



3595 South Main Street
Salt Lake City, Utah 84115
January 2020

**REQUEST FOR PROPOSAL
RFP# HC2020-03
GENERAL CONTRACTOR CONSTRUCTION MANAGER**

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RFP Document

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INTRODUCTION

The Housing Authority of the County of Salt Lake City dba Housing Connect is seeking bids for General Contractor Construction Manager (“GCCM”) services for a rehabilitation project for Housing Connect’s Hunter Hollow property located at 4025 Rosemary Circle West Valley City, UT. Hunter Hollow is currently a public housing property owned and operated by the Housing Authority of the County of Salt Lake dba Housing Connect. The property’s 20 units are being converted from public housing through HUD’s Rental Assistance Demonstration (RAD) program. The project received an allocation of 2020 9% tax credits in December 2019. The property consists of 10 duplex style buildings comprised of one and two story buildings. Hunter Hollow contains 2.77 acres of land and is configured in 2 adjoining cul-de-sacs (each contains 5 of the 10 total buildings).

Hunter Hollow consists of 10 duplex buildings built in 1974. Three buildings (6 units) are single story buildings and seven buildings (14 units) are two story buildings. The single story buildings contain 2 bedroom 1 bath units and the two story buildings contain three bedroom 1.5 bath units. Each unit has an attached carport providing 2 covered parking stalls per unit. Each unit is provided a separate fully enclosed and secure storage area attached to the exterior of the unit.

The property consists of six two bedroom one bath units two of which will be ADA units (one is currently an ADA unit while an additional two bedroom will be converted into a second ADA unit). The remaining 14 units are three bedroom 1.5 baths. The two bedroom units have approximately 810sq ft. each and the three bedroom units have 1130sq ft. each.

RFP INFORMATION AT A GLANCE

HC CONTACT PERSON	Emily Whittle, Purchasing Agent Telephone 801-284-4446 / ewhittle@housingconnect.org
HOW TO OBTAIN THE RFP DOCUMENTS ON THE APPLICABLE INTERNET SITE	1. Access www.housingconnect.org . 2. click on “Contact” , “Procurement” then under “Current Opportunities” select “Real Estate Development Procurement”
PRE-PROPOSAL CONFERENCE	Due to COVID-19 and the size of the project no pre-proposal conference will be held.
DEADLINE TO SUBMIT WRITTEN QUESTIONS AND REQUESTS FOR INFORMATION	12:00 noon, May 5, 2020
HOW TO FULLY RESPOND TO THIS RFP BY SUBMITTING A PROPOSAL SUBMITTAL	As instructed within Section 3.0 of the RFP document, submit 1 electronic copy of your proposal to the Housing Connect via email to ewhittle@housingconnect.org Upon a successful submission a receipt email will be provided back to the email address used to submit proposal.
PROPOSAL SUBMITAL RETURN & DEADLINE	10:00 am May 13, 2020 Electronically to Housing Connect
ANTICIPATED APPROVAL BY HC BOARD OF DIRECTORS	May, 2020 (Exact Date/Time TBD) Housing Connect 3595 South Main Street Salt Lake City, Utah 84115

1.0 HOUSING CONNECT'S RESERVATION OF RIGHTS:

- 1.1** Housing Connect (HC) reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by HC to be in its best interest.
- 1.2** Housing Connect reserves the right not to award a contract pursuant to this RFP or award a contract to more than one Contractor if it deems it is necessary to do so.
- 1.3** Housing Connect reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon 10 days written notice to the successful proposer(s).
- 1.4** Housing Connect reserves the right to determine the days, hours and locations that the successful proposer(s) shall provide services called for in this RFP.
- 1.5** Housing Connect reserves the right to retain all proposals submitted and not permit withdrawal for a period of 60 days subsequent to the deadline for receiving proposals without the written consent of the HC Purchasing Agent (PA).
- 1.6** Housing Connect reserves the right to negotiate the fees proposed by the proposer entity.
- 1.7** Housing Connect reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.
- 1.8** Housing Connect shall have no obligation to compensate any proposer for any costs incurred in responding to this RFP.
- 1.9** Housing Connect reserves the right to accept only one Solicitation per company carrying the same Tax Identification Number.
- 1.10** Waive or correct any immaterial defect or technical error in any response, proposal or proposal procedure, as part of the RFP or subsequent negotiation process;
- 1.11** Request that certain or all offerors to this RFP supplement or modify certain aspects of the information or proposals submitted;
- 1.12** At any time prior to the submittal deadline, modify the selection procedure, the scope of the proposed project or the required responses; extend any of the published deadlines; request amendments to proposals after the expiration deadlines; negotiate or approve final agreements;
- 1.13** Housing Connect reserves the right and requires all contractors to comply with the American Disability Act (ADA) on all contracts which are as follows:

- 1.13.1** Contractor agrees to comply with federal statutes relating to non-discrimination. These include, but aren't limited to Section 504 of the Rehabilitation ACT of 1973 as amended (29USC section 794) which prohibits discrimination on the basis of handicap and the Americans with Disabilities Act of 1990.
- 1.13.2** The Contractor agrees to abide by the requirements of the following as applicable; The Rehabilitation Act of 1973 as amended, the Vietnam Veterans Readjustment Assistance Act of 1974; the Requirements of the ADA of 1990. The Contractor agrees to not discriminate in its employment practices and will render services under this agreement and any contract entered into as a result of this agreement, without regard to veteran status or disabilities. Any failure to comply with these statutory obligations when applicable shall be grounds for termination of this agreement and any contract entered into as a result of this agreement.
- 1.14** Housing Connect reserves the right to reject and not consider any bid of which communication between a Proposer and a member of HC staff, its Residents or Board of Commissioners is violated. Communication regarding this Proposal is prohibited from the time the Proposal is advertised until the Proposal is recommended for award of a contract. Questions pertaining to this Proposal shall be addressed only to the "Designated Contact(s) as specified on the previous page of this document. Failure to comply with this requirement shall result in the Proposal being considered nonresponsive.
- 1.15** At any time during the RFP or contract process prohibit any further participation by a proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein. By submission of a response to this RFP, each proposer thereby agrees to abide by all terms and conditions listed within this document and within the housingconnect.org Internet site, and further agrees that he/she will inform Housing Connect in writing within 5 days of the discovery of any item listed herein or of any item that is issued thereafter by Housing Connect that he/she feels needs to be addressed. Failure to abide by this time frame shall relieve HC, but not the prospective proposer, of any responsibility pertaining to such issue.

2.0 SCOPE OF PROPOSAL/TECHNICAL SPECIFICATIONS: Housing Connect is seeking proposals from qualified, insured and licensed firms to provide the following detailed services:

2.1 Introduction

2.1.1 Housing Connect, on behalf of Hunter Hollow, LLC (“Owner”), is seeking written proposals from qualified GCCM firms for the development consulting rehabilitation of the Owner’s 20-unit tax-credit/100% Project Based Section 8 public housing located at 4025 Rosemary Circle, West Valley City, UT (“Hunter Hollow”). Proposals are requested from GCCM firms with direct demonstrated expertise in constructing/rehabbing family housing, particularly developments with a mix of public and private financing including Low Income Housing Tax Credits (LIHTC). Housing Connect’s selection process will result in awarding a contract to a qualified GCCM.

2.2 General Information:

2.2.1 Hunter Hollow was constructed in 1974 under the Federal Low-Income Public Housing program and is owned and operated by the Housing Authority of the County of Salt Lake DBA Housing Connect.

2.2.2 Under an innovative new program called Rental Assistance Demonstration (RAD), the U.S. Department of Housing and Urban Development (HUD) is allowing housing authorities to rehabilitate and preserve their aging public housing developments using a variety of public and private affordable housing resources, including tax-exempt bonds supported by project-based rental assistance, Federal Low-Income Housing Tax Credits and public housing capital funds. The Project financing for Hunter Hollow will include equity from the sale of 9% Low Income Housing Tax Credits, public housing capital funds and demolition disposition funds.

2.2.3 Under the RAD program HUD is allowing housing authorities to convert public housing into subsidized housing with a project-based rental assistance contract. The rental assistance contract 15 to 20 years with an option to renew for another 15 to 20 years under the Project-Based Voucher approach- will allow Housing Connect to borrow funds to cover a portion of the redevelopment effort.

2.2.4 Hunter Hollow was constructed in 1974 consisting of 10 duplex style buildings comprised of 3 single story buildings and 7 two story buildings all constructed of wood frame with brick and siding exteriors. The single story buildings comprise 6 two bedroom 1 bathroom units while the two story buildings contain 14 three bedroom 1.5 bathroom units. The duplex building roofs are gable style with asphalt shingles. Each unit has a 2 car carport. The unit mix, in 10 residential buildings, is as follows:

No. of Units	Type	Square Feet Each Unit
6	2 Bedroom/1 Bathroom	810
14	3 Bedroom/1.5 Bathroom	1,130

The site contains two playground areas.

- 2.2.5** It is anticipated Hunter Hollow will be 80% occupied (4 vacant units) at time of construction/rehabilitation. Housing Connect will coordinate relocation activities pre and post construction with the selected GCCM. The GCCM is to anticipate 4 vacant units available at a time to be rehabilitated concurrently and upon their completion the next group of 4 units will then be made vacant and available for construction rehab. This process will be repeated until all 20 units are completed.
- 2.2.6** The rehabilitation will comprise of interior and exterior elements. The interior elements are items pertaining to the interior of a unit. Exterior elements are items pertaining to items outside of a unit. Exterior items are anticipated to be completed any time regardless of which 4 units are being rehabilitated as indicated above.
- 2.2.7** The GCCM will be an independent contractor. One GCCM contract will be executed between the GCCM and the Owner to ensure that all documentation is provided to the tax credit partnership for Hunter Hollow. The ensuing contract shall not create an agency, employment, joint employer, joint venture or partnership relationship between the GCCM and Housing Connect the Owner.
- 2.2.8** The selected GCCM will report directly to the Developer
- 2.3 Scope of Work:** The selected GCCM shall provide development consultation services as well as construction services. The construction work involves site and building upgrades and will be contracted by Owner and/or Housing Connect.
- 2.3.1 Development Consultation Services:** The GCCM shall participate with the Development Team (“Team”) as a team member during the development stage by making recommendations through value engineering, constructability analysis and cost estimating. Drawings and specifications describing the work will be prepared by the Architect. The goal of the development consultation services period shall be to ensure that the design of the Development achieves maximum value, constructability, sustainability and is within project budget.
- 2.3.1.1 Partnering:** The GCCM shall participate in a partnering conference with the Team and other involved parties. The GCCM, at a minimum, will have in attendance its overall project manager, coordinator, and its

lead staff assigned to provide value engineering, constructability analysis and estimating services.

2.3.1.2 Document Review: The GCCM Shall review drawings and specifications to ensure construction quality and to identify potential improvements that could lower construction cost and/or improve design, reduce maintenance and increase sustainability and shall bring such improvements to the attention of the Team for possible incorporation.

2.3.1.3 Cost Estimate:

2.3.1.3.1 Based on the design and specification documents produced by the Architect, the GCCM shall research and prepare a cost estimate at 100% of the construction documents.

2.3.1.3.2 The cost estimate shall include deductive alternates not included in the current design that allow the construction cost to meet the Maximum Allowable Construction Cost (MACC). Alternates may be proposed by the GCCM or members of the Team. The GCCM shall use the estimate as a second opinion to the Architect's estimate and shall assist the Developer in comparing probable cost to the Development budget in making decisions.

2.3.1.3.3 The GCCM estimate shall be in Construction Specifications Institute (CSI) or a similar format that is mutually agreeable to the GCCM and the Team to allow detailed comparison with the Architect's estimate.

2.3.1.4 Construction Schedule: Based on the Design and Specification documents produced by the Team, the GCCM shall develop a construction schedule, incorporating an effective sequencing and coordination of the work related contracts.

2.3.1.5 Selection of Subcontractors and Self-Performed Work: The work, other than those items described in this paragraph, shall be bid to subcontractors in accordance with section 2.3.1.9 following. The Developer, the Team and the GCCM may jointly conclude that certain work is more reasonably accomplished by the following method:

2.3.1.5.1 Authorization for Self-Performed Work: Housing Connect and the Team, upon recommendation of the

GCCM, may concur that certain portions of the work may be most effectively performed by the GCCM. These portions of the work may require overall control and coordination not amenable to subcontracting. These portions of the work would not be bid. In the event of such determination, the GCCM shall prepare a proposal, generally consistent with the format and detail required for a Change Order, for review and possible approval by the Developer and the Team.

2.3.1.6 Subcontracting Plan: Based on the Design and Specification documents produced by the Team, the GCCM shall plan and prepare to solicit and obtain subcontractor bids for all work other than work agreed to be self-performed. The GCCM shall include how it will provide for or otherwise encourage Women and Minority Business Enterprise (WMBE) participation, utilization of Housing Connects residents pursuant to Section 3 of the Housing Act and meet the employment goal for Section 3 eligible residents as stated within Attachment D. This planning and preparation shall take into account that the GCCM may self-perform any work for which it submits the lowest responsible bid. Work which receives no responsible bid may be self-performed by the GCCM upon approval by the Developer and the Team of an analysis submitted by the GCCM showing that the cost to perform the work is the lowest cost reasonably obtainable.

2.3.2 Construction Subcontract Bidding (Stage 1): At the completion of the Development Consultation and the issuance of a Notice to Proceed (“NTP”) by the Developer, Stage 1 of Construction will begin. This Stage includes Subcontract Bidding for Site Improvements. This Stage is the period beginning with implementation of the approved Subcontracting Plan formed during Development Consultation and continuing until a Notice to Proceed for Stage 2 – Construction and Stage 3 Final Documentation is issued by the Developer. During Stage 1, the GCCM shall conduct the bidding process to select all subcontractors, obtain necessary building permits and negotiate a final MACC and Reimbursable General Conditions allowances with the Developer.

2.3.2.1 General: The GCCM shall prepare and competitively offer bid subcontract packages for the performance of all construction work necessary to construct Phase I and Phase II. The GCCM shall

administer the bidding process in accordance with the approved Subcontracting Plan conducting all bidding, evaluating bids, making recommendations to the Developer and the Team, awarding contracts and preparing Subcontracts. The Subcontracts shall include all necessary provisions to insure that the GCCM is the sole manager of the Subcontracts and also comply with the Developer's Contract Requirements including, but not limited to: Davis Bacon wage requirements; Equal Employment Opportunity (EEO) requirements; utilization of Women and Minority Business Enterprises (WMBE); Housing Connect Resident Utilization; and Insurance, Bonding, and other Legal Requirements. Prior to execution of any Subcontract, the GCCM and Housing Connect shall negotiate a maximum rate for overhead and profit or for work to be authorized by Change Orders. Such rate shall be separately calculated as a percentage of the cost of direct labor, materials, and supervision of the work specified in the Change Order, and shall clearly show the rate and value for profit and the rate and value for overhead. All such terms and conditions pertaining to Change Orders shall be incorporated in bid documents received by and contracts executed with, any subcontractors, regardless of the tier of the subcontract.

2.3.2.2 Bid Subcontracts in Accordance with the Subcontracting Plan:

The GCCM shall administer the subcontract bid procedure, including:

2.3.2.2.1 Producing subcontract bid packages, including all plans, specifications, and contract language necessary for the GCCM to contract for the subject work;

2.3.2.2.2 Publicly advertising the bidding in publications mutually agreeable to the GCCM and the Project Team;

2.3.2.2.3 Making the bid documents available to all Plans Centers mutually agreeable to the GCCM and the Project Team without charge;

2.3.2.2.4 Making the bid documents available to any interested bidder for a reasonable fee;

2.3.2.3 Provide Competitive Bid Report: The GCCM shall provide the Developer and the Team a report of all work to be awarded to subcontractors, or to be performed by the GCCM as the result of a competitive bidding process for which three or more bids were received.

The report shall include the name and address of each bidder, the bid amount, and an itemization of any exclusion, limitations, or other modifications to the bid. The report shall also include a description of any negotiations and a recommendation for the award of a Subcontract. If the GCCM is recommending for the award of a Subcontract to a subcontractor that is not the lowest bidder, the report shall provide a justification for the selection.

2.3.2.4 Provide Noncompetitive Award Report: The GCCM shall provide to the Developer and the Team a report that shall identify any work for which three or more responsible bids were not received. The report shall identify:

2.3.2.4.1 The measures taken by the GCCM to obtain competitive responsible bids for the work, including copies of advertisements and lists of plans centers and bidders receiving bid documents;

2.3.2.4.2 Explanation of any instance which the GCCM elected to accept a bid other than the lowest bid, including bidder disqualification resulting from lack of responsiveness or responsibility;

2.3.2.4.3 Explanation of the impact of any bidder exclusions or amendments accepted by the GCCM;

2.3.2.4.4 Explanation of any instance in which the GCCM elected to amalgamate bids for multiple divisions or items, and the cost benefit realized from such action;

2.3.2.4.5 Identification of any work for which no competitive responsible bids were received, where the GCCM elects to self-perform the work, the cost of the work, and analysis demonstrating why the cost is the lowest cost reasonably obtainable. The GCCM's cost proposal shall be at the same level of detail that is required for Change Orders;

2.3.2.4.6 A cost breakdown from any subcontract bidder for work for which only one competitive responsible and responsive bid was received, in the same level of detail as that required for Change Orders, and the GCCM's best analysis confirming why the proposed bid is reasonable and the best price that can be reasonably obtainable.

- 2.3.2.5 Provide Cost Analysis Data for Self-Performed Work:** In developing the bidding results reports, the GCCM shall provide the Developer and the Team with detailed cost data for any work to be self-performed by the GCCM and any work for which only one responsible bid was received. Such detailed information shall include, but not necessarily be limited to, the same data required for Change Orders as set forth in the Contract.
- 2.3.2.6 Provide WMBE and Resident Participation Report:** The GCCM shall provide to Housing Connect and the Team a report which shall identify how the GCCM has provided for or otherwise encouraged Women and Minority Business Enterprise (WMBE) participation and utilization of Housing Connect residents pursuant to Section 3 of the Housing Act, and results of those efforts.
- 2.3.2.7 Provide Final Construction Schedule:** The GCCM shall develop a final schedule for construction that shall conform to Housing Connect's requirements for production under its Development Agreements and with loan agreements, pending or executed, by the Developer and lender institutions and/or investors.
- 2.3.2.8 Cost of Stage 1:** All costs associated with the GCCM's Stage 1 Services are to be included as a lump-sum price in the GCCM's Stage 1 Specified General Conditions, as proposed by the GCCM in its proposal, and shall be incorporated into the Contract and shall not be subject to adjustments due to changes in the MACC or other Change Orders.
- 2.3.2.9 Stage Completion:** This stage shall be completed upon:
- 2.3.2.9.1 Agreement between the Developer and the GCCM of a final MACC** representing the total cost of all subcontractors and self-performed work;
 - 2.3.2.9.2 Agreement between the Developer and GCCM upon allowances for Reimbursable General Conditions** services provided by the GCCM, including utility connection fees;
 - 2.3.2.9.3 Execution of a Change Order** reflecting items 2.3.2.9.1 and 2.3.2.9.2 above, and establishing a Performance Schedule; and

**2.3.2.9.4 Issuance by the Developer of a Notice to Proceed with
Stage 2 – Construction and Stage 3 – Final Documentation**

2.3.3 Construction (Stage 2): This stage is the period during which each Phase is physically constructed. It begins with the Notice to Proceed for Stage 2 – Construction and Stage 3 – Final Documentation issued by the Developer, proceeds through Substantial Completion and ends with Final Construction Completion.

2.3.3.1 Specified General Conditions: All of the costs of the following items listed under this paragraph shall be paid from the GCCM's lump sum amount allocated for Specified General Conditions for Stage 2 – Construction and shall not be subject to adjustments due to changes in the MACC or to other Change Orders, except as described below. The Developer will consider proposals for an adjustment in Stage 2 Specified General Conditions which are necessary solely to offset actual increased costs of performance and payment bonds and General Liability Insurance premiums provided that such increases are directly attributable to cost increases in the MACC.

2.3.3.1.1 Performance and Payment Bonds: Prior to issuance of a Notice to Proceed with Stage 2 – Construction, the GCCM shall secure and provide the Developer Performance and Payment bonds equal to the value of the work and any additional work to be authorized by Change Order in such form as the Developer may prescribe, and issued by a surety satisfactory to the Developer

2.3.3.1.2 Insurance: Prior to issuance of the Notice to Proceed with Stage 2 – Construction, the GCCM shall procure certificates of insurance and endorsements as specified in Section 5.4 and provide such evidence to the Developer as required.

2.3.3.1.3 Site Construction Support and Logistics: The GCMC shall plan, order, prepare and coordinate all necessary on-site support staff, services and equipment for construction logistics and support for the site. Coordination shall include:

- 2.3.3.1.3.1** Management of temporary utilities, (including water, power and sanitation) construction offices, site safety and security arrangements, (including site access, traffic control, storage of materials and equipment on site); however, out-of-pocket costs for equipment, materials and personnel required for implementation of these activities shall be a Reimbursable General Condition as shown below in Section 2.3.3.3.
- 2.3.3.1.3.2** Coordinate, secure and provide for any required notifications, Street Use or Traffic Control permits or other authorizations necessary to begin construction; however, out-of-pocket costs for equipment materials and personnel required for implementation of these activities shall be a Reimbursable General Conditions as shown below in Section 2.3.3.3
- 2.3.3.1.3.3** Maintain and update information as to existing and required locations, configurations, and scheduling of the work and provide such information to all subcontractors.
- 2.3.3.1.4 Resident/Property Owner Notification and Coordination:** The GCCM shall notify adjacent residents and property owners of anticipated construction activity, and diligently seek to avoid disruption to the extent possible, and to mitigate such disruption to neighbors.
- 2.3.3.1.5 Franchise Utility Coordination:** The GCCM will be responsible for franchise and public utility delays resulting from an insufficient coordination effort.

- 2.3.3.1.6 Construction Supervision:** The GCCM shall oversee activities of all subcontractors on the Development and shall provide direction, coordination, and quality control, act as the conduit between subcontractors, Developer and the Team for all Requests For Information (RFI) and Design Clarifications (DC) of the project construction documents, coordinate schedules, evaluate subcontractor pay requests and make appropriate progress payments to the subcontractors, and process and evaluate for the Developer's interests any changes to the work. The GCCM shall act on behalf of the Developer to provide a product which, at a minimum, conforms to the Construction Documents at the most favorable cost reasonably obtainable by the Developer.
- 2.3.3.1.7 Construction Documentation:** The GCCM shall hold and maintain all Development records, document project communications, document as-built dimensions and locations, keep and maintain all approved project submittals and shop drawings, maintain records of daily and weekly site observations, keep and maintain documentation of time and materials expended on any force-account work, document work performed against current project schedules, and provide the Developer with Certified Payroll, and regular workforce reports on actual utilization of WMBEs and Section 3 employment. The GCCM shall prepare and submit applications for payment not more than monthly, and shall include in each application all documentation required to confirm the reimbursable expenses incurred for which payment is requested. The application for payment shall include, at the Developer's request, a report of payments made to minority and women – owned businesses, showing total payments to each such subcontractor, for the period for which payment is requested, and to date for the life of the Contract.

2.3.3.1.8 Safety Programs: The GCCM shall oversee and direct compliance with required Health and Safety program monitoring, and ensuring subcontractor compliance and the compliance of all persons on-site with such programs.

2.3.3.1.9 Schedule Management: The GCCM shall coordinate the work of subcontractors to accomplish the approved Development schedule, and shall coordinate the activities of others working on the site. The GCCM shall provide appropriate, agreed or required notifications to adjacent tenants, regulatory agencies, inspecting agencies, the Developer and Team members to facilitate their activities and expedite the work. The GCCM shall monitor and evaluate progress of the work against the Development construction schedule, noting variations and proposing updates to the schedule, as appropriate, for approval by the Developer.

2.3.3.2 Maximum Allowable Construction Cost (MACC): The MACC for the Development is assumed to be the amount set forth on the Proposal Cost Form for the purposes of the Proposal and Award of the Contract.

2.3.3.2.1 The MACC can only be changed by executed Change Order. Such a Change Order will be negotiated at the end of Stage 1 for each Phase prior to issuance of the Notice to Proceed with Stage 2. The MACC will reflect the approved and agreed-upon Final Design of the Development and the total cost based on completed bidding. The Change Order will also incorporate the Drawings and technical Specifications of the Final Design and the agreed final Construction Schedule.

2.3.3.2.2 The MACC shall include only those costs specified in items 2.3.3.2.3.1 and 2.3.3.2.3.2 below, and shall not include any costs itemized as Specified General Conditions for any Stage, Reimbursable General Conditions, or the GCCM's Fee for the work

2.3.3.2.3 The following costs included in Stage 2 – Construction are within the Scope of the Work (unless withdrawn by an executed Change Order) and shall be included in the MACC. Compensation for them shall be limited to the amount of the MACC. These costs are:

2.3.3.2.3.1 All Subcontractor Costs: Including work allocated through subcontract bidding and Developer-approved GCCM self-performed work involving mechanics and laborers not allocated to Reimbursable or Specified General Conditions of this Stage. The cost of these subcontracts bid by the GCCM, plus the cost of work to be self-performed by the GCCM, will constitute the final MACC.

2.3.3.2.3.2 Other Costs of Stage 2 – Construction MACC: The GCCM shall include only such other costs not specifically enumerated above, but demonstrably required directly for the completion of the work of the MACC, such as associated taxes and fees associated with such costs or activities.

2.3.3.3 Reimbursable General Conditions: The following work included in this Stage shall be deemed Stage 2 – Reimbursable General Conditions, and shall be paid based on submittal and approval of receipts for such expenses. Reimbursable General Conditions services shall be identified and estimated during the Stage 1 negotiation of the MACC and will be included in the Stage 2 Schedule of Values for payment on a documented time-and-materials basis. The estimated Reimbursable General Conditions incorporated in the Contract and the reimbursements made in accordance with the estimates shall not include any GCCM overhead, markup and profit, as these are included in the GCCM Fee. The following costs, and only the following costs, shall be included in the Reimbursable General Conditions:

- 2.3.3.3.1 Site Safety and Security:** All material and direct labor required to erect, maintain, relocate and remove fencing, barricades, and signage related to access and traffic to, from and on the site of the work.
- 2.3.3.3.2 Field Offices:** Installation, placement, maintenance and removal of the GCCM's trailer(s) required for the work, including equipment and furniture located therein, but not consumable materials.
- 2.3.3.3.3 Temporary Utilities:** Electrical, water, sewer and gas consumed for the site.
- 2.3.3.3.4 Temporary Sanitation:** Placement, removal and service of temporary toilets at the site.
- 2.3.3.3.5 Rubbish and Trash Removal:** Collection and removal of trash, rubbish, and construction debris necessary for the safe and effective prosecution of the construction work only.
- 2.3.3.3.6 Traffic Fees:** Applicable municipal charges for haul routes, parking, etc.
- 2.3.3.3.7 Permits:** Including Trade Permit Fees (mechanical, electric, etc.) and Temporary Street Use Permits.
- 2.3.3.3.8 Testing Fees:** Including Code Required testing and inspections
- 2.3.3.3.9 Environmental Pollution Control:** Costs of compliance with applicable environmental regulations not designated elsewhere.
- 2.3.3.3.10 Direct Charges for Utility Hookups:** Cost of hookups by utility providers, including electricity, natural gas, water, and sewer
- 2.3.3.3.11 Temporary Erosion and Sedimentation Control:** Construction and operation of vehicle washing sites, construction of silt basins, fencing,

etc., as necessary to comply with legal requirements.

2.3.3.3.12 Survey and Site Control: All of the GCCM's survey and measurement costs necessary to execute the work in accordance with Construction Documents.

2.3.3.3.13 Temporary Heat: Cost of equipment and fuel to provide heat necessary for internal drying of structures not provided through hook-up to public utilities.

2.3.3.3.14 Weather Protection: Rental of storage containers for on-site storage or covering with and maintaining plastic tarps.

2.3.3.3.15 Off-Site Staging and Materials Storage approved by the Developer: Rental of warehouse space and/or associated trucking loading charges.

2.3.3.4 Stage Completion: Construction shall be deemed complete when:

2.3.3.4.1 The GCCM has notified the Developer that construction is complete;

2.3.3.4.2 A site observation by the Developer's Representative and the Project Team has been conducted;

2.3.3.4.3 Items noted by the Developer's Representative and the Team that require correction or completion are completed;

2.3.3.4.4 Certificates of Occupancy are issued (for Phase 2); and

2.3.3.4.5 The Developer has established the date of Final Construction Completion.

2.3.4 Final Documentation (Stage 3): This stage is the period, in which the final documentation for the Development is prepared, assembled, and transmitted to the Developer.

- 2.3.4.1 Complete Processing and Transmittal of all final Development and Accounting Documentation:** The GCCM shall compile process and submit all final project and accounting documentation to the Developer, including resolution of any outstanding payroll or payroll documentation issues. This includes (but is not limited to) warranties, as-built drawings, subcontractor and supplier payment documentation, system balancing and adjustment documentation, test reports, and permit inspection sign-off sheets and approvals.
- 2.3.4.2 Spare Parts:** The GCCM shall package all spare parts and surplus materials provided for in the Construction Documents. Such parts or materials shall be labeled and protected for long-term storage.
- 2.3.4.3 Operations and Maintenance Manuals and Materials:** The GCCM shall prepare and provide to the Developer all Operations and Maintenance Manuals and associated necessary supplemental materials.
- 2.3.4.4 Stage Completion:** This stage is considered complete at Contract Completion.
- 2.3.5 General Schedule of the Work:** The Development will be designed and constructed over a period of approximately 8 to 10 months. The table following depicts the estimated timeframe for the work.
- 2.3.6 Anticipated Development Schedule:** We provide the following anticipated (but not guaranteed) schedule so that proposers are aware of what time line Housing Connect anticipates (but does not guarantee) pertaining to this development:

Issue	Dates
Predevelopment Planning; Securing Financing	6-1-2020
Architectural Design; Planning Approvals	6-1-2020
Project Permitting	7-15-2020
Close Construction Financing	8-4-2020
Construction	8-11-2020
Receipt of Certificate of Occupancy	4-15-2021
Lease-up	5-15-2021
Receipt of Form 8609	8-1-2021

2.4 GCCM's Personnel:

- 2.4.1 GCCM Employees:** The GCCM shall engage in or hire all personnel necessary for the completion of the Development. The GCCM shall ensure that employees of the GCCM fully understand that no employment relationship exists between the employee and the Owner or Housing Connect.
- 2.4.2 Drug Free Workplace:** Neither the GCCM nor any employee of the GCCM shall at any time fail to comply with the Federal Drug Free Workplace Act of 1988 nor any regulations promulgated there under, including without limitation the regulations at 54 Federal Register 4957 (1989) as amended.
- 2.4.3 Resident Hiring:** The GCCM shall comply with Section 3 requirements set forth herein. To the greatest extent possible, opportunities for training and employment will be given to (a) residents residing in the development; (b) low income residents of other Housing Connect public housing developments; (c) other low-income residents of the City of Salt Lake. Contracts for work in connection with the components will be awarded to business concerns which are owned in substantial part by the foregoing persons, provided that these opportunities shall not compromise the quality of maintenance and management services and are comparable in price and quality to services provided generally by contractors and are consistent with sound business practices.
- 2.4.4 Failure to Correct Problems:** If the GCCM receives a written warning and fails to correct the problem within the time period cited in such warning, the GCCM's contract is subject to cancellation.
- 2.4.5 Termination for Convenience:** The contract entered into between Housing Connect and the GCCM must include the HUD-required Termination for Convenience clause.

3.0 PROPOSAL FORMAT

3.1 Tabbed Proposal Submittal:

*****NOTICE*****
DUE TO COVID-19, HOUSING CONNECT WILL ONLY ACCEPT ELECTRONIC BIDS EMAILED TO [EWHITTLE@HOUSINGCONNECT.ORG](mailto:ewhittle@housingconnect.org)

Please arrange your bids per the instructions below adjusting to an electronic format rather than a hard copy format. The submission will be considered received by Housing Connect when a return receipt email is provided to the submitting email address from ewhittle@housingconnect.org

Housing Connect intends to retain the successful proposer pursuant to a “Best Value” basis, not a “Low Bid” basis (“Best Value in that Housing Connect will, as detailed within the following Section 4.0, consider factors other than just cost in making the award decision). Therefore, so that Housing Connect can properly evaluate the offers received, all proposals submitted in response to this RFP must be formatted in accordance with the sequence noted following. Each category must be separated by numbered index dividers (Which number extends so that each tab can be located without opening the proposal) and labeled with the corresponding tab reference also noted below. None of the proposed services may conflict with any requirement Housing Connect has published herein or has issued by addendum pertaining to this RFP.

- 3.1.1 Tab No. 1, Form of Proposal:** This Form is attached hereto as Attachment A to this RFP document. This 1-page Form must be fully completed, executed where provided thereon and submitted under this tab as a part of the proposal submittal.
- 3.1.2 Tab No. 2, Form HUD-5369-C (8/93), *Certifications and Representations of Offerors, Non-Construction Contract and HUD-5369-A (11/92, Certifications and Representations of Offerors, Public and Indian Housing Programs*:** These Forms are attached hereto as Attachment B and B-1 respectively to this RFP document. These Forms must be fully completed, executed where provided thereon and submitted under this tab as a part of the proposal submittal.
- 3.1.3 Tab No. 3, Profile of Firm Form and form HUD-2530 (5/2001), *Previous Participation Certification*:** These forms are attached hereto as Attachment C and C-1 respectively to this RFP document. These

Forms must be fully completed, executed and submitted under this tab as part of the proposal submittal.

3.1.4 Tab No. 4, Proposed Services: As more fully detailed within Section 2.4 of this RFP document, the proposer shall, at a minimum, clearly detail within the information submitted under this tab:

3.1.4.1 Letter of Interest/Transmittal Letter: signed by an officer of the firm or corporation authorized to tender such responses and to execute contracts;

3.1.4.2 Qualifications and Capacity of the Proposed GCCM Team, including:

3.1.4.2.1 Background on the firm, its principals, general qualifications and experience;

3.1.4.2.2 State UBI Number and Contractor Identification Number;

3.1.4.2.3 Description of any litigation the firm has been involved in over the last (5) years;

3.1.4.2.4 Bonding capacity, name, address and phone number of bonding company;

3.1.4.2.5 Demonstrated ability to perform the work during the specified timeframe given other current or anticipated obligations;

3.1.4.2.6 The firm's safety record, State Industrial Experience Factor and substance-abuse programs;

3.1.4.2.7 Audited financial statements of the firm for the past two years, if available. If audited statements are not available, Proposers should submit certified financial statements and tax returns for the past two years. **These financial statements should be separately bound and will be made available to Housing Connect to determine the firm's financial viability. They will be returned to the firm if requested and upon completion of the review.**

3.1.4.3 Evidence of Related Experience:

- 3.1.4.3.1** Experience in infrastructure construction of similar size and scope including timely performance within cost particularly with projects utilizing the LIHTC program;
- 3.1.4.3.2** Experience in single-family/duplex construction of similar size and scope including timely performance within cost;
- 3.1.4.3.3** Experience with negotiated contracts;
- 3.1.4.3.4** Experience in construction management and pre-construction services of similar size and scope;
- 3.1.4.3.5** Describe the project team, identifying the roles, responsibilities and authority of key members. Note whether they will be on or off-site.

3.1.4.4 Regulatory Knowledge and Experience:

- 3.1.4.4.1** Experience with construction projects using public funds such as public housing capital and Low Income Housing Tax Credits;
- 3.1.4.4.2** Experience with Davis-Bacon regulations and State Prevailing Wage requirements

3.1.4.5 Development Approach:

- 3.1.4.5.1** Describe the firm's development approach in working with the owner and design team on planning issues and coordination of construction activities;
- 3.1.4.5.2** Describe the firm's approach to cost control including cost estimating, bidding and monitoring the costs of the Development. Describe estimating format and accuracy of recent estimates;
- 3.1.4.5.3** Describe methods for encouraging participation on WMBE businesses and subcontractors and

suppliers as well as methods for maximizing employment of Housing Connect residents;

3.1.4.5.4 Provide a summary of expected problems and solutions including comments on the MACCs provided in the Cost Proposal Form.

- 3.1.5 Tab No. 5, Equal Employment Opportunity:** The proposer must submit under this tab a copy of its Equal Employment Opportunity Policy, and any documentation it believes substantiates Evaluation Criteria No. 6d detailed in Section 4.2.1 of this document (i.e. practice and history of employing minorities and/or women in professional positions).
- 3.1.6 Tab No. 6, Subcontractor/Joint Venture Information (Optional Item):** The proposer shall identify hereunder whether or not he/she intends to use any subcontractors for this job, if awarded, and/or if the proposal is a joint venture with another firm. Please remember that all information required from the proposer must also include for any major subcontractors (10% or more) or from any joint venture. The Profile of Firm Form shall be completed and submitted hereunder for each.
- 3.1.7 Tab No. 7, Section 3 Business Preference Documentation (Optional Item):** For any proposer claiming a Section 3 Business Preference, he/she shall under this tab include the fully completed and executed Section 3 Business Preference Certification Form attached hereto as Attachment D and any documentation required by that form. If the proposer does not claim any Section 3 preference, please place hereunder a statement that “NO SECTION # BEING CLAIMED.”
- 3.1.8 Tab No. 8, Other Information (Optional Item):** The proposer may include hereunder any other general information that the proposer believes is appropriate to assist Housing Connect in its evaluation. If no pertinent information is to be placed under this tab, please place hereunder a statement that “NO INFORMATION IS BEING PLACED HEREUNDER.”
- 3.1.9** If no pertinent information is to be placed under any of the tabs (especially the “Optional” tabs), please place there under a statement such as “NO INFORMATION IS BEING PLACED UNDER THIS TAB” or “THIS TAB LEFT INTENTIONALLY BLANK.”

- 3.2 Proposed Fees:** Each proposer shall complete the Proposal Cost Form (Attachment I) and submit such under a separate cover from the tabbed proposal submittal that is detailed within the preceding Section 3.1.
- 3.2.1** All proposed fees shall be consistent with HUD Federal Safe Harbor Standards
- 3.2.2** The assumed MACC for each Phase of the construction is shown on the Proposal Cost Form and is only an estimate in the Development cost. It is provided for proposal comparison purposes only. The Developer does not warrant, expressly or by implication that the actual MACC for each Phase of the construction will exactly correspond with the estimate. The MACC for each Phase of the construction will be established at the time a Change Order is negotiated, at the end of Stage 1 – Subcontract Bidding for each Phase. That Change Order will also incorporate the final Drawings and Specifications into the Contract Documents and provide approval of the Construction Schedule.
- 3.2.3 GCCM Fee on the MACC:** The GCCM will receive a fee, which will be proposed on the Proposal Cost Form, for the performance of the work under the MACC. This fee is to provide for all regional or general office overhead of the GCCM attributable to the Development, and all of the GCCM's profit on the Development. A percentage of the GCCM's fee shall be paid commensurate with the percentage of work completed.
- 3.2.3.1** The fee shall be established by and with the values stated in the GCCM's proposal. The fee shall not be modified due to changes in the MACC unless the MACC for a particular Stage of the work exceeds the MACC specified in the Request for Proposal by a minimum of 15 percent (15%) as the result of executed Change Orders, and provided that such increases are not principally the result of changes in material prices. In the event that the MACC, including Change Orders, exceeds the amount of the MACC specified for a Stage in the RFP by at least 15 percent, the Developer will entertain a proposal from the GCCM for an adjustment in the fee. Such adjustment shall not exceed the ratio between the GCCM's fee submitted in its proposal, and the estimated cost of the MACC specified in the RFP. Costs to be included within the GCCM's Fee shall include:
- 3.2.3.1.1** All General Non-Site Overhead and Corporate Management of the GCCM;

3.2.3.1.2 All GCCM Profit;

3.2.3.1.3 All other cost not specifically enumerated above, but required for completion of the work of the project not allocated elsewhere, including all taxes on or resulting from payments made to the Contractor as a part of the GCCM Fee.

3.2.3.2 **Guaranteed Contract Cost:** The Guaranteed Contract Cost (GCC) shall consist of the total cost of the following:

3.2.3.2.1 **Development Consultation:** Fixed price for services;

3.2.3.2.2 **Stage 1 Subcontract Bidding:** Specified General Conditions;

3.2.3.2.3 **Stage 2 Construction:** Specified General Conditions;

3.2.3.2.4 **Stage 2 Construction:** Reimbursable General Conditions;

3.2.3.2.5 **Stage 2 Construction:** Maximum Allowable Construction Cost (MACC);

3.2.3.2.6 **Stage 2 Construction:** GCCM Fee on MACC;

3.2.3.2.7 **Stage 3 Final Documentation:** Specified General Conditions;

3.2.3.3 **Costs Outside the Contract:** The following costs associated with the overall Development are external to and not part of the price of the Contract to be executed as a result of this RFP:

3.2.3.3.1 Architectural and Engineering Services contracted for separately by the Developer/Housing Connect

3.2.3.3.2 Land Use and Building Permits

3.2.3.3.3 Builder's Risk Insurance Premiums;

3.2.3.3.4 Initial Site Survey and Control Points.

3.2.4 Tax Exempt Status: It is our understanding that even though Housing Connect is a tax-exempt agency, all materials purchased by a contractor (including the GCCM) in the performance of a Contract let by the Developer are subject to retail sales tax or the compensatory use tax on material only. Further, it is our understanding that the sales or use tax is not imposed on the Contractor or subcontractor(s) for labor services in the performance of the contract. Therefore, all fee proposed by the GCCM shall include any such applicable taxes. However, it is the responsibility of each proposer to verify this information.

3.3 Proposal Submission: Please Note: Due to COVID-19, please see beginning of this section for modified submission requirements. All proposals must be submitted and time-stamped received in the Housing Connect Office by no later than the submittal deadline stated herein (or within any ensuing addendum). A total of 1 original signature copy (marked "ORIGINAL") and 6 exact copies (each of the 7 proposal submittals shall have a cover and extending tabs) of the proposal submittal, shall be placed unfolded in a sealed package and addressed to:

Housing Connect
Attention: Emily Whittle
3595 S Main Street
Salt Lake City, Utah 84115

The package exterior must clearly denote the above noted RFP number and must have the proposer's name and return address. Proposals submitted after the published deadline will not be accepted.

3.4 Submission Conditions: DO NOT FOLD OR MAKE ANY ADDITIONAL MARKS, NOTATIONS OR REQUIREMENTS ON THE DOCUMENTS TO BE SUBMITTED! Proposers are not allowed to change any requirements or forms herein, either by making or entering onto these documents or the documents submitted any revisions or additions; and if any such additional marks, notations or requirements are entered on any of the documents that are submitted to Housing Connect by the proposer, such may invalidate the proposal. If, after accepting such a proposal, Housing Connect decides that any such entry has not changed the intent of the proposal that Housing Connect intended to receive, Housing Connect may accept the proposal and the proposal shall be considered by Housing Connect as if those marks, notations or requirements were not entered on by such. By accessing the housingconnect.org internet site, and downloading these documents, each prospective proposer that does so is thereby agreeing to confirm all notices that Housing Connect delivers to him/her as instructed, and by submitting a proposal, the proposer is thereby agreeing to abide by all terms and conditions published herein and by addendum pertaining to this RFP.

3.5 Submission Responsibilities: It shall be the responsibility of each proposer to be aware of and to abide by all dates, times, conditions, requirements and specifications set forth within all applicable documents issued by Housing Connect, including the

RFP document, the documents listed within the following Section 3.8, and any addenda and required attachments submitted by the proposer. By virtue of completing, signing and submitting the completed documents, the proposer is stating his/her agreement to comply with all conditions and requirements set forth within those documents. Written notice from the proposer not authorized in writing by Housing Connect to exclude any of the Housing Connect requirements contained within the documents may cause the proposer to not be considered for award.

- 3.6 Proposer’s Responsibilities – Contact With Housing Connect:** It is the responsibility of the proposer to address all communication and correspondence pertaining to this RFP process to Housing Connect only. Proposers must not make inquiry or communicate with other Housing Connect staff members or officials (including members of the Board of Commissioners) pertaining to this RFP. Failure to abide by this requirement may be cause for Housing Connect to not consider a proposal submittal received by any proposer who has not abided by this directive.
- 3.7 Pre-Proposal Conference:** There will be no pre-proposal conference for this RFP.
- 3.8 Recap of Attachments:** It is the responsibility of each proposer to verify that he/she has downloaded the following attachments pertaining to this RFP:
- 3.8.1** Attachment A: Form of Proposal
 - 3.8.2** Attachment B: Form HUD-5369C (8/93), *Certifications and Representations of Offerors, Non-Construction Contract*, and
 - 3.8.2.1** Attachment B-1: Form HUD-5369-A (11/92), *Certifications and Representations of Offerors, Public and Indian Housing Programs* (pertaining to construction-related work);
 - 3.8.3** Attachment C: Profile of Firm Form;
 - 3.8.3.1** Attachment C-1: System of Award Management (SAM) Registration;
 - 3.8.3.2** Attachment C-2: HUD Information Bulleting 90 - 23
 - 3.8.4** Attachment D: Section 3 Forms, including explanation
 - 3.8.5** Attachment E: Form HUD-5369-B (8/93), *Instructions to Offerors, Non-Construction*; and
 - 3.8.5.1** Attachment E-1: Form HUD-5369 (10/2002), *Instructions to Bidders for Contracts*;
 - 3.8.6** Attachment F: Housing Connect Sample Contract Form (please note that this contract is being given as a sample only – Housing Connect reserves the right to revise any clause herein and/or to include within the ensuing

contract additional clauses that Housing Connect feels it is in its best interest to do so, including any clause, information or documentation issued as part of this RFP; but in any case, Housing Connect anticipates that the final contract form will contain many of the clauses detailed herein);

3.8.6.1 Attachment F-1: Form HUD-5370-C (01/2017), *General Contract Conditions, Non-Construction*;

3.8.6.1.1 Attachment F-1.1: Form HUD-5370 (01/2017), General Conditions of the Contract for Construction (please note that the uncompleted information hereon will be completed as a part of the negotiations that Housing Connect conducts with the selected general contractor);

3.8.6.2 Attachment F-2: Housing Connect *Instructions To Proposers & Contractors*; and

3.8.6.2.1 Attachment F-2.1: Housing Connect *Instructions To Bidders & Contractors, Construction*;

3.8.6.3 Attachment F-3: Form HUD 50071 (01/2017), *Certification of Payments to Influence Federal Transactions*;

3.8.6.4 Attachment F-4 Form HUD-4230A (01/2010), *Report of Additional Classification and Rate*;

3.8.6.4.1 Attachment F-4, Form HUD-4230A; and additional instructions follow:

3.8.6.4.1.1 The construction activity for this scope of work may require additional labor classifications not reflected in the approved wage decision (i.e., heavy equipment operator; asbestos abatement worker; etc.). Therefore, enclosed is form HUD-4230-A.

3.8.6.4.1.2 Per the HUD Labor Relations Department, the Contractor is no longer required to contact 3 contractors in the area who perform this work and request data on wages paid and number

of employees. The Contractor is still required, for this contract, to submit a fully completed form HUD-4320-A, Report of Additional Classification and Rate for approval. If the request is approved at a higher rate, then the provisions of Section 47, Labor Standards; Davis Bacon and Related Acts, subparagraph (2)(1), Amendment #1 of the General Conditions of the Contract for Construction, which is part of this RFP Document, shall apply.

3.8.6.4.1.3 Please forward to HUD for final processing through Housing Connect the information requested above to HUD.

3.8.6.4.2 Attachment F-5: Form HUD-11 (09/2017), *Record of Employee Interview*;

3.8.6.4.3 Attachment F-6: Form HUD-51000 (01/2017), *Schedule of Amounts for Contract Payments*;

3.8.6.4.4 Attachment F-7: Form HUD-51001 (01/2017), *Periodic Estimate for Partial Payment*;

3.8.6.4.5 Attachment F-8: U.S. Department of Labor form WH-347, *Payroll*;

3.8.6.4.5.1 Attachment F-8.1 *Instructions For Completing Payroll Form WH-347*;

3.8.6.4.6 Please note that a General Decision (Salt Lake County) is not yet attached, but will be part of the final contract.

3.8.7 Development Drawings (as completed as of April 13, 2020)

3.8.7.1 Attachment G - Architectural Drawings

3.8.8 Attachment H: Notification of Interest

3.8.9 Attachment I: Proposal Cost Form

4.0 PROPOSAL EVALUATION

4.1 Evaluation Criteria: The following criterion will be utilized by the evaluation panel appointed by Housing Connect to evaluate each proposal submittal received:

NO.	MAX POINT VALUE	CRITERION DESCRIPTION
1	10 points	The PROPOSED COSTS the proposer proposes to charge the AHP and their VALUE to the AHP ("Value," based upon the opinion of the evaluators).
2	40 points	The QUALIFICATIONS and CAPACITY of the PROPOSED GCCM TEAM , based upon the opinion of the evaluators after review of the documentation/information the proposer submits in response to the requirements detailed within Section 3.1.4.2 of this RFP document.
3	20 points	EVIDENCE OF RELATED EXPERIENCE , based upon the opinion of the evaluators after review of the documentation/information the proposer submits in response to the requirements detailed within Section 3.1.4.3 of this RFP document.
4	10 points	KNOWLEDGE OF APPLICABLE REGULATIONS , based upon the opinion of the evaluators after review of the documentation/information the proposer submits in response to the requirements detailed within Section 3.1.4.4 of this RFP document.
5	20 points	DEVELOPMENT APPROACH , based upon the opinion of the evaluators after review of the documentation/information the proposer submits in response to the requirements detailed within Section 3.1.4.5 of this RFP document.
	100 points	Total Points (other than preference points)

4.1.2 Preference Evaluation Criteria: The following criterion will be utilized by the staff member assigned by Housing Connect to evaluate each proposal submittal received:

NO.	MAX POINT VALUE	CRITERION DESCRIPTION
6		PROPOSER DIVERSITY (NOTE: A max of 10 points awarded.)
6a	10 points	Housing Connect resident-owned business.
6b	7 points	Woman- or minority-owned business
6c	5 points	Joint venture with women or minority or SNRHA resident-owned business.
6d	3 points	Practice and history of employing minority and/or women in professional positions.
7		SECTION 3 PARTICIPATION: A firm may qualify for Section 3 status as detailed within Attachment D (NOTE: A max of 5 points awarded).
7a	5 points	Priority I: As detailed on page 5 of Attachment D.
7b	4 points	Priority II: As detailed on page 5 of Attachment D.
7c	3 points	Priority III: As detailed on page 5 of Attachment D.
7d	2 points	Priority IV: As detailed on page 5 of Attachment D.
7e	1 point	Priority V/VI: As detailed on page 5 of Attachment D.
	15 points	Preference Points (Additional)
	115 points	Total Possible Points

4.2 Evaluation Method:

4.2.1 Initial Evaluation: Each proposal received will first be evaluated for responsiveness (i.e. meets the minimum of the requirements). Proposals that do not comply fully with those requirements may be rejected without further review. Housing Connect shall select a minimum of a three-person panel to evaluate each of the proposals submitted in response to this RFP. Housing Connect may consider unacceptable any proposal for which information is lacking or whose submission represents a deviation from the requirements of this RFP. Minor omissions, informalities or irregularities may, at the sole option and discretion of Housing Connect, be corrected subsequent to the submission due date.

4.2.2 Evaluation Panel: Responsive proposals will be submitted to an evaluation panel convened by Housing Connect representing the interests of the Owner. Housing Connect shall consult with the panel who shall make recommendations prior to selection of the finalist. Housing Connect shall make the final decision on behalf of the Owner, at its sole discretion, as to the proposal that best meets the interests of the development and prospective residents. The determination of the criteria and process whereby responses are evaluated, the decision as to who shall receive a contract award, or whether or not an award shall be made as a result of this RFP, shall be at the sole and absolute discretion of Housing Connect. No award will be made to any Agent that is determined not responsible to perform or if the Agent or any member of its team is suspended, debarred or otherwise determined ineligible to receive an award from HUD.

4.2.2.1 Oral Interviews/Best & Finals: At its discretion, and as detailed by HUD within Chapter 4-23 and 4-24 of HUD Procurement Handbook 7460.8 REV-1, at any point during the evaluation process Housing Connect may choose to conduct oral interviews with some of the proposers and to accept "Best & Final" offers from the same. As part of the Best & Final process, Housing Connect reserves the right to request and receive from each such proposer remaining in consideration a proposed operating budget to evaluate each as a part of the cost evaluation criteria.

4.2.3 Restrictions: All persons having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a proposer entity will be excluded from participation on the Housing Connect evaluation panel. Similarly, all persons having ownership interest in and/or contract with a proposer entity will be excluded from participation on the Housing Connect evaluation panel.

4.2.4 Right to Reject: Housing Connect reserves the right to reject the proposal of any respondent who has previously failed to perform properly on a contract of a similar nature, who is not in a position to perform the contract, or who habitually and without just cause has neglected the payment of bills or otherwise disregarded its obligations to subcontractors, providers of materials and/or employees.

5.0 CONTRACT AWARD:

5.1 Contract Award Procedure If a contract is awarded pursuant to this RFP, the following detailed procedures will be followed:

5.1.1 Upon final completion of the proposal evaluation process, the evaluation panel will forward the completed evaluations to the Housing Connect PM. The Housing Connect PM will formulate and forward to the Housing Connect ED for approval a written recommendation. The Housing Connect ED may choose to take the award recommendation to the Housing Connect Board of Directors at a scheduled Housing Connect board meeting for approval (typically for contracts with a total value greater than \$100,000). If so, the Housing Connect Board will then make its determination of whether or not to follow the panel's recommendation. If the recommendation is followed and the top rated proposer is approved for award, all proposers will receive a Notice of Results Evaluation. Contract price negotiations may, at Housing Connects option, be conducted prior to or after the Board approval.

5.2 Contract Conditions: The following provisions are considered mandatory conditions of any contract award made by Housing Connect pursuant to this RFP:

5.2.1 Contract Form: Housing Connect will not execute a contract on the successful proposer's form – contracts will only be executed on Housing Connect's form (please see Sample Contract, Attachment F), and by submitting a proposal the successful proposer agrees to do so (please note that Housing Connect reserves the right to amend this form as Housing Connect deems necessary). However, Housing Connect will consider any contract clauses that the proposer wishes to include therein, but the failure of Housing Connect to include such clauses does not give the successful proposer the right to refuse to execute Housing Connect's contract form. It is the responsibility of each prospective proposer to notify Housing Connect, in writing, prior to submitting a proposal, of any contract clause that he/she is not willing to include in the final executed contract and abide by. Housing Connect will consider and respond to such written correspondence, and if the prospective proposer is not willing to abide by Housing Connect's response (decision), then that prospective proposer shall be deemed ineligible to submit a proposal.

- 5.2.2 Assignment of Personnel:** Housing Connect shall retain the right to demand and receive a change in personnel assigned to the work if Housing Connect believes that such change is in the best interest of Housing Connect and the completion of the contracted work.
- 5.2.3 Unauthorized Sub-Contracting Prohibited:** The successful proposer shall not assign any right, nor delegate any duty for the work proposed pursuant to this RFP (including, but not limited to selling or transferring the contract) without the prior written consent of Housing Connect. Any purported assignment of interest or delegation of duty, without the prior written consent of Housing Connect shall be void and may result in the cancellation of the contract with Housing Connect, or may result in the full or partial forfeiture of funds paid to the successful proposer as a result of the proposed contract; either as determined by Housing Connect.
- 5.3 Contract Period:** Housing Connect anticipates that it will initially award the contract on behalf of the Owner for a period of time that it takes to complete the Development.
- 5.4 Licensing and Insurance Requirements:** Prior to award (but not as part of the proposal submission) the successful proposer will be required to provide:
- 5.4.1** An original certificate evidencing the proposer's current industrial (workers compensation) insurance carrier and coverage amount;
 - 5.4.2** An original certificate evidencing General Liability coverage, naming Housing Connect as an additional insured, together with the appropriate endorsement to said policy reflecting the addition of Housing Connect, as an additional insured under said policy (minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$2,000,000, together with damage to premises and fire damage of \$50,000 and medical expenses any one person of \$5,000), with a deductible of not greater than \$1,000;
 - 5.4.3** An original certificate showing the proposer's professional liability and/or "errors and omissions" coverage (minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000), with a deductible of not greater than \$1,000;
 - 5.4.4** An original certificate showing the proposer's automobile insurance coverage in a combined single limit of \$1,000,000.00. For every vehicle utilized during the term of this program, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$50,000.00/\$100,000.00 and medical pay of \$5,000.00;
 - 5.4.5** Products liability, including Contractual Completed Products Liability coverage;
 - 5.4.6** Independent contractors, covering operations of any and all subcontractors;

- 5.4.7** Contractual liability, including the Agent's or subcontractor's indemnification obligations to Housing Connect as set forth in the ensuing contract(s);
- 5.4.8** Explosion, collapse, undermining and damage to underground utilities and property when the development involves such risk exposures;
- 5.4.9** Premises liability, including personal injury, bodily injury and property damage;
- 5.4.10** Person and advertising injury;
- 5.4.11** Excess Umbrella Liability Coverage or Commercial General Liability, Motor Vehicle Insurance and Employer Liability Insurance in the amount of no less than \$2,000,000 limit. The Owner will work with the Agent to identify subcontractors as to which, either because of the size of work or the type of work, this umbrella will be reduced or waived.
- 5.4.12** The contracts will require releases and waivers of subrogation from the Agent and subcontractors for insured claims.
- 5.4.13** Not later than five (5) business days or prior to the execution of the final contract between the Owner and the Agent, the Agent shall provide the Owner with proof that the requirements of the above have been met (i.e. certificates and endorsements). The additional insured and primary and non-contributory requirements, waiver of subrogation and prohibition against cancellation without notice to the Owner shall be evidenced by endorsements, which shall be sent to the Owner.
- 5.4.14** Renewal Certificates and endorsements for all policies that expire during the term of the contract must also be provided prior to each policy's respective expiration.
- 5.4.15** Maintenance of the proper insurance for the duration of the contract is a material element of the contract.
- 5.4.16** A copy of the proposer's business license allowing that entity to provide such services within the City of Salt Lake;
- 5.4.17** If applicable, a copy of the proposer's license issued by the State of Utah licensing authority allowing the proposer to provide the services detailed herein.
- 5.4.18** The requested related information shall also be entered where provided for on the Profile of Firm Form (DO NOT ATTACH SUBMIT COPIES WITHIN THE PROPOSAL SUBMITTAL –we will garner the necessary certificates from the successful proposer prior to the contract execution).

5.5 Right to Negotiate Final Fees: Housing Connect shall retain the right to negotiate the amount of fees that are paid to the successful proposer, meaning the fees proposed by the top-rated proposer may, at Housing Connect's options, be the basis for the beginning of negotiations. Such negotiations shall begin after the Housing Connect evaluation panel has chosen a top-rated proposer. If such negotiations are not, in the opinion of Housing Connect successfully concluded within 5 business days, Housing Connect shall retain the right to end such negotiations and begin negotiations with the next rated proposer.

5.6 Billing/Payment Methods:

5.6.1 Payments: It is anticipated that the Agent will be paid, at a minimum, on a monthly basis after submittal to Housing Connect of a fully completed invoice in the format of Housing Connect's choice.

5.7 Contract Service Standards: All work performed pursuant to this RFP must conform and comply with all applicable local, state and federal laws.

5.8 Special Conditions:

5.8.1 Time for Completion:

5.8.1.1 The work shall be commenced after issuance of Notice to Proceed and shall be fully completed in accordance with approval of construction schedule

5.8.1.2 Completion shall be further defined as "Substantial Completion" of the work in progress to include but not limited to:

5.8.1.2.1 All final inspections and Certificate of Occupancy Inspections (if applicable) are approved by City Building Officials, Water District, Sanitation District, Fire Department, and Public Works as required.

5.8.1.2.2 Minor punch list items.

5.8.1.2.3 If the work does not require a permit from a local jurisdiction, only minor punch list items will be considered for work remaining. Minor punch list items shall be defined as: adjusting components, touch up paint, minor clean-up, not to include hauling debris away from the site, etc.

5.8.1.2.4 When a project is declared "Substantially Completed" the only work left to complete will be minor punch list items.

5.8.1.2.5 The contractor shall notify Housing Connect in writing when the job is considered substantially complete and the requirements, most specifically those listed within Section 5.8.1.2 herein, have been met. Lack of written notification will result in the accrual of contract time until written notice is received.

5.8.1.2.6 Housing Connect must have the concurrence of the Engineer/Professional of Record before the job is considered "Substantially Complete."

5.8.2 Liquidation Damages: As actual damages or any delay in completion are impossible to determine, the Contractor and his/her sureties shall be liable for and shall pay Housing Connect the sum of **\$(To be determined during contract negotiations with the General Contractor)**, per unit, per day as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted.

5.8.3 Communications:

5.8.3.1 All notices, demands, requests, instructions, approvals, proposals, and claims must be in writing.

5.8.3.2 Any notice to or demand upon the contractor shall be sufficiently given if delivered at the office of the contractor stated on the signature page of the Contract or at such other office as he may from time to time designate in writing to Housing Connect or deposited in the United States mail in a sealed postage-prepaid envelope, or if delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.

5.8.3.3 All papers required to be delivered to Housing Connect or the architect shall, unless otherwise specified in writing to the contractor, be delivered to Housing Connect and any notice to or demand upon Housing Connect or the architect shall be mailed in a sealed, postage-prepaid envelope, or delivered with charges prepaid to any telegraph company for transmission to Housing Connect at such address, or to such other representatives of Housing Connect or to such other address as Housing Connect may subsequently specify in writing to the Contractor for such purpose.

5.8.3.4 Any such notice shall be deemed to have been given as of the time of actual delivery; or in the case of mailing, when the same should have been received in due course of post; or, in case of telegrams, at the time of actual receipt.

5.8.4 Job Office:

- 5.8.4.1 The Contractor must designate an area to serve the posting requirements of this contract. A board (4' X 8') must be in plain view in a well-trafficked area at the site. On this board will be posted EEO and wage information in compliance with the General Conditions of this contract.
- 5.8.4.2 The Contractor shall furnish and maintain, during construction of the project, adequate facilities at the site to be designated by Housing Connect for the use of Housing Connect and the Architect, as follows: (Will be established during contract negotiations)
- 5.8.4.3 The Job Office shall include office space of approximately 12' x 12' with light, heat, cold water, toilet facilities, janitor's service, local telephone, plan tables and plan racks, a desk, chair and one four-drawer file cabinet. The Contractor may, at his/her option, furnish a Job Office trailer that specifically has been designated for that purpose. The trailer, if used, shall be subject to approval by Housing Connect.
- 5.8.4.4 The Contractor and his/her subcontractors may maintain such office and storage facilities on the site as may be necessary for the proper conduct of the work. These shall be located so as to cause no interference with any work to be performed on the site. The Architect shall be consulted with regard to locations.
- 5.8.4.5 Upon completion of the Development, or as directed by Housing Connect or the Engineer, the Contractor shall remove all such temporary structures and facilities from the site, same to become his/her property, and leave the premises in the condition required by the Contractor.

5.8.5 Equipment Furnished by Others:

- 5.8.5.1 The following equipment will be furnished by others but installed by the Contractor: **(To be determined during contract negotiations with the General Contractor).**
- 5.8.5.2 The Contractor shall, at his/her expense and risk, unload and install equipment and do any necessary hauling to the places for installation. The Contractor shall furnish Housing Connect with a schedule of his need for equipment sufficiently of such need to enable Housing Connect to obtain delivery under the procurement contracts.
- 5.8.5.3 Where the type of equipment requires rough-in dimensions, the Engineer or Housing Connect will furnish such to the Contractor as soon as available.

- 5.8.5.4** When equipment arrives at the delivery point, the Contractor shall promptly unload and transfer it to the development site, unless otherwise permitted or directed. The equipment shall not be unloaded except in the presence of a representative of Housing Connect with whom the Contractor shall jointly determine what, if any, damage has occurred in transit and the responsibility therefore. Turnover of the equipment to the Contractor shall then be formalized by means of a transfer receipt, executed in triplicate, signed by the representatives of the Contractor and Housing Connect. This document shall show all particulars of the shipment it covers; the number and condition of the items turned over to the Contractor shall be fully responsible for the equipment.
- 5.8.5.5** The Contractor shall inspect all equipment items for latent defects or concealed damage and for shortages, and immediately report all such discrepancies to Housing Connect so that correction or replacement can be obtained.
- 5.8.5.6** The provision to “install” as used in section 5.8.5.2 above covers all operations and materials in connection with this equipment necessary to (1) distribute; (2) uncrate; (3) assemble as may be normally necessary; (4) place in permanent position; (5) connect up; and (6) clean up.
- 5.8.5.7** The Contractor shall deliver all such equipment in whole and satisfactory operating condition. He/she shall be responsible for actions and costs applicable to final testing, adjusting, and checking for proper performance.
- 5.8.6 Performance and Payment Bonds:** The company providing the required performance and payment bonds must be listed in U.S. Treasury Circular No. 570 as a surety approved to issue bonds securing Government contracts in the State of Utah.

ATTACHMENT A

FORM OF PROPOSAL

**REQUEST FOR PROPOSALS (RFP) NO. HC2020-03
General Contractor/Construction Manager (GCCM)**

**FORM OF PROPOSAL
(ATTACHMENT A)**

(This Form must be fully completed and placed under Tab No. 1 of the “hard copy” tabbed proposal submittal)

Instructions: Unless otherwise specifically required, the items listed below must be completed and included in the proposal submittal. Please complete this form by marking an “X,” where provided, to verify that the referenced completed form or information has been included within the “hard copy” proposal submittal submitted by the proposer. Also, complete the Section 3 Statement and the Proposer’s Statement as noted below:

X = ITEM INCLUDED	TABS	SUBMITTAL ITEMS <i>(Six copies of each proposal, including one with original signatures)</i>
_____	Tab 1	Form of Proposal (Attachment A)
_____	Tab 2	Form HUD-5369-C, (Attachment B) & HUD -5369-A (Attachment B-1) (to be completed and signed)
_____	Tab 3	Profile of Firm Form and form HUD-2530
_____	Tab 4	Proposed Services
_____	Tab 5	Equal Employment Opportunity Statement and Practice and History of Hiring Minorities Form
_____	Tab 6	Subcontractor/Joint Venture Information (Optional)
_____	Tab 7	Section 3 Contractor Initial Response (Mandatory) (Attachment D)
_____	Tab 8	Section 3 Business Concerns Preference (Optional)
_____	Tab 9	Conflict of Interest Disclosure (GCCM Letterhead)
_____	Tab 10	Other Information (Optional)

An under separate cover:

X = ITEM INCLUDED	SUBMITTAL ITEMS <i>(Six copies of each proposal, including one with original signatures)</i>
_____	Proposed Fees (Cost Proposal Form; Attachment I)

SECTION 3 STATEMENT

Are you claiming a Section 3 business preference? YES___ or NO___. If “YES,” pursuant to the Section 3 portion within the Conditions and Specifications, and pursuant to the documentation justifying such submitted under Tab No.8, which priority are you claiming? _____.

**REQUEST FOR PROPOSALS (RFP) NO. HC2020-03
General Contractor/Construction Manager (GCCM)**

PROPOSER'S STATEMENT

The undersigned proposer hereby states that by completing and submitting this Form and all other documents within this proposal submittal, he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and that if the HA discovers that any information entered herein to be false, such shall entitle the HA to not consider or make award or to cancel any award with the undersigned party. Further, by completing and submitting the proposal submittal, and by entering and submitting the costs where provided within the noted Internet System, the undersigned proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by the HA, either in hard copy or on the noted Internet System, including an agreement to execute the attached Sample Contract form. Pursuant to all RFP Documents, this Form of Proposal, and all attachments, and pursuant to all completed Documents submitted, including these forms and all attachments, the undersigned proposes to supply the HA with the services described herein for the fee(s) entered within the areas provided within the noted Internet System pertaining to this RFP.

SIGNATURE

DATE

PRINTED NAME

FIRM NAME

Proposers who wish not to have any proprietary information released to the public must indicate on each page of their proposal that the information being provided is for the purpose of this solicitation only and shall not be disclosed outside of the Housing Authority.

ATTACHMENT B

FORM HUD-5369-C (8/1993)

**CERTIFICATIONS AND
REPRESENTATIONS OF OFFERORS, NON-
CONSTRUCTION CONTRACT**

Certifications and Representations of Offerors

Non-Construction Contract

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offers to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. 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.

1. Contingent Fee Representation and Agreement

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

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

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

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

2. Small, Minority, Women-Owned Business Concern Representation

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

- (a) is, is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) is, is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) is, is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

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

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

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

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

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor's objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

ATTACHMENT B-1

FORM HUD-5369-A (11/1992)

**REPRESENTATIONS, CERTIFICATIONS,
AND OTHER STATEMENTS OF
BIDDERS PUBLIC AND INDIAN
HOUSING PROGRAMS**

**(PERTAINING TO CONSTRUCTION-RELATED
WORK)**

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

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

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Organizational Conflicts of Interest Certification

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

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

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

5. Bidder's Certification of Eligibility

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

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

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

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

6. Minimum Bid Acceptance Period

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

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

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

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

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

The bidder represents and certifies that it:

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

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

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

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

The bidder certifies that:

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

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

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

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

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

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

13. Bidder's Signature

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

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

ATTACHMENT C

DISCLOSURE OF OWNERSHIP

HOUSING CONNECT
Purchasing
ewhittle@housingconnect.org

DISCLOSURE OF OWNERSHIP

INSTRUCTIONS: This form must be completed by the General/Prime Contractor, each Sub-contractor and Joint Venture Partnerships. Please provide copies of all Business Licenses, Articles of Incorporation, etc., and WBE, MBE Section 3, RBE Certifications with this form.

Company Name	Address	
City, State & Zip	Telephone	Fax
Primary Contact	Title	
Email Address	Federal Tax Identification Number	
City of Las Vegas Business License Number	State of Nevada Contractor's License Number, If any	

NAME AND TITLE OF PRINCIPALS OF YOUR COMPANY

Please list additional principals on a separate sheet of paper.

Name	Title	% Owned
Name	Title	% Owned

SUPPLIER DIVERSITY STATEMENT: Because the Housing Connect receives federal funding, we **must** report to the government our supplier diversity efforts. This Information is used for coding and reporting purposes only and will not affect the ability of your firm to do business with our agency. **If you do not complete this area, we cannot add your firm to our eligible list. Resident (RBE) Minority (MBE) or Women-Owned (WBE) Business Enterprise** qualifies by virtue of 51% or more of the ownership and active management by one or more of the following (check all that apply):

<input type="checkbox"/> Male Owned	<input type="checkbox"/> Public Held Corporation	<input type="checkbox"/> Government Agency	<input type="checkbox"/> Non Profit Organization
<input type="checkbox"/> Woman Owned	<input type="checkbox"/> Caucasian American	<input type="checkbox"/> Native American	<input type="checkbox"/> Hispanic American
<input type="checkbox"/> Asian/Pacific	<input type="checkbox"/> Hasidic Jew	<input type="checkbox"/> Asian/Indian	<input type="checkbox"/> SNRHA Resident
<input type="checkbox"/> African American	<input type="checkbox"/> Veteran <input type="checkbox"/> Disabled	<input type="checkbox"/> W/MBE Certification# _____	
<input type="checkbox"/> SEC 3/RBE Certification # _____	<input type="checkbox"/> Other _____		

DEBARRED STATEMENT: Has this firm or any principles ever been disbarred from providing any items or services by any local, state or federal governmental agency? Y or N If yes, please attach a full detailed explanation, including dates, circumstances and current status.

DISCLOSURE STATEMENT: Does/has this firm or any principal have/had any personal or professional relationship with any commissioner or officer of the Housing Connect? Y or N If yes, please attach a full detailed explanation, including dates, circumstances and current status.

The undersigned hereby affirms that he/she is empowered to sign this form and requests that the above-noted firm be added to the Housing Connect's list of firms eligible to do business with the Housing Connect. The undersigned further affirms that, to the best of his/her knowledge, the above information is current and accurate, and acknowledges on behalf of the noted firm that the non-response of two (2) consecutive invitations to provide quotes/bids/proposals by the Housing Connect will give Housing Connect the right to remove that firm from its list of eligible firms.

INSURANCE: Copy of insurance certificate must be provided immediately upon Notice of Award of contract, naming Housing Connect as the the Certificate Holder and as an additional insured regarding General Liability.

General Liability Insurance Policy # and Carrier: _____

Workman's Compensation Policy # and Carrier: _____

Automobile Liability Insurance Policy # and Carrier: _____

Signature	Date	Printed Name
-----------	------	--------------

HOUSING CONNECT
Purchasing
ewhittle@housingconnect.org

KEY PERSONNEL

INSTRUCTIONS:

LIST PERSONNEL ASSIGNED TO THIS CONTRACT: Identify the individual(s) that will act as project manager and any other supervisory personnel who will work on project; attach brief resume for each:

Name:

Title

NAME:

SIGNATURE:

DATE:

ATTACHMENT C-1

SYSTEM OF AWARD MANAGEMENT (SAM) REGISTRATION

How to register your entity to be eligible for CONTRACTS in SAM:

Before you register, you need to know the following:

What is an Entity?

In SAM, your company/business/organization is now referred to as an "Entity".

- **REGISTERING IN SAM IS FREE.**
- If you were registered in CCR, your company's information is already in SAM. You just need to set up a SAM account. See the "Migrating Roles" Quick Start Guide.

Your Entity's DUNS Number

You need a DUNS to register your entity in SAM.

- If you do not have a DUNS number, you can request a DUNS number for free by visiting D&B at <http://fedgov.dnb.com/webform>
- It takes 1-2 business days to obtain a DUNS.

Your Entity's Taxpayer Identification Number (TIN)

You need your entity's Tax ID Number (TIN) and taxpayer name (as it appears on your last tax return). Foreign entities that do not pay employees within the U.S. do not need to provide a TIN.

- A TIN is an Employer Identification Number (EIN) assigned by the Internal Revenue Service (IRS).
- Sole proprietors may use their Social Security Number (SSN) assigned by the Social Security Administration (SSA) if they do not have a TIN, but please be advised it will not be treated as privacy act data in SAM.
- To obtain an EIN visit:
www.irs.gov/businesses/small/article/0,,id=102767,00.html
- Activating a new EIN with the IRS takes 2-5 weeks.

Steps For Registering Your Entity in SAM

1. Go to www.sam.gov
2. Create a Personal Account and Login
3. Click "Register New Entity" under "Manage Entity" on your "My SAM" page
4. Select your type of Entity
5. Select "Yes" to "Do you wish to bid on contracts?"
6. Complete "Core Data"
 - ✓ Validate your DUNS information
 - ✓ Enter Business Information (TIN, etc.)
 - ✓ Enter CAGE code if you have one. If not, one will be assigned to you after your registration is completed. Foreign registrants must enter NCAGE code.
 - ✓ Enter General Information (business types, organization structure, etc)
 - ✓ Financial Information (Electronic Funds Transfer (EFT) Information)
 - ✓ Executive Compensation
 - ✓ Proceedings Details
7. Complete "Assertions"
 - ✓ Goods and Services (NAICS, PSC, etc.)
 - ✓ Size Metrics
 - ✓ EDI Information
 - ✓ Disaster Relief Information
8. Complete "Representations and Certifications"
 - ✓ FAR Responses
 - ✓ Architect-Engineer Responses
 - ✓ DFARS Responses
9. Complete "Points of Contact"
10. Your entity registration will become active after 3-5 days when the IRS validates your TIN information.

How do I get more information? Take a look at the SAM User Guide.

ATTACHMENT C-2

HUD INFORMATION BULLETING 90-23

HUD INFORMATION BULLETIN 90-23
Page 1 of 3

1. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
 - a. The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
 - b. In the event of any claim or suit against the SNRHA on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the SNRHA, when requested by the Contracting Officer, all evidence and information in possession of the contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the SNRHA except where the contractor has agreed to indemnify the SNRHA.
 - c. The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architects-engineer subcontracts) and those for material, expected to exceed the Small Purchases threshold.

2. CLEAN AIR AND WATER CERTIFICATION

The Contractor certifies that:

- a. Any facility to be used in the performance of this proposed contract is _____ / is not _____ listed on the Environmental Protection Agency List of Violating Facilities;
- b. The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication for the Administrator, or a designee, or the Environmental Protection Agency, indicating that any facility that the Offeror proposed to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- c. The Contractor will include a certification substantially the same as this certification, including this paragraph (c) in every nonexempt subcontract.

3. CLEAN AIR AND WATER

"Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean Air standards," as used in this clause, means:

- (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements combined in, issued under, or otherwise adopted under the Air Act or Executive Order 11738.
- (2) An applicable implementation plan as described in Section 1109d of the Air Act (41 U.S.C. 7401d)

HUD INFORMATION BULLETIN 90-23

Page 2 of 3

- (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
- (4) An approved implementation procedure under section 1129(d) of the Air Act (42 U.S.C. 7412(d))

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C.1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317)

"Compliance," as used in this clause, means compliance with:

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontract, used in the performance of a contract or subcontract. When a location or site shall be deemed a facility except when the Administrator, or a designee, or the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

b. The Contractor agrees:

- (1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirement specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
- (2) That no portion of the work as required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

HUD INFORMATION BULLETIN 90-23

Page 3 of 3

- (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
- (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph(b)(4).

4. ENERGY POLICY AND CONSERVATION ACT

The Contractor must meet the mandatory energy efficiency standards as required by the Energy Policy and Conservation Act (Pub.L.94-16). The "Covered product" shall meet the highest energy efficiency requirements in accordance with industry performance standards. "Covered product" means a consumer product such as central air conditions, freezers, furnaces, and water heaters. Copies of standards can be obtained from the list identified in the SNRHA's project manual, dated December 1989, page 01090-4 under the trade association names and titles section.

ATTACHMENT D

SECTION 3 REQUIREMENTS

SECTION 3 – CONTRACTOR INITIAL RESPONSE

Failure to complete this document will lead to your bid being deemed non-responsive.

Contractor Information

_____		_____
Company Name (Contractor)		Contact Person

Address		

_____	_____	_____
City	State	Zip Code

_____	_____	_____
Phone	Fax	E-mail

Section 3 Commitment

To meet the requirements of Section 3 of the Housing Act of 1968 [12 U.S.C. 1701u], as amended, the terms of the contract, and pursuant to Housing Connect's policies, please answer the following questions;

- Do you expect to create any new full time employment opportunities during the period while under contract with Housing Connect?

- If **yes**, of the full time employment opportunities that are created, how many will result in the direct hiring of Section 3 eligible Housing Connect's Public Housing residents, Housing Choice Voucher participants and/or low income persons within Salt Lake County (determined by HUD's criteria for low income)?

- If **no**, what is your plan to create other employment and training opportunities in order to comply with Section 3 requirements?

Upon award of the contract, the contractor will meet with Housing Connect to develop the Section 3 Plan specific to the contract, including scheduled progress and compliance deadlines.

_____	_____
Signature	Date

REQUEST FOR PROPOSALS (RFP) NO. HC2020-03
General Contractor/Construction Manager (GCCM)

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

NAME OF BUSINESS: _____

ADDRESS OF BUSINESS: _____

TYPE OF BUSINESS: Corporation Partnership Sole Proprietorship Joint Venture

****Please provide the required documentation listed in the category for which you are claiming preference:**

1. FOR BUSINESS CLAIMING STATUS AS A SECTION 3 RESIDENT-OWNED ENTERPRISE

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

For the business entity as applicable:

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

OR

2. FOR BUSINESS CLAIMING SECTION 3 STATUS BY SUBCONTRACTING 25% OF THE DOLLAR AWARDED TO QUALIFIED SECTION 3 BUSINESS

List of subcontracted Section 3 business and subcontract amount AND
 Copy of certification from City of Las Vegas or Clark County OR
 List of the qualifying subcontractors employees, indicating Section 3 status & tax return for the qualifying year

OR

3. FOR BUSINESS CLAIMING SECTION 3 STATUS, CLAIMING AT LEAST 30% OF THEIR WORKFORCE ARE CURRENTLY SECTION 3 RESIDENTS OR WERE SECTION 3 ELIGIBLE RESIDENTS WITHIN 3 YEARS OF DATE OF FIRST EMPLOYMENT WITH THE BUSINESS

List of all current full time employees AND List of all employees claiming Section 3 status AND
 PHA Residential lease (less than 3 years from date of employment) OR Tax return for the year employee is claiming eligibility (Must be in the last 3 years – 2011, 2010, or 2009)

Authorizing Name and Signature

Title

of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

- the section 3 covered contract to be awarded with sufficient specificity;
- the time within which quotations must be submitted; and
- the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation that provided the prices is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) Award. (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotation shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provisions of preference for

section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotations is the most advantageous, considering price and all other factors specified in the rating system.

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

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

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

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

	x=lesser of:
When the lowest responsive bid is less than \$100,000.....	10% of the bid or \$9,000
When the lowest responsive bid is:	
At least \$100,000, but less than \$200,000.....	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000.....	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000.....	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000.....	6% of that bid, or \$25,000
At least \$500,000, but less than \$1 million.....	5% of that bid, or \$40,000
At least \$1 million, but less than \$2 million.....	4% of that bid, or \$60,000
At least \$2 million, but less than \$4 million.....	3% of that bid, or \$80,000
At least \$4 million, but less than \$7 million.....	2% of that bid, or \$105,000
\$7 million or more.....	1½ % of the lowest responsive bid, with no dollar limit

(ii) if no responsive bid by section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) *Procurement under the competitive proposals method of procurement (Request for Proposals (RFP))*. (i) For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36 (d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

(ii) One of the evaluation factors shall address both the preference for section 3 business concern and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for

section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

Dated: June 27, 1994.

Roberta Actenberg,
Assistant Secretary for Fair Housing and Equal Opportunity
 [FR Doc.94-15951 Filed 6-29-94; 8:45am]
 BILLING CODE 4210-28-P

Office of the Secretary
24 CFR Subtitle A and Parts 92, 219, 280, 570, 572, 574, 576, 583, 882, 889, 890, 905, 961 and 963.

[Docket No. R94-1678; FR-3536 F-01]
 RIN 2501-AB64

Economic Opportunities for Low- and Very Low-Income Persons-Conforming Amendments

AGENCY: Office of the Secretary, HUD

ACTION: Final Rule

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968 (section 3), as amended by the Housing and Community Development Act of 1992, requires de economic opportunities generated by HUD financial assistance for housing (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for those persons.

ATTACHMENT E

FORM HUD-5369-B (8/1993) INSTRUCTIONS TO OFFERORS, NON- CONSTRUCTION

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

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

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer 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 HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (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 U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, 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 offer, 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, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, 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, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

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

(h) If this solicitation is a request for proposals, proposals 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 award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show **the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.**

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

ATTACHMENT E.1

FORM HUD-5369 (10/2002) INSTRUCTIONS TO BIDDERS FOR CONTRACTS

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

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

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

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

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

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

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

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

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

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

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

2. Explanations and Interpretations to Prospective Bidders

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

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

3. Amendments to Invitations for Bids

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

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

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

4. Responsibility of Prospective Contractor

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

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

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

5. Late Submissions, Modifications, and Withdrawal of Bids

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

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

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

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

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

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

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

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

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

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

6. Bid Opening

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

7. Service of Protest

(a) Definitions. As used in this provision:

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

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

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

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

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

8. Contract Award

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

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

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

(d) The PHA/IHA may reject any and all bids, 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.

ATTACHMENT F

SAMPLE CONTRACT FORM



HOUSING CONNECT

3595 South Main St.

Salt Lake City, Utah 84115

CONTRACT AND AGREEMENT

Contract #

THIS CONTRACT AND AGREEMENT, entered into this Date, 2020 between Company Name having an office for business at location hereinafter referred to as the CONTRACTOR, and Housing Connect residing at 3595 South Main St., Salt Lake City, Utah, hereinafter referred to as the OWNER. WHEREAS, the OWNER desires certain restoration work on the premises owned by him (them) and known and numbered as . THEREFORE, in consideration of the compensation to be paid the CONTRACTOR, the mutual agreements hereinafter contained, and subject to the terms hereinafter stated, it is mutually agreed as follows. The CONTRACTOR agrees to furnish all labor, material, equipment, supervision and services necessary to complete the work as described hereinafter.

1. GENERAL CONDITIONS
2. Additional HUD general conditions that apply to this contract HUD 5370-EZ at:
<http://www.hacsl.org/business-opportunities/open-bids>
 - A. The CONTRACTOR'S bid and proposal shall be submitted to:
Housing Connect
3595 South Main Street
Salt Lake City, Utah 84115
Attention: Emily Whittle
 - B. Bid and proposal must be received at the Housing Connect office not later than 5:00 p.m. on _____, 2020.
 - C. The OWNER shall accept the bid and proposal within 90 calendar days from _____, provided that the contract is subject to issuance of a proceed order by the OWNER and no work shall be commenced by the CONTRACTOR until he receives a written proceed order.

- D. The OWNER shall issue a proceed order within 30 calendar days from the date of acceptance of the CONTRACTOR'S bid and proposal. If the proceed order is not received by the CONTRACTOR within this period, the CONTRACTOR has the option of withdrawing his bid and proposal.
- E. The CONTRACTOR shall commence and terminate all work on the dates specified in the proceed order.
- F. The CONTRACTOR shall satisfactorily complete the work within 90 calendar days after issuance of the proceed order. Failure to meet the completion date as specified in the contract/proceed, or failure to perform the work or any separable part thereof, will cause Housing Connect to invoke a damage fee of \$100.00 per day for each and every day the contract is over the completion date. Additionally, Housing Connect may terminate the contract as per section "N" of this contract.
- G. If performance by the CONTRACTOR is prevented or delayed as a direct result of riot, insurrection, fire, Act of God, weather or circumstances beyond the CONTRACTOR'S control, an extension of one working day in the time limited for completion of the work to be done hereunder will be allowed the CONTRACTOR for each working day lost from such cause. Other time extensions may be granted provided the CONTRACTOR, WITHIN TEN (10) DAYS prior to the beginning of such delay, gives written notice to Housing Connect of such delay and the reason or reasons for it. Reasons for time extensions will be reviewed by the OWNER and may or may not be granted.
- H. THE CONTRACTOR SHALL PROMPTLY CORRECT all work rejected by Housing Connect as defective or as failing to conform to the Contract Documents whether observed before or after completion and whether or not fabricated, installed or completed. The CONTRACTOR shall bear all costs of correcting such rejected work.
- I. IF, WITHIN ONE YEAR after the date of completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the CONTRACTOR shall correct it promptly after receipt of a written notice from the OWNER to do so unless the OWNER has previously given the CONTRACTOR a written acceptance covering such condition. The OWNER shall give notice promptly after discovery of any condition requiring corrective action.
- J. THE CONTRACTOR SHALL bear the cost of correcting all work, materials or surfaces, etc. as may be destroyed or damaged by such removal or correction.
- K. SUB-CONTRACTORS SHALL be bound by the terms and conditions of this contract insofar as it applies to their work, but this shall not relieve the GENERAL CONTRACTOR from the full responsibility to the OWNER for the proper completion of all work to be executed

under this agreement, and he shall not be released from this responsibility by a Sub-Contractual Agreement he may make with others. The CONTRACTOR shall employ only the Sub-contractors listed in the disclosure form. Any substitutions, changes or additions to this list must be approved by Housing Connect. The CONTRACTOR shall employ only Sub-contractors that are approved by Housing Connect for work on this project.

L. REPAIRS SHALL BE MADE to all surfaces, furnishings, or equipment damaged by the CONTRACTOR resulting from his work under this contract at no additional cost to the OWNER. Where repair of an existing facility is called for by the contract, the facility is to be placed as similar and equal to new condition either by repair or replacement; all damaged, loose, or rotted parts shall be removed and replaced, and the finished work shall match adjacent work in design and dimension.

M. TERMINATION BY THE CONTRACTOR

If the work is stopped for a period of thirty days under an order of any court or other public authority having jurisdiction, through no act or fault of the CONTRACTOR or a Sub-contractor or their agents or employees or any other persons performing any of the work under a contract with the CONTRACTOR, or if the work should be stopped for a period of thirty days by the CONTRACTOR for Housing Connects failure to issue a Certificate for Payment as provided in the Agreement the CONTRACTOR may, upon seven days written notice to the OWNER, terminate the Contract and recover from the OWNER payment for all work executed and for any reasonable, proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

N. TERMINATION BY THE OWNER

If the CONTRACTOR is adjudged a bankrupt or if he makes a general assignment for the benefit of his creditor or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough property, skilled workmen or proper materials, or if he fails to make prompt payment to Sub-contractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction or otherwise is guilty of a substantial violation of a provision of the Contract Documents, Housing Connect may, without prejudice to any right or remedy and after giving the CONTRACTOR seven days written notice, terminate the employment of the CONTRACTOR and take possession of the site and of all materials, equipment, tools, and machinery thereon owned by the CONTRACTOR and may finish the work by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the work is finished.

O. The CONTRACTOR will be paid the contract price in one lump amount after the work is satisfactorily completed unless payment is to be made in progress payments as the work

progresses. When progress payments are to be made, the CONTRACTOR shall prepare a construction progress and payment schedule that specifies the stages at which payments will be made and the percentage (or amount) of the contract price that will be paid for the satisfactory completion of each stage. Progress payments may also be made for materials stored. Progress payments shall not exceed 95% of the value of the work satisfactorily completed. Progress payments and final payment due the CONTRACTOR will be paid within thirty (30) calendar days after Housing Connect receives the CONTRACTOR'S invoice and satisfactory release of liens by Sub-contractors, laborers and material suppliers for completed work or installed materials, payroll reports, insurance certificates, etc..

P. PROVISIONS THAT THE CONTRACTOR SHALL BE REQUIRED TO:

1. Furnish evidence of comprehensive public liability insurance coverage protecting the OWNER for not less than \$ 1,000,000.00 in the event of bodily injury including death and \$1,000,000.00 in the event of property damage arising out of the work performed by the CONTRACTOR.
2. Furnish evidence of insurance or other coverage as required by the State of Utah governing Workmen's Compensation.
3. Obtain and pay for all permits and licenses necessary for the legal and proper completion and execution of the work and labor to be performed.
4. Perform all work in conformance with the Salt Lake County Building Code, Uniform Building Code and all other applicable codes and requirements whether or not covered by the specifications and drawings for the work.
5. Submit weekly payroll reports for all employees of the CONTRACTOR and Sub-contractor for all federally funded construction contracts over \$2,000.00. Davis/Bacon or HUD determined wage rates shall be paid to all employees of the CONTRACTOR or Sub-contractor. Whenever State rates exceed the Davis/Bacon rates, the Davis/Bacon rates shall not be enforced.
6. Abide by the following Federal and Local regulations:
 - a. Federal and Local Regulations pertaining to Equal Employment as set forth in the Terms and General Conditions.
 - b. Lead base paint regulations 24CFR, Part 35.
 - c. Section 3 clause. All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):
 - a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban

Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- b. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and 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).
7. Keep the premises clean, orderly and safe during the course of the work and remove all debris from the premises at the completion of the work. Materials and equipment that have been removed and replaced as part of the work shall belong to the CONTRACTOR, unless otherwise specified.
 8. Not assign this contract without the written consent of the OWNER. Requests for assignment must be pre-approved by Housing Connect.
 9. Guarantee all work performed against defects of materials and workmanship for a period of one year from the date of final acceptance of all work required by this contract, unless otherwise specified.
 10. Provide the OWNER, all manufacturers and suppliers written guarantees and warranties covering materials and equipment furnished under this contract. This does not apply to OWNER supplied materials when applicable.
 11. Provide a competent supervisor to be on the job at all times during progress of work.
 12. Agree that all work shall be done in a good workmanlike manner in accordance with good trade practices, and using materials as specified.

13. Permit the U.S. government, or its designee to examine and inspect the work at any reasonable time.
14. Make a physical, onsite inspection of the subject property in the company of an authorized Housing Connect representative.
15. Shall submit to the Building Department all necessary sketches, drawings or plans, as required by the Building Department.
16. Initiate any grievances, disputes or claims by written notice to the OWNER within 10 days from the date of the incident on which the claim is based and follow written Housing Connect policies and procedures for handling disputes.
17. When construction is accomplished while the occupants remain in the unit, the CONTRACTOR shall issue a minimum three day written notice to the occupant as to the start of construction and to coordinate all subsequent construction activities with the occupant. This includes interior and exterior work, utility service disruptions and all site work. Where a tenant relocation is involved, the CONTRACTOR shall coordinate the move with the occupants and the moving agency in accordance with his Construction Progress Schedule. It is also the CONTRACTORS responsibility to notify all adjacent property owners of any construction related activity that will affect them.

Q. CONTRACT MODIFICATIONS

Change orders are allowable under this contract as follows:

1. Time extensions (as per Section G of this contract)
2. Deletions or additions within the original scope of work.
3. OWNER furnished materials (as per Section R of this contract)

R. OWNER FURNISHED MATERIALS

1. Where the OWNER elects to supply materials for this or part of this contract, the OWNER will be responsible for the following:
 - a. Delivery, acceptance and storage of the materials.
 - b. Discrepancies in quantities delivered.
 - c. Damaged, faulty or defective materials.
 - d. Warrantee and personal liability issues.
 - e. Providing Purchase Orders and payment to the vendor.

- f. Surplus materials (if any, will be retained by the OWNER).
 - g. Delivery of the materials in accordance with the CONTRACTORS construction schedule.
 - 2. The CONTRACTOR will be responsible for the following:
 - a. The CONTRACTOR is responsible for designating the delivery dates of OWNER furnished materials as per his construction schedule.
- S. PROVISIONS THAT THE OWNER WILL:
 - 1. Permit the CONTRACTOR to use at no cost, the existing facilities such as access roads, parking areas, etc. as necessary to the carrying out and completion of the work.
 - 2. Cooperate with the CONTRACTOR to facilitate the performance of the work and that neither he nor any existing resident will unduly hinder the CONTRACTOR in his work.
- T. The premises are to be occupied during the course of the work with adequate access maintained.
- U. Final payment on the contract amount will be made only after final inspection and acceptance of all work to be performed by the CONTRACTOR, and the CONTRACTOR has furnished the OWNER, satisfactory release of liens, or claims for liens by the CONTRACTOR, Sub-contractors, laborers, CONTRACTOR employed material suppliers, required warranties, test results, clearance certifications, payroll reports, insurance certificates and any other documentation deemed necessary by the Contracting Officer.
- V. The Contract consists of the following:
 - 1. Contract, General Conditions and Supplements.
 - 2. Description of work/Exhibit A and Bid Proposal.
 - 3. Plans, Specifications, Project Manual, Blueprints and/or working drawings.
 - 4. Special Conditions.
 - 5. Change Orders.
- W. For the consideration named therein, the CONTRACTOR proposes to furnish and provide all labor, supplies, equipment and materials required to do all of the work specified in the contract documents for the Lump Sum Price of \$_____.

ACCEPTANCE BY CONTRACTOR

ACCEPTANCE BY OWNER

Housing Connect

Contractor's Name

Owner's Name

Contractor's Signature

Authorized Signature

Address and Zip Code of Contractor

3595 South Main Street

Salt Lake City, Utah 84115

Address and Zip code of Owner

Date of Acceptance

Date of Acceptance

SAMPLE

ATTACHMENT F-1

**FORM HUD-5370-C (01/2017),
GENERAL CONTRACT CONDITIONS,
NON-CONSTRUCTION
SECTION I & II**

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

-
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
- (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

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

3. Records

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

4. Apprentices and Trainees

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

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
- (iii) A training/trainee program that has received prior approval by HUD.

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

5. Disputes concerning labor standards

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

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

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

6. Contract Work Hours and Safety Standards Act

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

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

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

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

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

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

ATTACHMENT F-1.1

**FORM HUD-5370 (01/2017),
GENERAL CONDITIONS FOR
CONSTRUCTION CONTRACTS**

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. 1/31/2017)

Applicability. This form is applicable to any construction/development contract greater than \$100,000.

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, 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

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

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

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

10. As-Built Drawings

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

11. Material and Workmanship

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

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

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

12. Permits and Codes

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

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

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

13. Health, Safety, and Accident Prevention

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

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

(b) For these purposes, the Contractor shall:

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

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

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

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

14. Temporary Heating

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

15. Availability and Use of Utility Services

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

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

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

- (f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
- (g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
- (h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels 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

The Contractor shall complete all work required on 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 breakdown of the contract price. Such estimates shall be 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 an adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- (f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

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

30. Suspension of Work

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

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

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

31. Disputes

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

32. Default

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

proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the 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 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).

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

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