unit pricing. Non-site-specific items such as software licenses, test/training equipment, spare parts, miscellaneous supplies and materials, etc. shall be itemized under the site “other”. Video Surveillance System equipment pricing shall be detailed and itemized. All unit models, configurations, software, firmware, standard options, special options, and accessories available from the manufacturer shall be included in a price list. Proposer shall provide the cost details for providing Training. The cost detail must identify the quantity, unit price and total price for each type of training. On-going Maintenance costs must also be detailed by site.

**F. SECURITY/RISK TO HACFM:**

- 1) Provide a SOC 1 and SOC 2 rating reports for the evaluation of internal controls, policies, and procedures to ensure security, availability, processing integrity, confidentiality, and privacy at a service organization.
- 2) Describe how the wireless system will protect and secure sensitive data in in rest and in motion.
- 3) Describe how firm shall mitigate any risk and vulnerability to HACFM during installation of the project and after the project is up a running.
- 4) Provide the following documents as applicable:
  - i. Information flow diagram of application
  - ii. IT Organizational chart
  - iii. Information Security Policy or Summary
  - iv. Access Control Policy
  - v. Password Policy
  - vi. Clear/Clean Desk Policy
  - vii. Mobile Device Policy

- viii. Risk Management policy document or attestation of same
- ix. Third-party review of compliance (SOC2; SSAE16; ISO)
- x. Asset Management Policy
- xi. Change Management Policy
- xii. Backup Policy
- xiii. Encryption Policy
- xiv. System Development Lifecycle (SDLC) policy and process
- xv. Vulnerability testing and application testing scan results
- xvi. Penetration testing report
- xvii. Security incident management policy/procedures
- xviii. Data breach notification policy/procedure
- xix. Data Retention Policy

**G.** Proposers must include a listing of all services to be provided by the vendor and any services or materials that must be provided by HACFM

**H.** Warranty Cost: Proposer shall provide the cost details for providing System Warranty and Support Services outside of the manufacturers three-year warranty for each proposed site. This includes all equipment, software and services. Proposer shall describe manufacturer and installer warranties that are provided as part of your proposal. Any required maintenance of the system during the warranty period shall be detailed. Maintenance responsibilities and services with related costs should also be detailed.

Firm shall provide an unlimited guaranty of one hundred percent completion and installation of quality video surveillance systems. Assurance to HACFM to ensure that all equipment installation is completed. Further details of the guaranty will be negotiated and included in the final contract.

**I. References:**

Submit three (3) references (preferable Government/Public Safety) dated within the last five years where the proposer has rendered services substantially like those identified in this RFP. Provide an overview of the Security Systems Firm 's experience in the planning, construction and management of projects like what is proposed. Include the following information and the list must be listed in chronological order:

- 1) List all affordable and mixed-income rental housing projects (preferably involving HUD developments) that were successfully completed within the past 5 years, identifying the states where the projects are located. Additionally, identify any other noteworthy features of these projects, including retail, commercial, office and community spaces, and childcare facilities developed to name a few. Provide evidence of timely development demonstrating that projects were on schedule and within budget;

Indicate the projects which employed alternative “Green Building” construction techniques, such as deconstruction, prefabricated buildings, etc. Indicate projects

employing sustainable development techniques and all LEED-certified development projects;

- 2) Provide examples of previous projects evidencing the Security Systems Firm 's experience with successful new construction of multi-family residences in an urban setting, including any such projects that are mixed-income;

**J.** Federal Capital Improvement Funds will be provided for the installation of Security systems in accordance with regulatory and policy restrictions. The Security Systems Firm must state its position and reasoning for each of the following development cost areas:

- 1) Proposed maintenance fee stated as a percentage of total construction/installation costs;
- 2) Proposed limitations on guarantees or extended warranties;
- 3) Any additional fees and/or compensation to developer and any of its related entities.

**K. Capacity:** Respondent shall certify that the Respondent and all team members are available to start immediately. The Respondent should describe any existing time commitments of the proposed team members or their proposed staff which would impair the Respondent ability to proceed expeditiously.

**L. Financial Statement:** Provide current financial statements of the Respondent prepared by a Certified Public Accountant.

**M. MBE and WBE Utilization in the Project**

Responders are advised to review in its entirety, the MBE utilization requirements set forth in Section 3 above and in this Section before preparing and submitting their proposals. Proposals that do not address the MBE participation or waiver requirements set forth in this RFP may be deemed unacceptable.

Responders shall provide the information requested below, or if the Responder is unable to meet the MBE utilization goals in part or in whole, the Responder shall submit with its proposal, a request for a waiver in the manner described below:

**Minimum Proposal Contents for MBE/WBE Utilization:**

**MBE/WBE Utilization Plan.** The Responder shall provide its plan for achieving the twenty percent (20%) MBE utilization goal for the proposed contract (“**MBE Utilization Plan**”), which shall include, at a minimum, the following information:

The names, addresses, telephone numbers and contact person for each MBE/WBE that will be performing work on this project. **NOTE: WBE utilization, although encouraged by HACFM, will not be counted towards the MBE goals. Further review Section 3 to ensure that proposed MBE subcontractors will meet the standards necessary to be counted towards the MBE goals;**

A specific description of the work to be performed by each MBE/WBE and the proposed schedule for delivery of services;

The fee structure showing the dollar amount to be awarded to each MBE/WBE to be utilized, and the total value of each proposed MBE subcontract towards the twenty percent (20%) MBE utilization goal;

A letter of intent between the Responder and each MBE/WBE agreeing to enter into a contract if the contract proposed hereunder is awarded to the Responder; and a current and valid MBE/WBE certification for each MBE/WBE to be utilized.

**Request for Waiver:** If the Responder is unable to meet all or part of the MBE utilization goal for the proposed contract for the grounds set forth in Section 3 above, the Responder may request a waiver of all or part of the MBE participation requirements by submitting a written request for a waiver with supporting documentary evidence, all of which must be submitted by the Responder with its proposal on or before the deadline for proposal submission. The documentary evidence must reasonably demonstrate that MBE participation was unable to be obtained or was unable to be obtained at a reasonable price, as discussed in Section 3 above. Such evidence shall include, at the least:

Correspondence, records, and other documents showing efforts made to contact and negotiate with MBEs;

A description of the specifications, plans, bonding requirements, anticipated schedule of delivery and other pertinent information provided by the Responder to MBEs;

A list of MBEs that responded to solicitations or inquiries by the Responder including contact information of each MBE and quotes or proposals submitted by MBEs;

A list of MBEs contacted by the Responder and found to be unavailable including addresses and phone numbers of each MBE and dates of each such contact; and

A list of MBE directories, trade associations, local minority assistance organizations, and Federal, State and local government small business agencies contacted by the Responder for assistance in locating MBEs.

- N. **Section 3 Compliance Plan** - Provide a description of your strategy for complying with the Section 3 requirements (“**Section 3 Compliance Plan**”) Responders may comply with Section 3 by providing employment and/or training opportunities to residents of HACFM public housing and/or other low-income persons for the performance of this contract, subcontracting with resident-owned businesses and/or other Section 3 businesses, or a combination of employment, training and/or subcontracting as described above. This requirement applies to Section 3 and non-Section 3 businesses. Section 3 is a HUD requirement that cannot be waived by HACFM. Therefore, Responders are advised to review the following information in preparing and submitting their proposals:



If you plan to comply with Section 3 by providing employment and/or training opportunities to residents of HACFM public housing and/or other Section 3 persons, your Section 3 Compliance Plan must provide all information regarding any hiring/training you will be conducting including a description of the employment/training duties, work hours, and salaries. Responders are required to submit, with their proposals, their workforce requirements for performing the proposed contract regardless of whether additional hiring will be done. If additional hiring will not be done, the Responder must, to the greatest extent feasible and consistent with all applicable laws, provide training to Section 3 persons.

If you plan to meet Section 3 requirements by subcontracting with Section 3 businesses, your Section 3 Compliance Plan must provide the names, addresses and telephone numbers of all Section 3 businesses that will be performing work on this project. Provide a description of the work to be performed by such firms and a proposed percentage of the total contract dollar amount that will be awarded to each firm. You must include a letter of intent between your firm and each Section 3 business with which you will subcontract if you are awarded the contract. It is the Responder's responsibility to provide proof that such firms meet the definition of Section 3 business concern as established by HUD. See 24 CFR Part 135.5 for definitions of Section 3 business concerns.

If you are claiming preference as a Section 3 business concern, your Section 3 Compliance Plan must include an explanation for your claim to be a Section 3 business concern along with proof of your firm's eligibility for preference as a Section 3 business concern. See 24 CFR Part 135.5 for definitions of Section 3 business concerns or contact HUD Fair Housing and Equal Opportunity for additional information (ref link below). Firms claiming eligibility for Section 3 preference must also submit a Section 3 compliance strategy.  
[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp](https://www.hud.gov/program_offices/fair_housing_equal_opp)

If you determine that it is not feasible to comply with Section 3, you must state with specificity, in your Section 3 Compliance Plan, the reasons why you cannot comply with Section 3. Any Responder that has determined that it is not feasible to comply with Section 3 assumes the risk that its claim of non-feasibility will be deemed unacceptable by HACFM.

Sub-consultants that the firm proposes to use for any of the services must be identified and the work they are to perform.

#### **O. Forms and documents required under Attachment A – Proposers Check List.**

**Firms that will be relying on subcontractors to increase their point scores for specific expertise must provide a Profile of Firm form for each subcontractor. It is expected that these subcontractors will be a part of the team for the duration of the contract.**

## PART IV EVALUATION CRITERIA

Selection of a firm to render services pursuant to this RFP will be made in accordance with HUD and HACFM procurement regulations. All proposals received by the time and date specified in this RFP shall be evaluated by the RFP Evaluation Panel based on the following criteria and weights:

Selection Criteria:

<b>Evaluation Criteria</b>	<b>Maximum Points</b>
a. Letter of Interest, Team Description, Organizational Structure, Staff Qualifications, Experience, Expertise & Qualifications of the Associates Assigned to Administer the Project.	10
b. Outline of the firm's approach, design, understanding & approach to the project	25
c. Architectural Plan, demonstrated ability of the firm's office to manage the contract, knowledge, deliverables, timeline, etc.	25
d. References	10
e. Proposed fee schedule and best value.	20
f. Existing contracts, capacity of personnel and availability to comments project expeditiously.	10
<b>TOTAL</b>	100
<b>Additional Points:</b> Provided if you are a Disadvantaged Business Enterprise (DBE) and have provided a Section 3 Participation Plan: DBE/WBE participation: 5 Points Section 3 participation: 5 Points Maximum Points	5 5 110

HACFM reserves the option to select in a one or two step evaluation process. This means HACFM may select the firm(s)/individual(s) from written submittals (step one) or after a second step of evaluation, which may or may not include presentations to the RFP Evaluation Panel and/or the Commissioners or Police Department.

If a two-step evaluation is used, the evaluation criteria does not change; however, during a presentation process there may be additional discovery including but not limited to the understanding of the project, approach, ability, methods and/or other factors which would result in a degree of difference in the numerical scoring established in step one of the evaluation which is utilized to generate a short list.

Other considerations may include but not be limited to reference checks, background license checks, credit and financial history investigations and other relevant information.

In the event firms are requested to do a presentation to the Evaluation Panel and/or Commissioners for final recommendation ranking; HACFM will not be liable for any costs incurred by the firm in connection with such presentation.

There is no obligation on the part of the HACFM to select and award any submitting response or to any firm or individual submitting a response. **No work is guaranteed.**

## **SECTION IV: INSURANCE**

**INSURANCE:** The vendor shall secure and maintain during the contract period the following coverage's:

**Workers' Compensation:** Insurance covering all employees meeting statutory limits in compliance with the applicable state and federal laws.

**Commercial General Liability:** Coverage shall have minimum limits of \$1,000,000 per occurrence, combined single limit for bodily injury liability and property damage liability. This shall include premises and operations; broad form property damage; XCU coverage; independent contractors; products and completed operations and contractual liability.

**Business Auto Liability:** Coverage shall have minimum limits of \$500,000 per occurrence, combined single limit for bodily injury liability and property damage liability. This shall include: owned vehicles, hired and non-owned vehicles, if applicable.

### **Professional Liability:**

Coverage shall include the following:

- a. A minimum combined single limit of \$1,000,000.
- b. Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits, or self-insurance program, provide an applicable deductible amount, or other exclusion or limitation, or sovereign immunity as to the amount of coverage to be provided within the minimum coverage limits set forth above, the HACFM shall hold the PROVIDER responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation or amount of sovereign immunity, the PROVIDER shall be required to provide written documentation that is acceptable to the HACFM establishing that the PROVIDER has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policies

**Special Provisions:** HACFM is to be specifically included as an additional insured on both the comprehensive general liability and the business auto liability policies.

The certificate holder should read as follows: The Housing Authority of the City of Fort Myers, 4224 Renaissance Preserve Way, Fort Myers, Florida 33916

No HACFM Division or individual name should appear on the certificate. No other format will be acceptable. The certificate must state the project number and name.

Current valid insurance policies meeting the requirements herein identified shall be in effect and maintained during the duration of the named project. Renewal certificates shall be sent to HACFM 10- days prior to any expiration date.

**ATTACHMENT A**

**CHECK LIST FOR  
PROPOSAL SUBMISSION**

Please read carefully, sign in the spaces indicated and return with your proposal.  
Proposer should check off each of the following items as the necessary action is completed.

- 1) **The prices offered have been reviewed and checked thoroughly**
- 2) **The price extensions and totals have been checked**
- 3) **5369 Instruction to Bidders**
- 4) **5369A - Representations, Certifications, and Other Statements of Bidders**
- 5) **5370 General Conditions for Construction Contracts**
- 6) **Special Conditions**
- 7) **Davis Bacon Wage Determination Summary**
- 8) **Disclosure of Lobbying Activities**
- 9) **Non-Collusion Affidavit of Contractor**
- 10) **Section 3 Policy and Certification**
- 11) **Public Entity Crime Form**
- 12) **Wage & Hour – WH347 Form**

I acknowledge receipt of the following addenda, and the cost, if any, of such revisions has been included in the price of the proposal.

Addendum # _____	Date: _____	Addendum # _____	Date: _____
Addendum # _____	Date: _____	Addendum # _____	Date: _____

The mailing envelope must be sealed and marked with:

**RFP Title: RFP No. 20-62, Security System Firm to Provide Innovative  
Multi-Community Wireless Security Camera Systems**

**Date Due: May 19, 2020 @ 4:00 P.M.**

Addressed to:

Laurie Victory, Procurement Specialist  
The Housing Authority of the City of Fort Myers, FL  
4224 Renaissance Preserve Way  
Fort Myers, Florida 33916

The proposal will be mailed or delivered in time to be received no later than the specified opening date and time. (Otherwise the proposal cannot be considered.)

The undersigned, herein referred to as the Proposer, has familiarized themselves with the RFP in its entirety and the local conditions under which the work is to be performed and is satisfied with the conditions of delivery, handling and storage of equipment and all other matters which may be incidental to the work, before submitting a proposal.

The undersigned agrees, if this proposal is accepted, to furnish any and all items/services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the Specifications. The period for acceptance of this Proposal will be one hundred eighty (180) calendar days.

By submitting a proposal in response to this solicitation, the proposer certifies that at the time of submission, he/she is not on the Federal Government's or the State of Florida's list of suspended, ineligible, or debarred contractors.

In the event of placement on the list between the time of proposal submission and time of award, the proposer will notify the HACFM. Failure to do so may result in terminating this contract for default.

The undersigned affirms that they have read and do understand the specifications and any attachments contained in this RFP package.

By signing this document I, an authorized representative of the Proposer, certify that my company has not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a Proposal; that the Proposal we have submitted for this RFP has been independently arrived at without collusion with any other Proposer, competitor or potential competitor; that our Proposal has not been knowingly disclosed prior to the opening of Proposals to any other Proposer or competitor; that the above statement is accurate under penalty of perjury.

Failure to sign and return this form will result in the rejection of the entire proposal.

---

Company Name

---

Authorized Signature

---

Date

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

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

# Instructions to Bidders for Contracts

## Public and Indian Housing Programs

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### 1. Bid Preparation and Submission

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

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

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

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

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

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

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

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

### 2. Explanations and Interpretations to Prospective Bidders

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

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

### 3. Amendments to Invitations for Bids

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

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

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

### 4. Responsibility of Prospective Contractor

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

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

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



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

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

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

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

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

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

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

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

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

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

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

## 6. Bid Opening

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

## 7. Service of Protest

(a) Definitions. As used in this provision:

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

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

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

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

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

## 8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, except other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

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

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

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

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

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

#### **10. Assurance of Completion**

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

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

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

[ ] (3) a 20 percent cash escrow;

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

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

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

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

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

#### **12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)**

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

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

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

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

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

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

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

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

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

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

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

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to be used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

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

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

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

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

# General Conditions for Construction Contracts - Public Housing Programs

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

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

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).

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

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

The information requested does not lend itself to confidentiality.

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

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## 1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
  - (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
  - (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
  - (d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
  - (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
  - (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
  - (g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
  - (h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.
  - (j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
  - (l) "Work" means materials, workmanship, and manufacture and fabrication of components.
- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.
  - (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [ ] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
  - (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
  - (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
  - (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
  - (f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
  - (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
  - (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

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

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

## 2. Contractor's Responsibility for Work

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

#### 4. Other Contracts

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

### Construction Requirements

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

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

#### 6. Construction Progress Schedule

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

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

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

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

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

### 8. Differing Site Conditions

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

### 9. Specifications and Drawings for Construction

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

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

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

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

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

#### 10. As-Built Drawings

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

#### 11. Material and Workmanship

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

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

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

#### 12. Permits and Codes

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



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

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

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

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

### 14. Temporary Heating

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

### 15. Availability and Use of Utility Services

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

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

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

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

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

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

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

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

#### **19. Energy Efficiency**

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

#### **20. Inspection and Acceptance of Construction**

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

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

## 21. Use and Possession Prior to Completion

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

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

## 22. Warranty of Title

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

## 23. Warranty of Construction

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

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

**24. Prohibition Against Liens**

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

**Administrative Requirements**

**25. Contract Period**

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

**26. Order of Provisions**

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

**27. Payments**

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

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

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

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

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

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

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

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

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

## 28. Contract Modifications

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

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

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

## 29. Changes

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

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.
- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change. The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.
- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

### 30. Suspension of Work

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

been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

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

### 31. Disputes

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

### 32. Default

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

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

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

### 33. Liquidated Damages

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

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

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

### 34. Termination for Convenience

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

### 35. Assignment of Contract

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

### 36. Insurance

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

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

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

### 37. Subcontracts

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

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

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

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

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

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

### 39. Equal Employment Opportunity

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

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



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

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

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

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#### 41. Interest of Members of Congress

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

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

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

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

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

#### 44. Royalties and Patents

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 48. Procurement of Recovered Materials.

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

## **SPECIAL CONDITIONS**

### **1. CONTRACT DOCUMENTS:**

- a. All drawings, specifications and copies thereof furnished to the Contractor shall be used only with this Project and are not to be used on any other project. With the exception of the one contract set, the Contractor shall return or suitably account for all documents.

### **2. OWNER:**

- a. "The Owner reserves the right to execute "direct material purchases: for any and all materials provided to the project to credit the associated sales tax. For all direct material purchases, the title vests immediately to the Owner."
- b. The Contractor shall obtain the Owner's written consent prior to changing any project superintendent.
- c. "All shop drawings, product data, samples and similar submittals shall be reviewed and approved be the Contractor first, who shall then submit them to the Architect."

### **3. CONTRACTOR:**

- a. "Should the Architect / Engineer or Owner find any person(s) employed on the project to be incompetent, unfit, or otherwise objectionable for his duties and so certifies the facts to the Contractor, Contractor shall immediately cause the employee to be dismissed and said employee shall not be re-employed on this project without written consent of the Architect / Engineer or Owner."
- b. The Contractor shall obtain the Owner's written consent prior to changing any project superintendent. Such consent shall be freely given where justice so requires.
- c. "All shop drawings, product data, samples and similar submittals shall be reviewed and approved by the Contractor first, and shall then submit them to the Architect."

### **4. ADMINISTRATION OF THE CONTRACT**

- a. Within ten (10) days after the effective date of this agreement, but before the Contractor starts to work at the site, a conference attended by the Contractor, Architect and others as appropriate will be held to discuss schedules for completion of the work, procedures for handling shop drawings and other submittals, for processing applications for payment, and to establish a working understanding among the parties as to the work.

### **5. CHANGES IN THE WORK:**

- a. The Contractor, after receiving authorization to make changes in the form of a Change Order, shall provide copies to all permitting authorities having justification.
- b. The allowance for overhead and profit combined, included in the total cost to the Owner, shall be based on the following schedule:

1. For the Contractor, for any Work performed by the Contractor's own forces, ten percent (10%) of the cost.
  2. For the Contractor, for Work performed by his subcontractor, five percent (5%) of the amount due the Subcontractor.
  3. For each Subcontractor or Sub-Contractor involved, for any Work performed by that Contractor's own forces, ten percent (10%) of the cost.
  4. For each Subcontractor, the Work performed by the Sub-Subcontractor, five percent (5%) of the amount due the Sub-Subcontractor.
- c. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their property can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where cost items are Subcontracts, they should be itemized also. Contractors shall additionally include a summary sheet for ease of final review.
- d. Where changes in the work result in the request for additional contract time: consideration shall be given for "time" only.

**6. TIME:**

- a. Should performance of the Contractor's work be delayed by adverse weather conditions or other conditions which prevent all work during the morning hours on a given day shall be considered lost time.

**7. PAYMENTS AND COMPLETION:**

- a. "Final Payment shall not be made until the project of clearly defined phase portions thereof, are inspected and accepted by the Owner and all other authorities required by Florida Law."
- b. In accord with the Owner's policy, ten percent (10%) of the amount certified for payment by the Architect shall be retained until final completion of the project or clearly defined phased portions thereof.

**8. INSURANCE:**

- a. Contractor shall provide the following insurance for the benefit of the Owner.
  1. Property Insurance:  
The Contractor will purchase and maintain during the entire time of his agreement, builder's risk insurance (fire, extended coverage, vandalism and malicious mischief) on 100% of the completed value of all insurable portions of work, for the benefit of the Owner, Contractor, and all Subcontractors, as their interest may appear.
  2. The Owner, as trustee, shall have the power to adjust and settle any loss with the Insurers.



3. Liability Insurance:  
The Contractor shall purchase and maintain during the entire time of this Agreement, comprehensive general liability and comprehensive automobile liability insurance as shall protect him from claims for damage for personal injury, including accidental death, as well as claims for property damages which may arise from operations under this Agreement whether such operations be by himself or by anyone directly or indirectly employed by him, and the amounts of such insurance shall be minimum limits as follows. The Owner will be named as "Additional Insured" on all policies.

4. Comprehensive General Liability (including Premises – Operations: Independent Contractor’s Protective: Products and Completed Operation: Broad Form Property Damage):

Bodily Injury:	\$1,000,000.00 Each Occurrence
Property Damage:	\$1,000,000.00 Each Occurrence

Products and Completion Operations to be maintained for one (1) year after final payment.

Property Damage Liability Insurance will not exclude X., C., and U. coverage when contracts are affected. The owner shall be named as co-insured on all liability insurance.

5. Employer’s Liability \$1,000,000.00

6. Contractual Liability:

Bodily Injury:	\$1,000,000.00
Property Damage:	\$1,000,000.00

7. Comprehensive Automobile Liability:

Bodily Injury:	\$1,000,000.00 Each Person
Bodily Injury:	\$2,000,000.00 Each Occurrence
Property Damage:	\$1,000,000.00 Each Occurrence

8. Workmen’s Compensation Insurance:  
Contractor shall acquire and maintain, during the life of this Agreement, Workmen’s Compensation Insurance in compliance with Chapter 440. Florida Statutes, for all of his employees connected with the work of the project and further, the Contractor shall require his Subcontractors similarly to provide Workmen’s Compensation Insurance. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Workmen’s Compensation Statute, the Contractor shall provide adequate insurance, satisfactory to the Owner for the protection of his employees not otherwise protected.

9. Indemnification:  
a. The Contractor / Vendor, in consideration of One Hundred Dollars (\$100.00), the receipt and sufficiency of which is accepted through signing of this document, shall hold harmless and defend The Housing Authority of the City of Fort Myers and its agents and

employees from all suits and actions, including attorney's fees and all costs of litigation and judgments of any name and description arising out of or incidental to the performance of this contract or work performed thereunder. This provision shall also pertain to any claims brought against the Housing Authority of the City of Fort Myers by any employee of the named Contractor / Vendor, and Subcontractor, or anyone directly or indirectly employed by any of them. The Contractor / Vendor's obligation under this provision shall not be limited in any way by the agreed upon contract price as shown in this Contract or the Contractor / Vendor's limit of, or lack of, sufficient insurance protection. The first One Hundred Dollars (\$100.00) or money received on the contract price is considered as Payment of this obligation by the Housing Authority of the City of Fort Myers.

- b. Certificates evidencing that all above insurance is in force shall be furnished to the Owner before any work is begun.
- c. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in Florida, Contractor shall, within five days thereafter, substitute another bond and surety, both of which must be acceptable to the Owner. Said additional bond shall be at no cost to the Owner.

DAVIS BACON  
WAGE DETERMINATION

This project is subject to the Federal Davis Bacon Wage Determination Guidelines

The project shall utilize the following determinations for building projects (does not include single family homes of apartments up to and including 4 stories)

General Decision Number: **Davis-Bacon Act WD #: [FL20200069](#)**

Bidders are required to pay at least the lowest skilled trade rate of the decision as their minimum hourly rate. The rate will be applicable for all persons working on the project whether they are a mechanic, technician or helper. The wage determination makes no separate provisions for helpers or apprentices.

Contractors and sub-contractors are required to submit the Department of Labor Payroll Form WH-347. This form must be submitted with each application for payment and shall include all persons who worked on the project. This does not include administrative and office personnel, unless they performed construction related duties at the specific project site.

# DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> :  <b>Congressional District, if known:</b>	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>   <b>Congressional District, if known:</b>	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**NON-COLLUSION AFFIDAVIT OF CONTRACTOR**

*Attach to HUD-5369-A*

\_\_\_\_\_ does hereby state:  
(name)

(1) S/He is the \_\_\_\_\_ of  
(owner, partner, officer, or representative),  
\_\_\_\_\_, hereinafter referred to as Contractor.  
(business name)

(2) S/He is fully knowledgeable of the preparation and contents of Subcontractor's proposals which were submitted to (Contractor);  
\_\_\_\_\_, for specific work required in  
connection with a Home Forward project titled \_\_\_\_\_  
and located at : \_\_\_\_\_

(3) Said Contractor's proposal is genuine and is not a collusive or sham proposal;

(4) Neither the Contractor nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including myself, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other bidder, firm, or person to submit a collusive or sham proposal in connection with such contract or to refrain from submitting a proposal in connection with such contract, or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other bidder, firm, or person to fix the price or prices in said Contractor's Proposal, or to fix any overhead, profit, or cost element of the price or prices in said Contractor's Proposal, or to secure through collusion, conspiracy, connivance, or unlawful agreement any advantage against Home Forward, or any person interested in the proposed Contract; and

(5) The price or prices quoted in the Contractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including myself.

Signed: \_\_\_\_\_

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

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

Witnessed by: \_\_\_\_\_



## **SECTION 3**

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).

**Please visit The Housing Authority of the City of Fort Myers (HACFM) website by clicking on the following link to become educated with the HACFM Plan in its entirety.**

<http://hacfm.org/web/page.asp?urh=Section3>

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**THE FOLLOWING PACKAGE INCLUDES VARIOUS FORMS THAT MUST BE RETURNED WITH YOUR PROPOSAL.**

**Table of Contents:**

Attachment I	HUD CFR Part 135 Section 3 Regulations
Attachment II	Section 3 Special Conditions
Attachment III	Part IV Definitions
Attachment IV	Section 3 Opportunities Plan (pages 1-6)
Attachment V	Section 3 New Hire Compliance Report (pages 1 – 6)

**Note: Attachment IV and V must be returned in their entirety with the proposal package.**

# ATTACHMENT I

## SECTION 3 CLAUSE

*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 (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).

**I the undersigned contractor have read the above Section 3 Clause will comply with HUD, 24 CFR Part 135 – Section 3 Regulations.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title





## **ATTACHMENT II**

### **SECTION 3 SPECIAL CONDITIONS**

HACFM has initiated efforts to enhance resident hiring on construction related contracts. These initiatives are designed to set the requirements for resident hiring and developing and/or strengthening administrative procedures for facilitating contractors' hiring of HACFM residents and other low income and/or very low-income residents residing in the section 3 area.

#### **1. Procurement Documents**

- Each bidder must include a Section 3 Opportunities Plan which indicates its commitment to meet HACFM resident hiring requirements.
- If a bidder fails to submit a Section 3 Opportunities Plan and the related data along with the bid, such bid will be declared as "non-responsive".
- For Invitations for Bids ("IFB") where awards are made to the most responsive and responsible bidder, the bidder's commitment to satisfy HACFM resident hiring requirements will be a factor used in determining whether the bidder is "responsive".
- For RFQ's, RFP's and IFB's, contractors shall be required to detail the cost of the bid or proposal by separately categorizing contract cost by labor (person hours and dollar amounts).

#### **2. Enforcement**

- To enforce the decision-making process pertaining to determining applicable percentages for resident hiring, enforcement strategies are set forth below.
- During the post award or pre-construction meeting, the objective shall be to impart critical Section 3 information to the contractor prior to commencement of the work/project. The following contract requirements shall be discussed in detail (Non-construction contracts do not require Davis-Bacon compliance):
  - Davis-Bacon Wage Requirements
  - Minority and Women Owned Business Participation requirements
  - Section 3 Program requirements

HACFM representatives will require the contractor to certify its understanding of the terms and conditions of the contract as they pertain to Davis-Bacon, Section 3 hiring and Minority and Women Owned Business participation.

#### **3. Monitoring and Enforcement Authority and Responsibility**

The function of monitoring and enforcing Section 3 Compliance and hiring will be carried out by the Section 3 Coordinator in coordination with the Real Estate Development Office



## **ATTACHMENT III**

**Business Concern** – a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

**Contractor** – any entity which contracts for the performance of work generated by the expenditure of Section 3 covered assistance, or performing work in connection with a Section 3 covered project.

**Employment Opportunities Generated by Section 3 Covered Assistance** – all employment opportunities generated by the expenditure of Section 3 covered public assistance (i.e., operating assistance, development assistance and modernization assistance, (as described in 24 CFR Section 135.3 (a) (1)). With respect to Section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with Section 3 covered projects (as described in Section 135.3 (a) (2)), including management and administrative jobs. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

**Housing Authority** (HA) – Public Housing Agency.

**Housing Development** – low-income housing owned, developed, or operated by public housing agencies in accordance with HUD’s public housing program regulations codified in 24 CFR Chapter IX.

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

**Low-income person** – families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families.

**Metropolitan Area** – a metropolitan statistical area (MSA), as established by the Office of Management and Budget.



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

**Recipient** – any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State unit of local government, PHA, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

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

**Section 3 Business Concern** – a business concern,

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

**Section 3 Covered Assistance** –

- 1) Public housing development assistance provided pursuant to Section 5 of the 1937 Act;
- 2) Public housing operating assistance provided pursuant to Section 9 of the 1937 Act;
- 3) Public housing modernization assistance provided pursuant to Section 14 of the 1937 Act; 4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with housing rehabilitation, construction, or other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 Clause – the contract provisions set forth in 24 CFR Section 135.38.

**Section 3 Covered Contracts** – a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. Section 3 covered contracts do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation (FAR). Section 3 covered contracts also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract.



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

**Section 3 Resident** – a public housing resident or an individual who resides in the metropolitan area or non-metropolitan County in which the Section 3 covered assistance is expended and who is considered to be a low to very low-income person.

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

**Very low income person** – families (including single persons) whose income do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of unusually high or low family incomes.



## **ATTACHMENT IV**

### **SECTION 3 OPPORTUNITIES PLAN**

#### **Business Opportunities and Employment Training for Housing Authority of the City of Fort Myers Low Income Public Housing Residents (LIPH) and Low and Very Low Income City of Fort Myers Neighborhood Area Residents (LIAR)**

**PRIME CONTRACTOR'S NAME:** \_\_\_\_\_

**SPECIFICATION OR RFP/IFB/RFQ NUMBER:** \_\_\_\_\_

**SPECIFICATION OR RFP/IFB/RFQ TITLE:** \_\_\_\_\_

The Contractor hereby agrees to comply with all the provisions of Section 3 as set forth in 24 CFR 135.1 et seq. and the HACFM Section 3 Policy and Program requirements. The Contractor hereby submits this document to identify employment opportunities for HACP residents (LIPH) and low and very low income City of Fort Myers neighborhood area residents (LIAR) during the term of the contract between the Contractor and the HACFM.

The preference of HACFM is to ensure that as many HACFM residents as possible are employed. In an effort to further that requirement, HACFM has created a preference tier structure as outlined in the attached Section 3 Policy and Program Manual. Contractors are required to comply with Section 3 by first considering Tier I – Hiring. The Contractor agrees to meet its Section 3 requirement following the Preferential Tier Structure as indicated by the selection below (check one or more tiers below):

**[ ] Tier I – HIRING**

The Contractor affirms that the jobs identified shall be for meaningful employment that may or may not be related to the scope of services covered under Contract/Purchase Order # \_\_\_\_\_. The Contractor has committed to employ \_\_\_\_\_ resident(s) in order to comply with its Section 3 requirements. A prime contractor may satisfy HACFM Resident Hiring Requirements through his/her subcontractors.

**Contact HACFM Real Estate Development Office for resident referrals at 239-344-3232.**

When Tier I is selected, the Contractor shall complete the following table as instructed below:

- (1) Indicate each job title for all phases of this contract
- (2) The number of positions that will be needed in each category
- (3) How many of those positions are currently filled
- (4) The number currently filled by low and very low-income HACFM residents
- (5) The number currently filled by City of Fort Myers neighborhood area residents



(6) How many positions need to be filled

**Indicate your requirement for the number of positions you intend to fill with:**

(7) Low income HACFM Residents (LIPH) and/or

(8) Low and very low income City of Fort Myers Neighborhood Area Residents (LIAR)

**[ ] Tier II – CONTRACTING**

The contractor has identified HACFM resident-owned business(es) or Section 3 business(es) which is/are 51 percent or more owned by Section 3 residents or 30 percent or more of their permanent full-time workforce are Section 3 residents. This will satisfy the contractor's Section 3 requirement covered under Contract/Purchase Order # .

**In a one (1) page letter on your firm's letterhead:**

1) Indicate the requirements, expressed in terms of percentage, of planned contracting dollars for the use of Section 3 business concerns as subcontractors.

2) A statement of the total dollar amount to be contracted, total dollar amount to be contracted to Section 3 business concerns for building trades, and total dollar amount to be contracted to Section 3 business concerns for other than building trades work (maintenance, repair, modernization, and development).

3) A description of the method used to develop the requirements above and the efforts to be undertaken by the contractor to meet those requirements.

**[ ] Tier III - OTHER ECONOMIC OPPORTUNITIES**

Contractors may provide other economic opportunities to train and employ Section 3 residents by incurring the cost of providing skilled training for residents in an amount commensurate with the sliding scale set forth in the Resident Hiring Scale



**SECTION 3 INCOME LIMITS**

**(FY 2009 Income Limits from [www.huduser.org](http://www.huduser.org))**

All residents of public housing developments of the Housing Authority of the City of Fort Myers qualify as Section 3 residents. Additionally, individuals residing in Lee County who meet the income limits set forth below can also qualify for Section 3 status.

**A picture identification and proof of current residency is required.**

<b>Eligibility Guidelines</b>		
<b>Number in Household</b>	<b>Very low-income (50%)</b>	<b>Low income (80%)</b>
1 person	\$21,250	\$34,000
2 person	\$24,300	\$38,850
3 person	\$27,300	\$43,700
4 person	\$30,350	\$48,550
5 person	\$32,800	\$52,450
6 person	\$35,200	\$56,300
7 person	\$37,650	\$60,200
8 person	\$40,050	\$64,100



## SECTION 3 OPPORTUNITIES PLAN

<b>Section 3 Utilization Assessment and Plan</b>	
<b>SPEC or RFP TITLE:</b>	<b>SPEC or RFP NUMBER</b>

JOB TITLE (1)	# OF POSITIONS					HIRING REQUIREMENT		
	# NEEDED (2)	TOTAL (3)	LIPH (4)	LIAR (5)	TO BE FILLED (6)			





## SECTION 3 OPPORTUNITIES PLAN

By signing below, the Contractor hereby agrees to comply with the selected Section 3 requirements indicated above. To the extent that the completion of this form is contingent upon future information, for example price negotiations, request for specific services, etc., the undersigned hereby affirms and agrees to fully adhere to the spirit and intent of the HACFM Section 3 Policy.

Furthermore, the undersigned acknowledges and affirms responsibility for completion and submission of this form PRIOR to the AWARD of a contract from HACFM. Failure to submit this form may jeopardize the responsiveness of your submission.

### Attest/Witness

\_\_\_\_\_

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

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

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

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

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



**Certification of Receipt and Understanding of the HACFM Section 3  
Plan and Compliance Requirements:**

I \_\_\_\_\_ the \_\_\_\_\_  
(printed Name) (Title)

of \_\_\_\_\_ herby acknowledge  
(Company Name)

receipt and understanding of, and pledge to adhere to, the Section 3 Plan.

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_



## SECTION 3 NEW HIRE COMPLIANCE REPORT

The US Department of Housing & Urban Development (“HUD”) requires the Housing Authority of the City of Fort Myers to collect information on every person hired in connection with Section 3 projects to ensure HACFM’s compliance with Federal regulations.

As part of HACFM’s Section 3 program your firm is required to report the number of employees hired in connection with a Section 3 Project who are Section 3 Eligible. Complete this form by entering the names and addresses of all new hires and by indicating whether they are Section 3 eligible. For purposes of HACFM, a Section 3 resident is:

1. A public housing resident;
2. An individual who lives within the City of Fort Myers and whose income falls within the guidelines for low or very low income. **See table on page 19.**

**This form must be completed by all firms working on a Section 3 project, defined as a contract that exceeds \$100,000, even if the firm is not a “Section 3 Business.”**

### **INSTRUCTIONS FOR EMPLOYERS:**

1. Enter the name and address of every new employee hired in connection with the Section 3 Project on the following list. (Add additional sheets if necessary).
2. For Employees **NOT HIRED** through HACFM, determine whether each new hire is Section 3 eligible by asking the employee the following questions upon hiring:

**a. Are you a resident of HACFM/LCHA public housing?**

- YES
- NO

If the answer is “YES,” please skip question “b” and proceed directly to question “c”.

If the answer is “NO,” please follow up by asking question “b”.

**b. Are you a resident of the City of Fort Myers/Lee County**

- YES
- NO

If the answer is “NO,” this person is not a Section 3-eligible resident.

Therefore, there is not a need to ask question “c”.

**c. In the last 12 months, was your household income (meaning the total for everyone in your family earning income) NOT GREATER THAN the amount listed based on your household size?**

- YES
- NO

If yes, have the employee complete the certification form (Exhibit 1) and attach this to your submission.

3. For employees HIRED through HACFM, check the “hired through HACFM” box next to their name.



*City of Palms*

THE HOUSING AUTHORITY  
OF THE CITY OF FORT MYERS, FLORIDA

Page 2 of 4

### **SECTION 3 NEW HIRE COMPLIANCE REPORT**

4. Indicate whether each new hire is Section 3 eligible by checking the appropriate box next to their name and address on Section 3 New Hire Report. Indicate “Y” for Yes and “N” for No

5. Indicate the Job Category using the following codes:

Professionals	P
Technicians	T
Office and Clerical	OC
Sales	S
Trades	T
Labor	L
Service Workers	SW
Other	Other

6. An authorized representative of the firm must certify the accuracy and completeness of the information provided by signing this form where indicated.

7. Developers and contractors – who have direct agreements with HACFM regarding a Section 3 covered project – are responsible for collecting the Section 3 New Hire Report from all applicable contractors and sub-contractors performing on a Section 3 covered project. By December 31 of each year that the project is under construction, completed forms must be submitted to HACFM Section 3 Compliance Officer. If a project finishes construction before the end of the year, Section 3 New Hire Compliance Reports must be submitted within 30 days of completion.

8. If there were NO new hires for the report period, please document by checking the box and providing an authorized signature for your company.



City of Palms  
 THE HOUSING AUTHORITY  
 OF THE CITY OF FORT MYERS, FLORIDA

## SECTION 3 NEW HIRE COMPLIANCE REPORT

	NAME OF NEW HIRE	ADDRESS (include Suite/Apt #)	Section 3 Eligible?		Labor Category
			YES OR NO	Provided by HACFM	See Instructions
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					

If there were NO new hires for the report period, please document by checking the box and providing an authorized signature for your company.

I certify that there were no new hires during the reporting period \_\_\_ / \_\_\_ / \_\_\_  
 to \_\_\_ / \_\_\_ / \_\_\_ mm / dd / yyyy

**Name:** \_\_\_\_\_  
 (please print)

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

**Title:** \_\_\_\_\_  
 (please print)

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

I affirm that the above statements are true, complete, and correct to the best of my knowledge and belief



*City of Palms*  
THE HOUSING AUTHORITY  
OF THE CITY OF FORT MYERS, FLORIDA

### **SECTION 3 NEW HIRE COMPLIANCE REPORT**

**Project Name:** \_\_\_\_\_

**Project Address:** \_\_\_\_\_

**Developer Name (if applicable):** \_\_\_\_\_

**General Contractor Name:** \_\_\_\_\_

**Name of Firm Completing This Form:** \_\_\_\_\_

**This Firm is a (check one):**

- Developer
  
- General Contractor  
Contract Amount: \$ \_\_\_\_\_
  
- Subcontractor  
Contract Amount: \$ \_\_\_\_\_
  
- Professional Services Consultant  
Contract Amount: \$ \_\_\_\_\_

**Contracts and subcontracts made with vendors to solely provide supplies and/or materials are not subject to the HUD Section 3 requirements. However, where such vendors also install such supplies and materials, said contracts and subcontracts above \$100,000 shall be subject to the HUD Section 3 requirements.**

**STATEMENT OF PUBLIC ENTITY CRIMES**

**SWORN STATEMENT PURSUANT TO SECTION 287.133 (3)(a)  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to the \_\_\_\_\_ by  
\_\_\_\_\_  
(type individual's name and title)

\_\_\_\_\_  
(type name of entity submitting sworn statement)  
whose business address is:

\_\_\_\_\_  
and (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_

(If the entity has no FEIN, include Social Security Number of the individual signing this sworn statement: \_\_\_\_\_.)

2. I understand that a "public entity crime" as defined in Paragraph 287.133 (1)(g), **Florida Statutes**, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, ant bid or contact for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133 (1)(b), **Florida Statutes**, means a finding or guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non jury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.1333(1)(a), **Florida Statutes**, means:

- a. A predecessor or successor of a person convicted of a public entity crime: or
- b. An entity under control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

SWORN STATEMENT ON PUBLIC ENTITY CRIMES

I

understand that a "person" as defined in Paragraph 287.133 (1)(e) Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.

5. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. **(indicate which statement applies)**

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any of it's officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of it's officers, officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity, or an affiliate of the entity has been charges with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of it's officers, officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of the entity, or an affiliate has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administration Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **(attach a copy of the final order)**

**I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.**

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

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority. \_\_\_\_\_  
(name of individual signing)

who, after first being sworn by me, affixed his / her signature in the space provided above on this

\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

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

SWORN STATEMENT ON PUBLIC ENTITY CRIMES



**PAYROLL**

(For Contractor's Optional Use; See Instructions at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm))



Rev. Dec. 2008

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

OMB No.: 1235-0008  
Expires: 04/30/2021

NAME OF CONTRACTOR		OR SUBCONTRACTOR		ADDRESS																	
PAYROLL NO.		FOR WEEK ENDING		PROJECT AND LOCATION						PROJECT OR CONTRACT NO.											
(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK		
				HOURS WORKED EACH DAY										FICA	WITH-HOLDING TAX	OTHER	TOTAL DEDUCTIONS				
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

**Public Burden Statement**

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

Date \_\_\_\_\_

I, \_\_\_\_\_  
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the  
(Contractor or Subcontractor)

\_\_\_\_\_;  
(Building or Work)

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
all persons employed on said project have been paid the full weekly wages earned, that no rebates have  
been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ from the full  
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly  
from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part  
3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948,  
63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

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

(2) That any payrolls otherwise under this contract required to be submitted for the above period are  
correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the  
applicable wage rates contained in any wage determination incorporated into the contract; that the classifications  
set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship  
program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and  
Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered  
with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in  
the above referenced payroll, payments of fringe benefits as listed in the contract  
have been or will be made to appropriate programs for the benefit of such employees,  
except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid,  
as indicated on the payroll, an amount not less than the sum of the applicable  
basic hourly wage rate plus the amount of the required fringe benefits as listed  
in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR  
SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE  
31 OF THE UNITED STATES CODE.