

**HOUSING AUTHORITY OF BALTIMORE CITY**

**REQUEST FOR PROPOSALS**

**B-1924-21**

**CONSTRUCTION SERVICES UNDER JOB ORDER CONTRACT  
EJ46-HAE3036, EJ47-HAE3037, EJ48-HAE3038  
AND EJ49-HAE3039**

**Housing Authority of Baltimore City  
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Baltimore, Maryland 21202  
John Airey, Senior Contract Manager  
Office: 410-396-3261  
[john.airey@habc.org](mailto:john.airey@habc.org)**

**Issuance Date: Monday,  
April 26, 2021**

**Pre-Proposal Conference:  
Wednesday, May 5, 2021  
at 10:00 a.m. Eastern Time**

**Submission Deadline:  
Thursday, May 27, 2021  
by 2:00 p.m. Eastern Time**



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## HOUSING AUTHORITY OF BALTIMORE CITY

### REQUEST FOR PROPOSALS NUMBER: B-1924-21

#### FOR

#### CONSTRUCTION SERVICES UNDER JOB ORDER CONTRACT EJ46-HAE3036, EJ47-HAE3037, EJ48-HAE3038 and EJ49- HAE3039

### Executive Summary

The Housing Authority of Baltimore City ("HABC" ) will receive sealed proposals from interested and qualified contractors for the above- referenced Job Order Contract("JOC"). **HABC must receive Responder's proposal via email to [john.airey@habc.org](mailto:john.airey@habc.org) by 2:00 p.m. Eastern Time on Thursday, May 27, 2021. Please follow up with telephone call to John Airey at 443-392-5240 to confirm receipt of your proposal.** The proposals will not be publicly opened and all proposals will remain confidential until negotiations are completed and proposals are accepted. Any proposal received after the above stated time will be returned to the Responder unopened.

A JOC is a competitively awarded, firm fixed priced, indefinite quantity contract for a collection of tasks and related specifications involving HABC owned properties, based on established unit prices. The Contracts are to be used for the accomplishment of repair, alteration, modernization, maintenance, rehabilitation, demolition and construction of infrastructure, buildings and structures (collectively, the "Work") by means of Job Orders issued under the Contracts. Under a JOC Contract, the contractor is required to furnish all management, documentation, labor, materials and equipment needed to perform the Work.

EJ46-HAE3036 and EJ46-HAE3037 are for general construction projects and requires an active Maryland State Business license. It is anticipated that the contractor will be asked to perform design services on some projects. The contractor shall be required to self-perform at least 10% of the work EJ46-HAE3036 and EJ46-HAE3037.

EJ46-HAE3038 is for mechanical projects and requires an active Maryland State Mechanical license with proper Insurance along with an active Baltimore City Mechanical license. It is anticipated that the Contractor will be asked to perform mechanical design services on some mechanical projects. The Contractor shall be required to self-perform at least 50% of the mechanical work under EJ46-HAE3038. HABC will primarily assign mechanical work to the Contractor. HABC reserves the right, at its sole discretion, to assign general construction work to the Contractor when deemed to be in the best interest of HABC.

EJ46-HAE3039 is for electrical projects and requires an active Maryland State Electrical license with proper Insurance along with an active Baltimore City Electrical license. It is anticipated that the Contractor will be asked to perform Electrical design services on some electrical projects. The Contractor shall be required to self-perform at least 50% of the electrical work under EJ46-HAE3039. HABC will primarily assign electrical work to the Contractor. HABC reserves the right, at its sole discretion, to assign general construction work to the Contractor when deemed to be in the best interest of HABC...

HABC reserves the right to reject any or all proposals or to accept or reject any item in the proposal. Awards will be made to responsible Responders conforming to the requirements of this Request for Proposals ("RFP") as determined by, and in the best interest of HABC.



The contracts awarded under this RFP will have the following values:

Contract Number	Trade	Maximum Contract Term Value	Maximum Number of Contract Terms	Maximum Total Contract Value
EJ46-HAE3036	GC	\$1,000,000	5	\$5,000,000
EJ47-HAE3037	GC	\$5,000,000	5	\$25,000,000
EJ48-HAE3038	MECHANICAL	\$5,000,000	5	\$25,000,000
EJ49-HAE3039	ELECTRICAL	\$5,000,000	5	\$25,000,000

HABC reserves the right to award contracts to multiple contractors under a single Contract Number. If more than one award is made, each contract will be at the Maximum Contract Term Value.

Contracts will be awarded for an Initial Contract Term. The Initial Contract Term is defined as a term beginning on the date of contract execution or a Notice to Proceed and ending either: (a) one (1) year from such date; or (b) when the Maximum Contract Term Value, as defined below, is expended, whichever occurs first. The Contract will include options for up to four (4) additional one-year terms (the "Optional Contract Terms"), in HABC's sole discretion. An "Optional Contract Term" is defined as a term beginning on the date after the Initial Contract Term ends and ending either: (a) one year from such date; or (b) when the Maximum Contract Term Value for such term is expended, whichever occurs first. "Maximum Contract Term Value" means the maximum total value of work that can be ordered by HABC for the current term of the Contract. Provided, however, that in HABC's sole discretion, any amounts remaining from the preceding term or terms of the contract may be carried over to the current contract term. The Total Contract Term (duration) shall not exceed five (5) years. All Contract Terms may be subject to prior approval by the U.S. Department of Housing and Urban Development ("HUD").

It is the current intention of HABC to award multiple JOCs under this RFP. to maintain an adequate number of sources for the services being requested to ensure the continuous availability of a reliable source of the services as needed by HABC.

This RFP and related proposal documents (collectively, the "Proposal Documents") may be obtained by contacting John Airey, Senior Contract Manager at [john.airey@habc.org](mailto:john.airey@habc.org) , on or after Monday, April 26, 2021. Inquiries regarding the Proposal Documents may be made by calling 443-392-520 .

**A non-mandatory pre-proposal conference will be held at 10:00 a.m., Wednesday, May 5, 2021**, for the purpose of discussing the JOC concept, Proposal Documents, various proposal considerations and for answering questions and discussing JOCs from a Responder's viewpoint (including how to prepare and submit the Price Proposal). All prospective **Responders are strongly encouraged** to attend. The pre-proposal conference will be virtual conference. Use the link below to access the pre-proposal conference on the designated time. After registering, prospective Responders will be placed into a waiting room where they will be admitted to the pre-proposal conference at the designated start time.

**Access and Registration for the Pre-proposal Conference:**

<https://zoom.us/meeting/register/tJUduuor4jG9dZuBwVu3EXwVEeBHTNCA9I>.

Inquiries regarding the Proposal Documents must be submitted in writing and received by HABC no later than 4:30 p.m. on Tuesday, May 11, 2021. and be addressed to: Mr. Steve Suit, Senior Vice President of Procurement,, Attention: Mr. John Airey, Charles L. Benton, Jr. Building, 417 East Fayette Street, Baltimore, Maryland, 21202 or e-mailed to [john.airey@habc.org](mailto:john.airey@habc.org).

HABC selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for its JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for



the purpose of fulfilling its obligations under a JOC Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by HABC. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to each and all Job Orders issued to the Contractor under the terms a JOC Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors.

The successful Responder(s) will be required to furnish satisfactory performance and payment bonds in the following amounts for the duration of the contract:

Contract Number	Trade	Performance Bond Amount	Payment Bond Amount
EJ46-HAE3036	General	\$500,000	\$500,000
EJ46-HAE3037	General	\$500,000	\$500,000
EJ46-HAE3038	Mechanical	\$500,000	\$500,000
EJ46-HAE3039	Electrical	\$500,000	\$500,000

If for any reason, such bond amount ceases to be adequate to cover the dollar value of Job Orders issued and/or uncompleted Work, the Contractor shall at its expense furnish an additional bond or bonds. In such event, no further payments to the contractor shall be deemed to be due, or new Job Orders issued under the contract until such new or additional security for the faithful performance of the Work is furnished by the contractor in a manner and form satisfactory to HABC.

Attention is called to the fact that the Contractor's payrolls must be filed with HABC and not less than the prevailing salaries and wages as set forth in the Proposal Documents must be paid on the Contract.

No goal has been established for participation by women-owned businesses ("WBE's"); however, HABC strongly encourages and affirmatively promotes the use of WBEs in all HABC contracts. HABC shall not limit MBE/WBE certification to a particular jurisdiction.

To assist the Responder in complying with the Section 3 requirements, HABC encourages Responders to solicit applicants from the HABC Office of Resident Services, People Accessing Continued Employment Program (P.A.C.E.); and use other employee recruitment services only if P.A.C.E. has no qualified referrals that meet the Responder's employment, training or subcontracting needs. P.A.C.E. is an employment initiative funded by HABC to provide direct job placement, support services, and post placement support, skills training opportunities, job replacement and job retention services.

Responders shall be further required to comply with all applicable requirements of Section 3 of the U.S. Housing and Urban Development Act of 1968, 12 U.S.C.A. Section 1701u et seq. The Section 3 Employment Goal for the Contract is 50% of new hires, which must be project area residents.

All matters and issues related to this RFP and the award of contract(s) hereunder shall be governed by 2 C.F.R. Part 200 and the procurement principles set forth in the HUD Handbook on Procurement for Public Housing Authorities, Handbook 7460.8, REV-2 (2/2007) (the "HUD Procurement Handbook"), subject to the express authorizations granted to HABC pursuant to the Amended and Restated Moving to Work Agreement between HABC and HUD dated December 24, 2008 (the "MTW Agreement"), and the Statement of Procurement Policy for the Housing Authority of Baltimore City and its implementing procedures (collectively, the "HABC Procurement Policy"). HUD regulations at 2 C.F.R. Part 200, the HUD Procurement Handbook, the MTW Agreement, and the HABC Procurement Policy are collectively referred to herein as the "Applicable Procurement Principles". In the event of a conflict between this RFP and the Applicable Procurement Principles, the Applicable Procurement Principles shall govern. A copy of the



## Executive Summary

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HABC Procurement Policy may be obtained from the Division of Fiscal Operations, Room 401, Charles L. Benton, Jr. Building, 417 E. Fayette Street, Baltimore, Maryland 21202.

No proposal shall be withdrawn for a period of one hundred eighty (180) days subsequent to the proposal due date, without the consent of HABC.

HOUSING AUTHORITY OF BALTIMORE CITY

Mr. Steve Suit  
Senior Vice President of Procurement



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## SECTION 1: AUTHORITY BACKGROUND

- A. The following information is provided to aid Responders in understanding the context for HABC's objectives and the services requested under this RFP.
- B. HABC is a large public housing authority, established by the State of Maryland, which administers public and affordable housing programs to eligible families within Baltimore City. As a recipient of HUD funding, HABC owns and operates approximately 8,900 conventional public housing dwelling units located in approximately 18 public housing developments and over 1,000 scattered site dwelling units throughout Baltimore City. HABC provides housing to approximately 23,000 public housing residents.
- C. HABC employs approximately 1,100 employees. Divisions and Offices within HABC include, but are not limited to, Housing Operations; Rental and Assisted Housing, which administers the Housing Choice Voucher (Section 8) Program; Fair Housing and Equal Opportunity Enforcement; Information Technology; Human Resources, Resident Services; Public Housing Development Division; Engineering and Capital Improvement; Office of Legal Affairs, and Code Enforcement.
- D. On December 24, 2008, HABC executed a restated Moving to Work ("**MTW**") agreement with the U.S. Department of Housing and Urban Development ("**HUD**"). Under the MTW Agreement, HABC may combine its public housing operating subsidies, capital funds including replacement housing factor funds, and tenant-based Section 8 rental assistance voucher funds into a single fund budget with full flexibility. HABC may use the funding source to promote flexibility in the design and administration of housing assistance to eligible families, to reduce cost and achieve greater cost effectiveness in federal expenditures.

## SECTION 2: STATEMENT OF PURPOSE

HABC, through its Division of Engineering and Capital Improvements ("ECI"), is seeking the services of qualified and interested Contractors to provide JOC general construction services to enable HABC to accomplish a large number of small to medium sized construction projects under the umbrella of a single, competitively awarded construction contract. The JOC contract structure eliminates HABC's need to complete the typical design-bid-construct cycle for each and every project. Consequently, the time, money and man-hours necessary to procure a project under the JOC contracting system for HABC should be significantly reduced. In addition to expedited procurement, HABC expects two very beneficial byproducts of the JOC system 1) a reduction in overall construction costs, and 2) an increase in the quality of construction. HABC intends to utilize the JOC contracts for every aspect of the agency's modernization and rehabilitation programs. A particular area of focus for these JOC contracts will include rehabilitation of HABC dwelling units in compliance with Section 504 of the Rehabilitation Act (Section 504), Americans with Disabilities Act (ADA), Uniform Federal Accessibility Standards (UFAS), Fair Housing Accessibility Guidelines (FHAG), and providing architectural and engineering services, upgrading and replacement of HVAC systems.

## SECTION 3: DESCRIPTION OF THE CONTRACT

- A. A Job Order Contract ("JOC", "JOC Contract" or "Contract") is a competitively awarded, firm fixed priced, indefinite quantity construction contract, pursuant to which the Contractor will perform a

variety of work at different project locations (the “Work”). The Work includes a collection of detailed repair and construction tasks and specifications that have pre-established unit prices. The Contract is executed with the Contractor for the accomplishment of repair, alteration, modernization, maintenance, rehabilitation, demolition and construction of infrastructure, buildings, structures, or other property. Work is accomplished by means of issuance of a Job Order under the Contract.

- B. Under the JOC concept, the Contractor furnishes all management, documentation, labor, materials and equipment needed to perform the Work.
- C. The JOC Contract includes a Construction Task Catalog® containing a series of construction and demolition tasks with pre-established unit prices. The Construction Task Catalog® was developed using experienced labor and high quality materials. All unit prices are based on local labor, material and equipment prices including the current market wages for Baltimore City.
- D. The Responder will submit a Price Proposal consisting of four Adjustment Factors to be applied to the unit prices. Each Adjustment Factor will apply to Work performed under a specific wage determination setting forth the minimum amount the Contractor must pay the individuals performing the Work (laborers, mechanics, and apprentices). The first Adjustment Factor is for performing Work for which the Residential wage rate applies in an occupied unit. The second Adjustment Factor is for performing Work for which the Building wage rate applies in an occupied unit. The third Adjustment Factor is for performing Work for which the Residential wage rate applies in other than an occupied unit. The fourth Adjustment Factor is for performing Work for which the Building wage rate applies in other than an occupied unit. The Adjustment Factors shall be applicable for performing Work during all hours of the day, days of the week, and days of the year (i.e. day, night, weekends, holidays, etc.) as directed by HABC.
- E. As Work requirements are identified, the Detailed Scope of Work will be explained to the Contractor and the Contractor will be given a Request for Job Order Cost Proposal. The Contractor will be required to develop a Job Order Cost Proposal using the published unit prices. The price of an individual Job Order will be determined by multiplying the pre-established unit prices and the appropriate quantities by the applicable Adjustment Factor. The appropriate Adjustment Factor will be based on the actual Wage Decision issued for each Job Order. If the Contractor's Job Order Cost Proposal is found to be accurate and in conformance with the Proposal Documents, a Job Order may be issued. The resulting price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. HABC reserves the right to request a Job Order Cost Proposal from more than one JOC contractor, relative to a specific Detailed Scope of Work, concurrently; or solicit pricing from any other contractors, via any other project delivery method available as determined by and in the best interest of HABC.
- F. The JOC Proposal Documents include a provision for the establishment of prices for Work requirements, which are required by the Detailed Scope of Work but were not included in the Construction Task Catalog® at the time of Contract award. These tasks are referred to as "Non-Prepriced Items". Non-Prepriced (NPP) items may require the establishment of specifications and drawings and may subsequently be incorporated into the Construction Task Catalog®.



## G. Maximum Contract Term and Maximum Total Contract Values:

Contract Number	Trade	Maximum Contract Term Value	Maximum Number of Contract Terms	Maximum Total Contract Value
EJ46-HAE3036	GC	\$1,000,000	5	\$5,000,000
EJ47-HAE3037	GC	\$5,000,000	5	\$25,000,000
EJ48-HAE3038	MECHANICAL	\$5,000,000	5	\$25,000,000
EJ49-HAE3039	ELECTRICAL	\$5,000,000	5	\$25,000,000

The Contractor will, at a minimum, be provided the opportunity to prepare Job Order Cost Proposals totaling \$50,000 during the duration of the Initial Contract Term. The Contractor may be required to perform Work at any HABC controlled project location.

- H. HABC has no obligation to request further Job Order Cost Proposals once HABC has provided the Contractor with the opportunity to prepare Job Order Cost Proposals of at least \$50,000.
- I. The Initial Contract Term is defined as one (1) year from the date of Contract execution or when the Maximum Contract Term Value has been ordered, whichever occurs first. An Optional Contract Term is defined as one (1) year from the date of option execution or when the Maximum Contract Term Value is expended, whichever occurs first. If there is unused Contract value at the expiration of the Initial Contract Term or any Optional Contract Term, HABC reserves the right to carry over the unused portion of the Maximum Contract Term Value into future Optional Contract Terms.

The Contract shall have an initial term equal to one (1) Initial Contract Term with a unilateral option provision for extending the Contract for an additional four (4) Optional Contract Terms, at HABC's sole discretion. HABC has no obligation to execute an option for additional Optional Contract Terms. The Total Contract Term (duration), including all Optional Contract Terms, shall not exceed five (5) years and the Maximum Contract Total Value shall not exceed the amounts set forth in the table above.

## SECTION 4: DETAILED SCOPE OF WORK

- A. The Detailed Scope of Work of the Contract shall be determined on a job-by-job basis for individual Job Orders issued under the Contract. Upon receipt of a Job Order, the Contractor shall provide all management, documents, work, materials, supplies, parts (to include system components), transportation, plant, supervision, labor, and equipment needed to repair, or construct facilities on real property and/or HABC owned infrastructure. The Contractor shall provide quality assurance as specified in strict accordance with all terms, conditions, special contract requirements, specifications, attachments, and exhibits contained in the Contract, Job Orders under the Contract, or incorporated by reference. The Contractor shall also be responsible for site safety as well as site preparation, security and cleanup.
- B. The Contractor's work and responsibility shall include all planning, administration, and management necessary to provide repair, construction, and related services as ordered. The Contractor shall conduct the Work in strict accordance with the Contract and all applicable laws, regulations, codes, or directives including Federal, State, HUD and HABC. The Contractor shall ensure that all Work provided meets or exceeds critical reliability rates or tolerances specified or



included in applicable referenced documents and all Work shall meet the highest standards prevailing in the City of Baltimore.

- C. Contractor shall perform the Work such as supply, quality control, financial control, and maintain accurate and complete records files, libraries of documents to include Federal, State, and local regulations, codes, laws listed herein, and manufacturers' instructions and recommendations which are necessary and related to the Work to be performed.
- D. Contractor shall provide related services such as preparing and submitting required reports, maintaining record drawings current from activities under the Contract, perform administrative work, and submit necessary information as specified. The Contractor shall provide material lists to include trade names and brand names, and model materials lists to include trade names, brand names, model numbers, and ratings (if appropriate) for all materials necessary for a complete job.
- E. All Work will be ordered and funded when needed in accordance with the ordering clause and procedures contained in the HABC Supplemental Conditions.
- F. The Contractor will be required to work on any property under the management of HABC. Award of a Job Order Contract does not give the Contractor any exclusive rights with regard to project location or type of Work.
- G. The following documents and standards shall be used in the execution of Work under the Contract and are considered to be part of the Contract:
  - (1) Volume I Proposal Information and Contractual Documents
  - (2) Construction Task Catalog<sup>®</sup>, Volume II Electronically provided as a PDF file (no bound paper copies of this volume)
    - a. The Construction Task Catalog<sup>®</sup> Volume II contain pricing information for the Work to be accomplished and for the unit of measure specified. It consists of Construction Specification Institute (CSI) divisions 1 through 46
  - (3) Job Order Contract Technical Specifications (Volume III). Electronically provided as a PDF file (no bound paper copies of this volume)
    - a. The Technical Specifications, Volume III, are numbered and organized in the CSI's master format. All specifications are filed in divisions 1 through 16 per CSI guidelines.
    - b. The intent of these specifications is to furnish concise industry and commercial standards for maintenance or repair of HABC facilities. In the event of conflict between any of the specifications contained in the Proposal Documents, the most stringent specification shall govern.

## SECTION 5: DETAILED DEFINITION OF PROPOSAL DOCUMENTS

A. Proposal Documents shall include:

VOLUME I: Proposal Information and Contractual Documents.

VOLUME II: Construction Task Catalog® (Sections 1-46). *Use Link Below to Access*

VOLUME III: Technical Specifications (Sections 1-46). *Use Link Below to Access*

**Accessing the Construction Task Catalog® (Volume II) and Technical Specifications (Volume III).** Use the following link to access these documents:

[HABC Construction Task Catalog® and Technical Specifications – 2021 - Distribution](#)

B. Except for titles, subtitles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of the Proposal Documents:

1. Executive Summary
2. RFP Overview
3. Instructions To Responders
4. General Conditions (HUD 5370)
5. HABC Supplemental General Conditions
6. HABC Special Conditions
7. Technical Qualifications
8. Price Proposal/Affidavit of Non-Collusion
9. Price Proposal Support
10. Authorization of Responder For Verification of References
11. Representations, Certifications and Other Statements of Responders (HUD 5369-A)
12. Certificate of Previous Participation (HUD 2530)
13. HABC Conflict of Interest Statement
14. All the Responder's Certifications and Affidavits
15. All Addenda Issued by the Authority Prior to Receipt of Proposals
16. Certification Regarding Disbarment
17. Wage Decisions



18. Contract
19. The Notice of Award
20. Performance and Payment Bonds
21. Job Orders, Requests for Job Order Cost Proposals, and Detailed Scopes of Work issued under the Contract
22. The Contractor's Job Order Cost Proposals submitted under the Contract

## SECTION 6: AVAILABILITY OF PROPOSAL DOCUMENTS

- A. Proposal Documents may be examined and purchased at HABC, Division of Fiscal Operations, Room 414, Charles L. Benton, Jr. Building, 417 East Fayette Street, Baltimore, Maryland, 21202, on the date and time specified in the Executive Summary. Inquiries regarding the purchase of Proposal Documents may be made by calling (410) 396-3261.
- B. A copy of the Proposal Documents may only be obtained upon the Responder's registration and upon payment of a non-refundable fee of one hundred and fifty dollars (\$150.00) by Certified Check or Money Order. CASH WILL NOT BE ACCEPTED as well Company Business or Personal Checks. Each Proposal Document purchaser will be required to provide his/her name, title, company he/she is representing, phone number, fax number, and a street address at which to receive addenda information. HABC reserves the right to reject the proposal of any Responder who fails to register and to pay the amount designated for a set of the Proposal Documents.

## SECTION 7: EQUAL OPPORTUNITY

- A. **Subcontracting with Minority and Women-Owned Business Enterprises.**
  1. **Statement of Policy:** "It is the policy of HABC to ensure that Minority Business Enterprises ("MBEs") as defined in Section 2 below, and Women-owned Business Enterprises ("WBEs") are provided maximum opportunity to participate in contracts administered by HABC. In accordance with Executive Order 11625, HABC has established a minimum goal of twenty percent (20%) of the total dollar amount of each contract awarded under this solicitation, for MBE utilization under this RFP. This requirement applies to all minority and non-minority business performing as the prime contractor. HABC has not established a minimum goal for participation of WBEs; however, in accordance with Executive Order 12138, HABC strongly encourages and affirmatively promotes the use of WBEs in HABC contracts. The use of WBEs will not apply towards the MBE utilization goals. Notwithstanding the directly preceding language, in any contract issued by HABC, the MBE/WBE numerical goals will be established by the funding source. HABC will inform the Contractor of the MBE/WBE numerical goals at the time of the scoping of a Work Order. HABC shall not limit MBE/WBE certification to a particular jurisdiction."
  2. **MBE Definition.** For these purposes, a MBE is defined as "any legal entity other than a joint venture, organized to engage in commercial transactions, that is at least fifty-one percent owned and controlled by one or more minority persons. "For these purposes, a minority person is defined as a member of a socially or economically disadvantaged



minority group, which includes African-Americans, Hispanic-Americans, Native-Americans, and Asian-Americans.

3. **MBE Certification.** Any MBE proposed by the Responder to be utilized in the Contract must be certified as an MBE by an authorized certifying body/agency of a Federal, State or local jurisdiction, in order for participation of such MBE to be applied toward the Contract goals. All certifications must be current as of the date a Job Order Cost Proposal is submitted to HABC. HABC does not certify MBEs but will accept certifications from other jurisdictions which meet the requirements herein stated. Notwithstanding evidence of the certification of any firm as an MBE, HABC reserves the right to (1) independently verify the status of such firm as an MBE; (2) review and approve the appropriateness of the utilization of an MBE based on the trade(s) or profession(s) for which the MBE has been certified; and (3) request additional information from the Responder necessary for HABC's review.
4. **Award Considerations.** The twenty percent (20%) MBE participation is a minimum goal which Responders are expected to meet in the performance of the proposed Contract. Therefore, to be considered for award, the Proposal must include (a) information demonstrating the Responder's plan for achieving the minimum MBE participation goals for the proposed contract as described in Section 5 below; or (b) the Responder's request for a waiver of the MBE participation requirements as described in Sections 6 and 7 below. MBE and WBE participation may vary from Job Order to Job Order, and will be tracked on a Job Order by Job Order basis; however, the Contractor is expected to meet 20% MBE utilization for the overall JOC Contract. Failure to meet the stated MBE participation goal of a specific Job Order is considered a material non-compliance, which may result in further Job Orders not being issued to the JOC Contractor. Failure to meet MBE participation on the overall JOC Contract will result in the Contractor being deemed a non-responsible Contractor.
5. **MBE Utilization Plan:** The Proposal must include the Responder's MBE utilization plan ("MBE Utilization Plan") describing the Responder's strategy for achieving the MBE participation requirements if awarded a Contract, and any additional efforts the Responder may make to award subcontracts to WBEs. Provided, however, that WBE subcontracts are not applied towards the MBE utilization goal. The MBE Utilization Plan shall include the information requested in Section 4 of Technical Qualifications below (See Page (H-5)). HABC will not accept a blanket statement by the Responder to utilize MBEs in this contract without the specific details requested in the Proposal Documents. Unless granted a waiver, Proposals that substantially fail to include the required MBE Utilization Plan will be eliminated from award.
6. **Request for Waiver of MBE Utilization Requirements.** A waiver of the MBE participation requirements may be granted in part or in whole only upon a reasonable demonstration based upon documentary evidence submitted by the Responder that MBE participation was unable to be obtained or was unable to be obtained at a reasonable price.
7. **Deadline for Submission of Request for Waiver.** Any actual or prospective Responder that seeks a waiver of the MBE utilization requirements must submit a written request for a waiver on or before the deadline for submitting Proposals with documentary evidence as more fully described in Section 4 of Technical Qualifications below, to support such waiver request.
8. **Use of Affiliated Entities:** The Contractor shall not utilize any entity that is affiliated with the Contractor towards the MBE participation goals without prior written approval by HABC of the use of such affiliated entity. Therefore, each Contractor shall disclose in its



Job Order Cost Proposal, on forms to be provided by HABC, any and all interests, either direct or indirect, in any business entity intended to be utilized by the Contractor towards the MBE/WBE utilization goals. For these purposes, business concerns are considered affiliates of each other when, either directly or indirectly, (a) one concern controls or has the power to control the other, or (b) a third party or entity controls or has the power to control both. HABC reserves the right to make the determination in its sole discretion and in accordance with applicable laws and regulations, whether any affiliated entity proposed by the Contractor may be used towards the MBE subcontracting goals. Failure to disclose such relationships may result in adverse action as deemed appropriate by the Authority.

**9. Additional Efforts.**

A) In addition to the foregoing requirements and the requirements of Section 4 of the Technical Qualifications, Responders should take the following steps to ensure that whenever possible, subcontracts are awarded to MBEs and WBEs such as the following:

1. Placing qualified MBEs, WBEs and small businesses on solicitation lists;
2. Dividing the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MBEs, WBEs and small businesses;
3. Establishing delivery schedules where possible, in a manner, which encourages participation by MBEs, WBEs and small businesses;
4. Using the services and assistance of the United States Small Business Administration, the Minority Business Development Agency of the United States Department of Commerce, the Housing Authority of Baltimore City Office of Fair Housing and Equal Opportunity ("FH&EO"), the City of Baltimore Office of Minority and Women's Business Opportunity Office ("M/WBOO"), the local minority assistance organizations, and the various State and local government small business agencies. FH&EO is located at 417 East Fayette Street, Suite 922, Baltimore, Maryland 21202 and may be contacted by phone at 410-396-3246. M/WBOO is located at 100 N. Holliday Street, 1st Floor, Room, Baltimore, Maryland 21202 and may be contacted by phone at 410-396-4355.

**B. Compliance With Section 3 of the Housing and Urban Development Act of 1968**

1. The successful Responder shall be required to comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, and the regulations issued pursuant thereto, as set forth in 24 C.F.R. Part 135, and all applicable rules, directives and orders issued by HUD thereunder. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment generated by a Section 3 covered contract be given to public housing residents and other low income persons residing in the metropolitan area, and subcontracts in connection with such contracts be awarded to Section 3 covered business concerns which are located in, or owned in substantial part by persons residing in the areas of the project. The successful Responder shall be required to insert the Section 3 clause set forth in Article 6 of the HABC Special Conditions, in any subcontract resulting from the proposed contract.



2. **Section 3 Compliance Strategy:** The Proposal must include the Responder's plan for complying with the requirements of Section 3 if awarded the contract, as described in Section 5 of Technical Qualifications below.

C. **HABC Special Conditions.**

By submitting a Proposal, the Responder agrees to comply with all equal opportunity requirements as set forth above and in the HABC Special Conditions (Pages G1-25) if awarded a Contract pursuant to this RFP.



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## SECTION 1: TIME, PLACE AND INSTRUCTIONS FOR SUBMISSION OF SEALED PROPOSALS

- A. Complete and submit the entire component titled Proposal Package of Volume I - Proposal Information and Contractual Documents (hereinafter referred to as the "Proposal Package"). Submit one (1) original and six (6) copies of a typewritten and executed Proposal Package. If a Responder is submitting a proposal for more than one contract under this RFP, the Responder must submit one (1) original and six (6) copies of the typewritten and executed Proposal Package separately for each contract.
- B. The one (1) original proposal must contain a manual original signature of an authorized representative of the Responder. The authorized representative of the Responder must initial all corrections, if any, made on the proposal. The proposal must include all documents, materials and information required in the component titled "Proposal Package" of Volume I - Proposal Information and Contractual Documents.
- C. Enclose and seal the Proposal Package, inclusive of the Proposal Bond/Guarantee in the required amount, in an envelope with the contract number clearly marked on the outside of said envelope. If a Responder is submitting a proposal for more than one contract under this RFP, each proposal should be submitted in a separate envelope and a unique/separate Proposal Bond/Guarantee is required for each contract.
- D. Responders shall make no alterations, changes, or exclusions to the Price Proposal or phraseology. Proposals may be rejected if they show any omissions, alterations, additions not approved, conditional or alternate proposals, or irregularities of any kind.
- E. The location for submission of the proposals shall be as specified in the Executive Summary.
- F. The date and time specified in the Executive Summary are deadlines for receipt of proposals by HABC, not deadlines for mailing or entrusting to a delivery service. Late proposals will be returned unopened.

## SECTION 2: MISTAKES IN THE PROPOSAL

If a mistake in a proposal is suspected or alleged, the proposal may be corrected, at the sole discretion of HABC, or withdrawn during any negotiations that are held. If negotiations are not held, or if the best and final offer has been received, the Responder may be permitted to correct a mistake in its proposal and the intended correct offer may be considered if the mistake and the intended correct offer are clearly evident on the face of the proposal; or the mistake is not clearly evident on the face of the proposal, but the Responder submits written evidence which clearly and convincingly demonstrates both the existence of a mistake and the intended offer, and such correction would not be contrary to the fair and equal treatment of other Responders. Mistakes discovered after award shall not be corrected unless the Contracting Officer makes a written determination that it would be disadvantageous to HABC not to allow the mistake to be corrected.

## SECTION 3: CONFIDENTIALITY

There will be no public opening of proposals. All proposals and information concerning same shall remain confidential until all negotiations are completed and the Notice of Award is issued.



Responders are hereby notified that all proposals received by HABC shall be included as part of the official contract file and that HABC is subject to the Maryland Public Information Act, Annotated Code of Maryland, State Government Article, Section 10-611 et. seq. (the “**Act**”), which gives the public access to certain records in the custody of public bodies. The Act does, however, protect certain information from disclosure, such as confidential commercial or financial information, and some personal information. Any part of the proposal that is not considered confidential, privileged or proprietary under any applicable Federal, State or local law shall be available for public inspection upon completion of the procurement process. HABC attempts to notify a firm when it receives a request for a copy of a proposal, and gives the firm an opportunity to identify the information in its proposal that it considers confidential. HABC redacts all protected information from the proposal before making any non-exempt information available. Notwithstanding the foregoing, the applicable provisions of Federal, State and local laws shall govern the confidentiality of proposals despite anything contrary to this provision stated in the proposal.

### **SECTION 4: EXAMINATION OF PROPOSAL DOCUMENTS AND RESOLUTION OF DISCREPANCIES AND AMBIGUITIES**

- A. Prospective Responders shall examine the RFP and Proposal Documents carefully and before submitting their proposal shall make a written request to the Contracting Officer or his/her designee for an interpretation or correction of any ambiguity, inconsistency or error therein which should be discovered by a reasonably prudent Responder.
- B. Every request for such interpretation must be received by 4:30 p.m. on Tuesday, May 11, 2021 and must be submitted to John Airey, Senior Contract Manager, at [john.airey@habc.org](mailto:john.airey@habc.org)... Such written explanation, interpretation or correction, as well as any additional Contract provisions HABC shall decide to include shall be issued in writing by the Contracting Officer or his/her designee as an addendum, which shall be sent by certified or registered mail or by facsimile or otherwise delivered to each prospective Responder recorded as having received a copy of the Proposal Documents from HABC and shall be available at the place(s) where the Proposal Documents are available for inspection by prospective Responders. Upon such mailing or delivery and making available for inspection, such addendum shall become a part of the Proposal Documents and shall be binding on all Responders whether or not the Responder receives or acknowledges the actual notice of such addendum. The requirements contained in all Proposal Documents shall apply to all addenda, unless otherwise expressly stated in the addenda. HABC will, in no case, be responsible for any change in anticipated profits resulting from such failure or neglect to examine addenda.
- C. Each Responder shall ascertain prior to submitting a proposal that the Responder has received all Addenda issued, and the Responder shall acknowledge their receipt in the proposal (on the Price Proposal form).
- D. Only interpretations, corrections or additional Contract provisions made in writing by the Contracting Officer or his/her designee as addenda shall be binding. No officer, agent or employee of HABC or its designee is authorized to explain or to interpret the Proposal Documents by any other method and any such explanation or interpretation, if given, must not be relied upon by the Responder.
- E. At the time of the opening of proposals, each Responder shall be presumed to have read and to be familiar with the Proposal Documents. The failure or omission of any Responder to



receive or to examine any part of the Proposal Documents shall in no way relieve any Responder from any obligation in respect to the proposal of such Responder.

### SECTION 5: NO EXTRANEEOUS INFORMATION TO BE EXAMINED

No information other than that specifically requested in the Proposal Package (and attachments where such attachments are expressly permitted) will be examined or used in determining award. Responders are reminded to keep their proposal within the page limitations communicated in the Proposal Documents, if so imposed. If the Responder exceeds said stated limitations, the proposal may be rejected.

### SECTION 6: PRE-PROPOSAL CONFERENCE

A non-mandatory pre-proposal conference will be held at the time and place specified in the Executive Summary, for the purpose of discussing the JOC concept, Proposal Documents, various proposal considerations and for answering questions and discussing JOC from a Responder's viewpoint (including how to prepare and submit the Price Proposal ). The general nature and type of Work anticipated to be completed under these contracts will be discussed at length, consequently, HABC **strongly encourages** prospective Responders to attend the pre-proposal conference to better understand the Work, the unique contract structure, and how to prepare a responsive proposal. The pre-proposal conference will last approximately two hours.

### SECTION 7: SPECIAL NOTICE ITEMS

- A. Incomplete proposals are subject to rejection. All information requested in the Section titled Proposal Package in Volume I - Proposal Information and Contractual Documents of the Proposal Documents must be submitted in its entirety. Failure to do so could result in the entire proposal being declared nonresponsive.
- B. The Contracting Officer shall represent and act for HABC in all matters pertaining to this RFP and Contract in conjunction therewith. The Contracting Officer reserves the right to reject any or all proposals and to disregard any informality in the proposals, when in his/her opinion the best interest of HABC will be served by such action.

### SECTION 8: EVALUATION AND AWARD PROCESS

- A. Award of any contract resulting from this RFP will be made in accordance with the Applicable Procurement Principles.
- B. The evaluation and award process shall be as follows:
  - 1. A Evaluation Panel consisting of at least three (3) voting members will be established. The Evaluation Panel shall consist of HABC employees; and may also include HABC residents, HABC consultants, Baltimore City employees, Baltimore City consultants, or any combination thereof. HABC may also identify non-voting advisors to the Evaluation Panel.
  - 2. The Contracting Officer will forward all proposals that are received by the date and time specified in the Executive Summary and comply with the submission requirements of the RFP to the Evaluation Panel.



## Instructions To Responders

3. The Evaluation Panel will review all proposals for responsiveness to the RFP. All proposals deemed to be responsive will be evaluated and scored against the evaluation criteria included herein and on the basis of the information contained in the proposal. Each proposal will be evaluated on its own merit.
4. The evaluation criteria to be utilized by the Evaluation Panel is found immediately below:

Evaluation Criteria	Maximum Score (Points)
<b>Technical Qualifications (See Section H of RFP):</b>	
Related Experience and Past Performance	20
Contract Management Plan	25
Quality Control Plan	10
MBE and WBE Subcontracting Compliance Strategy	10
Section 3 Compliance Strategy	10
Financial Capability	10
<b>Price:</b>	
Price Proposal	15
<b>Total Possible Score (Points):</b>	100
<b>Section 3 Preference:</b> A firm that qualifies as a Section 3 Business Concern may be awarded additional preference points prior to award of the contract.  (See Attachment 9C "Certification for Business Concerns Seeking Section 3 Preference" for explanation of how Section 3 Preference bonus points are determined.) Category 1 Business - 20 pts; Category 2 Business - 15 pts; Category 3 Business - 10 pts.; Category 4 Business - 5 pts.	





## Instructions To Responders

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5. Upon completion of the technical evaluation, all proposals will be classified as acceptable, potentially acceptable, or unacceptable. All proposals classified as acceptable or potentially acceptable shall be deemed to be in the competitive range.
6. Those Responders whose proposals were in the competitive range may be asked to participate in negotiations/discussions relative to both technical qualifications and price to ensure a mutual understanding of both HABC requirements and the Responder's proposal, unless HABC determines that there is no need to hold negotiations/discussions and awards are made based on initial proposals received. Negotiations/discussions will be conducted either in person or by telephone depending on the nature of each proposal and the Evaluation Panel's requirements.

**If your company qualifies as a Section 3 Business Concern, and your proposal is deemed to be in the competitive range, you may qualify for additional points prior to the award of the contract. See, also, Attachment 9C: "Certification for Business Concerns Seeking Section 3 Preference in Contracting," for designation of four categories upon which preference points may be awarded.**

7. After negotiations/discussions are completed with those Responders whose proposals were in the competitive range, a date and time will be established for submission of best and final offers, if they are considered necessary and in the best interest of HABC. Best and final offers will be submitted only once unless the Contracting Officer makes a written determination that it is in HABC's best interest to conduct additional negotiations/discussions or change HABC requirements and request another submission of best and final offers.
8. After best and final offers are received, a final round of technical qualifications and price proposal evaluation will occur.
9. The Evaluation Panel will recommend the responsible firm(s) whose proposal(s) is/are most advantageous, with price and technical qualifications considered, for selection.
10. The selection and award will be based on the proposal that provides HABC with the best value as measured by the pre-established evaluation criteria and scoring process. Selection will not necessarily be made to the Responder offering the lowest price.
11. HABC will consider as "non responsive" any proposal for which critical information is lacking, or the submission represents a major deviation from the RFP. Minor omissions such as incomplete references, may, at the sole option and discretion of HABC, be corrected within five (5) business days of the submission due date.
12. HABC reserves the right to request additional information from any Responder after the proposal deadline. HABC also reserves the right to reject any and all, or parts of any and all proposals; to request additional information; to award one or more contracts for any contract number under this RFP, or to not award any contracts; to re-advertise this RFP; postpone or cancel at any time the RFP process; to waive minor irregularities to this RFP or in the proposals received as result of the RFP. This waiver determination will be the sole decision of HABC.



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## SECTION 9: FORM OF THE TECHNICAL QUALIFICATIONS

The Responder shall submit the information requested in the "Technical Qualifications" (see Section H Technical Qualifications in Volume I- Proposal Information and Contractual Documents) as specifically instructed. The Responder is instructed that if the page limitations imposed in this section are exceeded, or if the required attachments (i.e. the Financial Statements) are omitted, the proposal may be rejected.

## SECTION 10: FORM OF THE PRICE PROPOSAL

- A. The Responder shall submit four (4) Adjustment Factors to the Construction Task Catalog® and the published prices contained therein. Each Adjustment Factor will apply to Work performed under a specific wage determination setting forth the minimum amount the Contractor must pay the individuals performing the Work (laborers, mechanics, and apprentices).
  - 1. The first Adjustment Factor is for performing Work for which the Residential wage rate applies in an occupied unit (see "Wage Decision" section of Volume I - Proposal Information and Contractual Documents).
  - 2. The second Adjustment Factor is for performing Work for which the Building wage rate applies in an occupied unit (see "Wage Decision" section of Volume I - Proposal Information and Contractual Documents).
  - 3. The third Adjustment Factor is for performing Work for which the Residential wage rate applies in other than an occupied unit (see "Wage Decision" section of Volume I - Proposal Information and Contractual Documents).
  - 4. The fourth Adjustment Factor is for performing Work for which the Building wage rate applies in other than an occupied unit (see "Wage Decision" section of Volume I - Proposal Information and Contractual Documents).
- B. The Adjustment Factors shall be applicable for performing Work during all hours of the day, days of the week, and days of the year (i.e. day, night, weekends, holidays, etc.) as directed by HABC. The amount of the Contractor's Cost Proposal will be determined by multiplying the pre-established unit prices and the appropriate quantities by the applicable Adjustment Factor. The applicable Adjustment Factor will be based on the actual Wage Decision issued for each job.
- C. The Responder's Adjustment Factor must contain allowances for all overhead costs (including all costs of construction management and project supervision), profit, bond premiums, insurance, mobilization, proposal development, ancillary design services and all contingencies in connection therewith, as no allowance will be made later for any other costs (except as noted in calculating Non-Prepriced item unit prices).
- D. Any change in the applicable minimum hourly rates of wages, or material or equipment prices during the contract period shall not affect the unit price to be paid by HABC for Work performed under the Contract.
- E. The Adjustment Factors and the Award Criteria Figure specified and/or calculated in the Price Proposal must be provided to four (4) decimal places (i.e. 1.1500).



- F. The Responder shall acknowledge the receipt of any addenda to the Proposal Documents. Note in the spaces provided on the Price Proposal the Addenda, by numbers and dates, which have been received. If no addenda have been received, the Responder shall insert the word "NONE".
- G. The Adjustment Factors will be weighted based on HABC's estimate of their utilization of the different Adjustments Factors (driven by nature of Work, heights of the buildings, etc.). These Adjustment Factor weights are for proposal evaluation purposes only. There are no assurances given to the Responders that HABC will order Work in a ratio consistent with these weights.
- H. Any proposal in which the Adjustment Factors are deemed by HABC to be unbalanced may be rejected.
- I. Failure to conform to these requirements may result in rejection of the proposal.

### SECTION 11: FORM OF CONTRACT

The Contract for the Work shall be in the form provided in the Proposal Documents entitled "Contract".

### SECTION 12: PROPOSAL SECURITY/GUARANTEE

- A. A proposal security/guarantee bond must accompany each proposal. The form of the security/guarantee shall be a bond provided by a surety company authorized to do business in the State of Maryland, or the equivalent in cashier's check, money order or certified check. All certified checks must be drawn on a federally insured U.S. bank, and shall be made payable to HABC. CASH OR COMPTROLLER'S CERTIFICATE IS NOT AN ACCEPTABLE FORM OF PROPOSAL SECURITY/GUARANTEE.
- B. The proposal security/guarantee shall be in the amount of \$25,000. Compliance with the provisions herewith shall be determined in all cases by the Contracting Officer and his/her determination shall be final. **A separate proposal security/guarantee shall be required for each contract number for which a proposal is submitted.**
  - 1. After proposals are opened, the proposal security/guarantee shall be irrevocable for a period of one hundred eighty (180) days. If a Responder is permitted to withdraw its proposal before award, no action shall be taken against the Responder or the form of proposal security/guarantee.
  - 2. HABC has the right to retain the proposal security/guarantee of Responders until either (a) the Contract has been executed and bonds have been furnished, or (b) the specified time has elapsed so that proposals may be withdrawn, or (c) all proposals have been rejected.

### SECTION 13: PERFORMANCE AND PAYMENT SECURITY

- A. The successful Responder shall deliver the required bonds to the Contracting Officer, not later than ten (10) calendar days from the date of Contract Award. The successful Responder shall furnish to the Contracting Officer, and maintain at its own cost and expense Performance and Payment Bonds in the amount listed below as security for faithful performance and for the



## Instructions To Responders

payment of all persons performing labor on the project under the Contract or furnishing materials in connection with the Contract. The surety on such bonds shall be a surety company authorized to do business in the State of Maryland and approved by the U.S Department of Treasury.

B.

Contract Number	Trade	Performance Bond Amount	Payment Bond Amount
EJ46-HAE3036	General	\$500,000	\$500,000
EJ46-HAE3037	General	\$500,000	\$500,000
EJ46-HAE3038	Mechanical	\$500,000	\$500,000
EJ46-HAE3039	Electrical	\$500,000	\$500,000

- B. Attorneys-in-fact who sign said bonds on behalf of a surety must affix to each bond a certified and effectively dated copy of their power of appointment.
- C. The Contracting Officer reserves the right to approve the surety company issuing said bonds.
- D. In the event that the successful Responder fails to furnish the performance and payment bonds in said period of ten (10) calendar days, then the Proposal Security/Guarantee of the Responder shall be retained by HABC as liquidated damages and not as a penalty, IT BEING NOW AGREED that said sum is a fair estimate of the amount of damages that said HABC will sustain due to the Responder's failure to furnish said bonds. In addition, the Contracting Officer reserves the right to terminate the Contract for failure to furnish said performance and payment bonds.
- E. If for any reason, such bond amounts cease to be adequate to cover the dollar value of Job Orders issued and/or uncompleted Work, the Contractor shall at his/her expense furnish an additional bond or bonds. In such event, no further payments to the Contractor shall be deemed to be due, or new Job Orders issued under the Contract until such new or additional security for the faithful performance of the Work is furnished by the Contractor in manner and form satisfactory to HABC.

## SECTION 14: ACCEPTANCE OF PROPOSALS

In the event contract(s) are awarded under this RFP, the Contracting Officer will notify Responders of award in writing or reject all proposals for said Contract, within (180) calendar days from the date the proposals were due, unless the Responder, upon the request of HABC, extends the time of acceptance to HABC.

## SECTION 15: DISQUALIFICATION OF PROPOSALS

HABC will disqualify proposals, before or after opening, upon evidence of collusion with intent to defraud or other illegal practices upon the part of the Responder.



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## SECTION 16: RESPONSIBILITY OF RESPONDER

- A. In accordance with 24 CFR 85.36(b)(8) and 24 CFR 905.160(a)(3) no award shall be made to any Responder determined to be non responsible. A Responder is considered to be responsible and to possess the ability to perform successfully under the terms and conditions of the Contract based on the following:
1. The Responder has performed or is performing satisfactorily on all previous contracts awarded by HABC (satisfactory performance includes field performance/quality of construction, construction schedule compliance, wage compliance, JOC Cost Proposal submission, payment of subcontractors, and all other areas of responsibility under the Contracts);
  2. The Responder is not in default to HABC on any debt or contract;
  3. No adverse information has been received that would bring the Responder's present responsibility or integrity into question;
  4. The Responder is not on any Federal or State maintained debarment suspension lists;
  5. Surveys of other agencies or companies doing business with the Responder results in no adverse information that would bring the Responder's present responsibility and technical capability into question;
  6. A review of the Responder's financial and technical resources indicates that it is capable of performing the Contract; and
  7. No State or local government agency has records of any outstanding code violations, improper business practices, or similar history of non-compliance with public policy.
- B. The Responder, if requested, must present within a reasonable time, as determined by the Contracting Officer, evidence satisfactory to the Contracting Officer of performance ability and possession of necessary facilities, financial and technical resources and adequate insurance and bonding capacity to comply with the terms of these specifications and Proposal Documents.

## SECTION 17: GOVERNING LAWS AND REGULATIONS ADMINISTERED BY OTHER ENTITIES

While all the applicable Federal and State of Maryland laws, rules and regulations are incorporated by reference in the Contract, the Responder shall take special note of the provisions of the Labor Law OSHA and Industrial Code 32, relative to the safety of workers and persons lawfully occupying or using the premises.

## SECTION 18: WAGES AND SALARIES

- A. The successful Responder will be required to comply strictly with all Federal, State and local labor laws and regulations, including but not limited to: payment of prevailing wage rates as determined by the job specific Wage Decision; and conformance to the conditions of employment with respect to certain categories and classifications of employees contained in said Wage Decisions.



- B. The rate of pay set forth in the "Wage Decisions" section of the Proposal Documents, are to be paid during the twelve (12) months immediately following Contract execution. Thereafter, the Contractor will be required to comply with the rates of pay set forth in revised Wage Decisions that will be issued in conjunction with issuance of the Economic Price Adjustment (at every twelve (12) month anniversary date from the Contract execution for as long as the Contract is in force). It is therefore the responsibility of Responders to familiarize themselves as to the local labor conditions such as the length of work day and work week, overtime compensation, health and welfare contributions, labor supply and prospective changes or adjustment of rates and give such information due consideration prior to submitting their proposal.

## SECTION 19: REFERENCED SPECIFICATIONS AND STANDARDS

Whenever standards or specifications of other agencies or departments, authorities, etc. are referred to, they shall be the version in effect at the time of receiving proposals unless the date is given.

## SECTION 20: INSURANCE

Responders are advised that the insurance requirements contained in Article 68 of the HABC Supplemental General Conditions of this RFP are regarded as a material condition of the Contract. During performance and up to the date of final acceptance of all Work under the Contract, the Contractor must procure and maintain with companies licensed to do business in the State of Maryland and approved by HABC, the types and amounts of insurance specified in the Contract.

## SECTION 21: LICENSES AND PERMITS

The successful Responder will be required to obtain, at its sole expense, all necessary licenses and permits necessary to perform the Work.

## SECTION 22: SUBCONTRACTOR APPROVAL

At the time a Job Order Cost Proposal for a specific Job Order is submitted to HABC and before executing any subcontract, the Contractor shall submit the name of any proposed Subcontractor for prior approval substantially in the form provided by HABC. All subcontractors must be approved by HABC prior to their commencement of Work.



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## SECTION 23: COMPUTER & COMMUNICATIONS EQUIPMENT REQUIREMENTS

- A. The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.
- B. HABC selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under the JOC Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by HABC.. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to each and all Job Orders issued to the Contractor under the terms the JOC Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors.

## SECTION 24: CONTRACTOR COMPETITION, SELECTION AND AWARD OF INDIVIDUAL JOB ORDERS

- C. Job Order Contracting: HABC may award an individual Job Order to any selected Contractor under HABC Supplemental General Conditions Article 16 Ordering Procedures. Selection of the Contractor and award of the Job Order will be in compliance with established HABC procedures and based on one or more of the following criteria:
  - 1. Rotational selection among all Contractors, unless otherwise determined by HABC.
  - 2. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
  - 3. Balancing of work load (Job Order pricing and construction backlog) among Contractors.
  - 4. Management of Job Order dollar volume within bonding limitations of the Contractor.
  - 5. Price, as it relates to HABC's independent cost estimate or to an offer from any other Contractor.
  - 6. Not-To-Exceed bids (NTE Bid) submitted by two or more Contractors through BIDSafe™.
  - 7. Contractor's responsiveness to the Authority on Job Orders.
  - 8. Other appropriate criteria as deemed in the best interest of HABC.
- D. BIDSafe: HABC may issue a Request For Proposal (RFP) to two or more Contractors for a Job Order. Selection of the Contractor and award of the Job Order will be in compliance with established HABC procedures.





## Instructions To Responders

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1. HABC reserves the right to utilize BIDSafe on a Job Order by Job Order basis.
2. HABC will consider several factors when determining the applicability of BIDSafe to a Job Order including, but not limited to, the following:
  - i. Estimated Job Order Amount;
  - ii. Scope Documentation, including but not limited to A/E design;
  - iii. Nature and complexity of the Work;
  - iv. Contractors' abilities to self-perform the Work;
  - v. Contractors' proven capabilities on similar Work;
  - vi. Schedule; and
  - vii. Other appropriate criteria as deemed in the best interest of HABC.
3. The Detailed Scope of Work (DSOW) will be developed by HABC personnel and included with the RFP.
4. HABC may conduct one or more site visits with all contractors designated to receive the RFP.
5. All contractors that receive the RFP will have the opportunity to submit requests for information. Should HABC choose to respond to any or all of the requests for information, the responses, and any changes to the RFP, will be provided in an addendum to all contractors designated to receive the RFP.
6. The Contractor will utilize the BIDSafe application in the eGordian software to provide an NTE Bid, along with any additional requested documentation, in response to the RFP.
7. HABC will issue an Intent to Award to the Contractor submitting the NTE Bid that provides the best value to HABC based on, but not limited to, price and any technical factors considered.
8. The Contractor that receives an Intent to Award will submit a Price Proposal to HABC. Provided that any necessary Price Proposal modifications are completed in a timely and thorough manner, the Job Order may be issued to the Contractor.
9. The Job Order Amount shall be equal to the lessor of the NTE Bid and the Price Proposal amount.
10. Where the NTE Bid is less than the Price Proposal, the difference between the NTE Bid and Price Proposal shall be deemed a discount offered by the Contractor. The discount amount shall be a percent-based discount that will be calculated by dividing the NTE Bid amount by the Price Proposal amount. The discount shall be applied to each item included in any Price Proposals for subsequent Job Orders (additions or deletions) required to complete the Work, but not defined in the original DSOW, that is also included in the original Price Proposal used to determine the discount.





11. If HABC exercises its right to award a Job Order utilizing BIDsafe, collaboration between Contractors is specifically prohibited. Contractor collaboration undermines competition, and evidence of such will be considered a material breach of this Contract and grounds for termination for cause.

### SECTION 25: Protest Procedures

- A. **Protest of Procurement Action:** The following protest procedures do not apply to a request for cost proposals or issuance of a Job Order or such related contracting activities by HABC subsequent to contract award hereunder.
  1. **Who May File:** Any actual or prospective Bidder/Responder to an HABC solicitation whose direct economic interest would be directly affected by the award of the base contract, may protest a solicitation or a base contract award only for alleged material violations of the principles of this Policy; HUD procurement regulations; and applicable Federal, State and local laws. Solicitation documents shall set forth HABC's protest rights.
  2. **Filing Deadline:** A protest against a solicitation must be received from the prospective Bidder/Responder before the due date for receipt of bids or proposals. A protest against the award of a base contract or cancellation of a solicitation must be received within ten (10) calendar days after notice of base contract award or notice of cancellation of a solicitation, or the protest will not be considered.
  3. **Filing Procedure:** All protests shall be in writing, submitted to the Contracting Officer.
  4. **Contracting Officer's Decision:** The Contracting Officer shall conduct an investigation as appropriate, and shall issue a written decision on the matter expeditiously after reviewing all relevant information. The Contracting Officer's decision shall inform the protester of any appeal rights within HABC. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented. The filing of a protest shall not prevent HABC from entering into a base contract with the successful Bidder/Responder.
- B. **Appeal Rights:**
  1. **Appeal to HABC Board:** The decision of the Contracting Officer in a protest may only be appealed to the HABC Board if the decision involves a protest of a solicitation or contract award in excess of \$500,000.
  2. **Deadline for Appeal:** All such appeals must be submitted to the HABC Board by the protester in writing within fourteen (14) calendar days from the date of the Contracting Officer's decision.
  3. **HABC Board's Consideration of Appeal:** The Board may consider a properly and timely filed appeal by public hearing, or by appointment of a hearing officer who shall hear the appeal, make findings of fact, and recommend a decision to the Board on the appeal.
  4. **Final Determination of the Board:** The Board shall have the sole authority to enter a final decision on the appeal, based on the recommendation of the hearing officer or based on a hearing of the Board. The decision of the Board shall be the final HABC consideration of the appeal. Notwithstanding any clause contained in any solicitation or base contract



## Instructions To Responders

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document, a protest or appeal shall not be referred to a mediator or arbitrator unless HABC expressly gives written consent to such mediation or arbitration at the time the protest or appeal arises. For purposes of this Policy, HUD shall not be considered a mediator or arbitrator.

### **SECTION 26: Interchangeable Language in HUD Documents**

Responder's attention is called to the fact that the terms "Bidder" and "Responder" the terms "Bidder's" and "Responder's" and the terms "Bid" and "Proposal", respectively, are used interchangeably in the HUD documents below:

General Conditions (HUD 5370)

Representations, Certifications and Other Statements of Bidders (HUD 5369-A)



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

## 2. Contractor's Responsibility for Work

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

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

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





- (b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, 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 ~~as 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

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

#### 26. Order of Provisions

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

#### 27. Payments

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

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

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

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

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

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

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

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

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

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





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

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

#### 28. Contract Modifications

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

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

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

#### 29. Changes

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





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

### 30. Suspension of Work

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

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

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

### 31. Disputes

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

### 32. Default

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





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

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

### 33. Liquidated Damages

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

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

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

### 34. Termination for Convenience

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

### 35. Assignment of Contract

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

### 36. Insurance

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





per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a ~~retroactive~~ 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 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





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

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

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



47. Non-Federal Prevailing Wage Rates

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

48. Procurement of Recovered Materials.

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



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### 1. DEFINITIONS

- A. ACCEPTANCE shall mean that construction on an individual Job Order is substantially completed in accordance with the Detailed Scope of Work, plans and specifications, as modified by any change order agreed to by the parties, so that the remaining work is such minor alterations and patching as the final inspection shall disclose. All warranties and guarantees for completed Work shall commence at Final Completion of the total project and not acceptance. The date of acceptance will be set by HABC.
- B. ADDENDUM or ADDENDA shall mean the additional Contract provisions issued in writing by the Contracting Officer prior to the receipt of proposals.
- C. ADJUSTMENT FACTORS are the Contractor's price adjustments to the unit prices as published in the Construction Task Catalog® included in their proposal. The Adjustment Factors are expressed as an increase or decrease from the published prices.

ADVERTISEMENT shall mean the publicly placed Request for Proposals inviting Responders to submit a proposal.
- D. AWARD shall mean the date formal action is taken by HABC for award of the Contract.
- E. CLAIM shall mean a right existing on behalf of any person, which might develop into a lien in favor of the claimant if such right existed against any person or entity other than a public body.
- F. COMPLETION (FINAL COMPLETION) shall mean that an individual Job Order issued under the Contract is fully executed and completed in accordance with the Detailed Scope of Work, plans and Specifications.
- G. Construction Task Catalog® shall mean the comprehensive listing of specific construction or construction related tasks together with a specific unit of measurement and a unit price.
- H. CONTRACT or PROPOSAL DOCUMENTS shall mean each of the various parts of the Contract referred to in Section 5 of the RFP Overview/Instructions to Responders hereof, both as a whole and severally.
- I. CONTRACT shall mean the agreement between the Contractor and HABC.,
- J. CONTRACTING OFFICER shall mean the person delegated the authority by HABC to enter into, administer, and/or terminate the 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 HABC in all dealings with the Contractor.
- K. CONTRACTOR shall mean the person, firm, or corporation authorized to do business in the State of Maryland with whom a Contract has been made directly or through accredited representatives that have entered into a Contract with HABC for the performance of the Work described by these documents. The term Responder may be used interchangeably with the term Contractor.
- L. DAYS shall mean calendar days.



- M. DETAILED SCOPE OF WORK, of the Contract shall be determined by individual Job Orders issued hereunder. The Detailed Scope of Work is the complete description of services to be provided by the Contractor under an individual Job Order. The Detailed Scope of Work will include sufficient documentation for a given project as determined by HABC. Documentation may include a narrative description of the Work, partial design documents or full design documents depending on the complexity of the specific project.
- N. EMERGENCY shall mean such situations as shall require immediate action preventing Contractor from contacting HABC prior to execution.
- O. EXECUTIVE DIRECTOR shall mean the Executive Director of the Housing Authority of Baltimore City or his/her designated representative.
- P. FINAL COMPLETION shall mean the last date on which all of the following events have occurred: HABC has determined that 100% of the Work has been completed in accordance with the Proposal Documents including satisfactory testing of all systems and equipment, delivery of all warranties, guarantees, O&M manuals, and certificates of occupancy (if any), final inspections have been completed, and all contractual requirements for final payment or voucher have been met.
- Q. HABC shall mean the Housing Authority of Baltimore City.
- R. HUD shall mean the United States Department of Housing and Urban Development.
- S. INITIAL CONTRACT TERM shall mean the period beginning on the date of Contract execution and ending either: (a) one (1) year from such date; or (b) when the Maximum Contract Term Value is expended, whichever occurs first. Each Contract shall have an Initial Contract Term and an option at the sole discretion of the Authority for four (4) additional Optional Contract Terms.
- T. INSPECTOR shall mean any authorized representative of HABC assigned to monitor the progress of the Work.
- U. JOB ORDER shall mean the obligation document under a Job Order Contract. Each individual project to be accomplished under the Contract will be through the issuance of a Job Order. HABC will be responsible for the development of the Job Order as well as the supervision and acceptance of the Work contained within the Job Order. HABC will review the Contractor's Job Order Cost Proposal and if acceptable, shall sign and issue a Job Order for the Work described in the related Detailed Scope of Work. Each Job Order will include a Detailed Scope of Work, a firm fixed price Job Order Cost Proposal from the Contractor, time duration for the completion of the Work and any special conditions that might apply to that specific Job Order, such as Liquidated Damages.
- V. JOB ORDER CONTRACT shall mean a competitively awarded, firm fixed price, indefinite quantity contract for accomplishing construction and construction related services. Work is accomplished through the issuance of individual Job Orders under the Contract. Each Job Order issued under the JOC will be a firm fixed priced order for accomplishing a specific task construction task or project.
- W. JOB ORDER COST PROPOSAL or COST PROPOSAL shall mean the Contractor prepared documents quoting a firm fixed price and schedule for the completion of a specific Detailed



Scope of Work as requested by HABC. The Cost Proposal might also contain approved drawings, permits or other such documentation as HABC might require for a specific Job Order.

- X. JOC COORDINATOR shall mean the person designated by the Deputy Chief, Division of Engineering, Energy and Capital Improvements to serve as the overall JOC program manager for HABC. The JOC Coordinator shall serve as the Contracting Officer's representative with respect to the day-to-day operation of the JOC program at HABC.
- Y. JOINT SCOPE or JOINT SCOPING shall mean the joint activity that takes place at the Site with the Project Manager, or his/her designee, and the Contractor wherein a proposed Job is discussed and examined, and the framework of the Detailed Scope of Work is developed.
- Z. MAXIMUM CONTRACT TERM VALUE shall mean the maximum dollar value of Work that can be ordered under the Contract during any Contract Term.
- AA. MAXIMUM TOTAL CONTRACT VALUE shall mean the maximum dollar value of Work that can be ordered under the Contract during the entire duration of the Contract.
- BB. MEANS AND METHODS OF CONSTRUCTION shall mean the labor, materials in temporary structures, tools, plant, and, construction equipment, and the manner and time of their use, necessary to accomplish the result intended by a Job Order.
- CC. NON-PREPRICED TASKS shall refer to those units of Work that are not included in the Construction Task Catalog<sup>®</sup> but within the general scope and intent of the Contract and may be negotiated into Cost Proposals as needs arise. Such Work requirements shall be incorporated into and made a part of the Contract for the Job Order to which they pertain, and may be incorporated into the Construction Task Catalog<sup>®</sup>, if determined appropriate by HABC, at the base price determined in this provision. Non-Prepriced Work requirements shall be separately identified and submitted in the Job Order Cost Proposal.
- DD. OTHER CONTRACTORS shall mean any person, firm, or corporation with whom HABC has a Contract for the performance of any work which is not a portion of work covered under the Contract.
- EE. OPTIONAL CONTRACT TERM shall mean the period beginning on the date HABC exercises its option for such additional term and ending either: (a) one (1) year from such date; or (b) when the Maximum Contract Term Value is expended, whichever occurs first.
- FF. PLANS shall mean Detailed Scopes of Work, task descriptions in Construction Task Catalog<sup>®</sup>, drawings, specifications and other pertinent information.
- GG. PREPRICED TASK shall mean a task included within the Construction Task Catalog<sup>®</sup> for which a Unit Price has been established.
- HH. PROJECT used interchangeably with JOB shall mean collectively the improvements to be constructed by the Contractor in satisfaction of a requirement or group of related requirements pursuant to one or more Job Orders.
- II. PROJECT ARCHITECT/ENGINEER shall mean the individual/firm designated by HABC for the preparation of plans and specifications for a specific Job Order.



- JJ. PROJECT MANAGER shall mean the individual designated by HABC as being responsible for preparation and verification of individual Job Order Orders as well as the supervision and acceptance of all Work of that specific Job Order. The terms Engineer or Architect may be used interchangeably with the term Project Manager.
- KK. PROPOSAL DOCUMENTS shall mean the documents defined as such in the Instructions to Responders.
- LL. PUNCH LIST shall mean a compilation of items which have not been completed in accordance with an individual Job Order.
- MM. RESPONDER shall refer to any individual, firm or corporation submitting a proposal for the Work contemplated, acting directly or through a duly authorized representative.
- NN. REQUEST FOR COST PROPOSAL (RFCP) shall mean the document issued by HABC that formally requests the Contractor to prepare a Job Order Cost Proposal for a Detailed Scope of Work.
- OO. SAMPLES shall mean the physical examples submitted by the Contractor of materials, equipment or workmanship to establish a standard that the Contractor is required to meet.
- PP. SHOP DRAWINGS shall mean drawings, diagrams, illustrations, schedules, test data, calculations, performance charts, cuts, brochures, and other data which are prepared by the Contractor and which illustrate a portion of the Work.
- QQ. SITE shall mean the area upon or in which the Contractor's operations are carried on, and such other areas adjacent thereto as may be designated as such by the Engineer.
- RR. SPECIFICATIONS shall mean all of the definitions, instructions, descriptions, directions, requirements, provisions and standards (and all written supplements thereto) pertaining to the methods, (or manner) of performing and actual performance of the Work, or quantities and quality (as shown by test records) of accepted materials to be furnished under the Contract, as hereinafter detailed and designated in the Proposal Documents along with any agreements made (or to be made).
- SS. STATE shall mean the State of Maryland.
- TT. SUBCONTRACTOR shall mean a person other than a material supplier or laborer who enters into a Contract with a Contractor for the performance of any part of the Contractor's Contract.
- UU. SUPERINTENDENT shall mean the executive representative of the Contractor who is present on the work site at all times during progress, authorized to receive and fulfill instructions from and communicate with HABC, and capable of superintending the Work efficiently. The Superintendent shall not actually perform the physical tasks involved unless otherwise waived in writing by HABC.
- VV. SURETY shall mean the firm, corporation, or individual which is bound by the Performance, Payment, and Guaranty Bond with and for the Contractor, and which engages to be responsible for the Contractor's acceptable performance, payment and guaranty of the Work and for payment of all debts pertaining thereto and is licensed to do business in the State of Maryland.



- WW. TOTAL CONTRACT TERM (duration) including all Optional Contract Terms shall not exceed five (5) years.
- XX. UNIT PRICE shall mean the price published in the Construction Task Catalog® for a specific construction or construction related task. The unit prices are fixed for the duration of the Contract. Each unit price is comprised of the Labor, Equipment and Materials costs to accomplish that specific task.
- YY. WAGE DECISION shall mean the Davis Bacon wage determination established by the Authority to be applicable to each Job Order and in which minimum wage rates that must be paid to construction personnel within specific trade categories are specified.
- ZZ. WORK shall mean all labor material and equipment necessary to produce the construction as required by the Detailed Scope of Work for an individual Job Order. The word "provide" when used in this specification shall mean furnish all labor, materials, equipment, transportation, and services required for the completion of the Job Order

## **2. Contract Performance Period**

- A. This is a Contract for the repair or construction of items specified in individual Job Orders, with an Initial Contract Term beginning when the Contract is executed and ending one (1) year thereafter or when the Maximum Contract Term Value has been expended, whichever occurs first. Provided, however, that the Contractor's duty to complete to the satisfaction of HABC, any and all Job Orders in progress, shall survive the expiration of the Initial Contract Term and any exercised Optional Contract Terms.
- B. Performance time for each Job Order issued under the Contract will be negotiated in accordance with the Articles entitled "Ordering Procedures" and "Schedule for Job Orders" in the HABC Supplemental Conditions.
- C. HABC is entitled to and expects full Contract performance from the Contract award date. Contractor should commence any mobilization activities as soon as practical after award of an individual Job Order.
- D. Time is of the essence at all times and in all places where this document refers to a period of time during which something is to be done.

## **3. HABC's Option to Unilaterally Extend for Optional Contract Terms**

The Contract contains an Option to Extend Provision, for four (4) additional Optional Contract Terms. HABC has the unilateral option to extend the Contract for additional Optional Contract Terms as follows:

- A. The Contracting Officer, if he/she elects, shall issue the Contractor a preliminary written notice of HABC's exercise of its option for an additional Optional Contract Term before the Initial Contract Term or the current Optional Contract Term (as applicable) expires.
- B. The total duration of the Contract, including the exercising of all Optional Contract Terms, shall not exceed five (5) years.



### 4. HABC's Option to Carry Over Unused Contract Term Value

If during any Contract Term (Initial or Optional), HABC does not utilize the Maximum Contract Term Value, the Contract will still terminate, unless an Optional Contract Term is exercised. If there is unused Contract Term Value remaining on any Contract Term (Initial or Optional) and HABC elects to exercise an Optional Contract term, HABC, at its sole discretion may carry over the unused portion of the Maximum Contract Term Value for any previous Contract Terms into the next Optional Contract Term.

### 5. Economic Price Adjustment

A. The Adjustment Factors may be updated on each anniversary of the execution date of the Contract to account for changes in construction costs, provided, the Contractor requests in writing, approximately fourteen to thirty days prior to such anniversary, that the Adjustment Factors be updated. The request shall be delivered to HABC and to Gordian. In the event the Contractor fails to deliver the request timely, then HABC shall determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty days after the written request to update the Adjustment Factors is received by HABC.. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:

- 1) A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for City of Baltimore published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the bid due date (e.g. February bid due date, Base Year Index is February of the prior year to January of the bid due date year).
- 2) A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the City of Baltimore published in the Engineering News Record (ENR) for the 12 months beginning with the month of anniversary of the bid due date (e.g. February bid due date, Current Year Index is February of the prior year to January of the current year).
- 3) The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
- 4) The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next 12 months.
- 5) Averages shall be obtained by summing the 12-month indices and dividing by 12.
- 6) All calculations shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
- 7) The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
- 8) The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 9) ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment





## **HABC Supplemental General Conditions**

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calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.

- B. If the Contractor submits a Price Proposal with outdated Adjustment Factors, then the Contractor waives its right to resubmit the Price Proposal using updated Adjustment Factors.
- C. The Contractor cannot delay submitting a Job Order Proposal to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.

### **6. Failure To Provide Payment and Performance Bonds**

- A. Failure of the Contractor to file with HABC acceptable performance and payment bonds and insurance and other documents as may be required within ten (10) calendar days from the date of Contract award shall be considered just cause for HABC to annul and void the award and declare forfeiture of any Proposal Security/Guarantee in liquidation of all damages sustained.
- B. Award may then be made by HABC to another Responder as determined by and in the best interest of HABC, or the Contract may be re-advertised or may be constructed by other means, as HABC may decide.

### **7. Subcontractors**

#### **A. Execution of Subcontracts**

- (1) The Contractor shall provide, with each Job Order Cost Proposal, a list of proposed subcontractors, type of work, MBE certification, and proposed value of work. This list shall be provided on a form provided by HABC.
- (2) The Contractor shall not commit to or finalize subcontracts with any subcontractor until receipt of a written Job Order award from HABC.. No subcontractor shall be used that is excluded from Federal, State or City of Baltimore procurement programs or those who have been debarred or otherwise excluded from the HABC procurement system.
- (3) Prior to award of a Job Order, if there are any changes in the list of subcontractors, HABC must be notified.
- (3) Upon award of a Job Order, the Contractor shall immediately enter into each subcontract at no less than the amount listed on the list of subcontractors, and thereafter shall neither terminate any such subcontract nor reduce the scope of the work to be performed by, or decrease the price to be paid to the subcontractor thereunder without prior notification to HABC.

#### **B. Procedure for Changing Listed Subcontractors**

A listed subcontractor may be changed only subsequent to notification to HABC. The notification of change shall state reasons for the change with a release from the listed subcontractor attached thereto.

### **8. Notification to HABC Of Subcontractor Utilization**





- A. The Contractor shall submit, with each Job Order Cost Proposal, the names of the subcontractors the Contractor proposes to utilize for the performance of all subdivisions of work together with the division of work, M/WBE status, if applicable, and the dollar value of each subcontract.
- B. The Contractor shall submit with each Job Order Cost Proposal the names of the resident employees that the Contractor proposes to utilize for the performance of all subdivisions of work and the estimated amount of compensation that will be paid to said residents.
- C. Contractors will be required to submit to HABC, on a Job Order by Job Order basis, a report indicating the actual M/WBE participation.

### 9. Termination for Cause

Should the Contractor fail, refuse or neglect to prosecute the Work properly and diligently, or in substantial accord and compliance with the schedule or schedules agreed upon and filed with HABC, or, if the Contractor shall fail or refuse to perform any requirement or provision of the Contract specified to be performed by the Contractor, or, if the Contractor shall fail or neglect to develop Job Order Cost Proposals properly and diligently in substantial accord and compliance with the Request for Proposal issued by HABC, or if the Contractor consistently fails to reach agreement with HABC on a specific project, or shall perform the Work in an unsatisfactory manner, or shall neglect or refuse to remove materials or perform anew such Work as shall be rejected as defective or unsuitable, or shall discontinue the prosecution of the Work, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, the Contracting Officer shall give notice, in writing, to the Contractor and his/her surety of such failure, delay, neglect, refusal, or default, specifying the same, and if the Contractor, within a period of ten (10) days after such notice, shall not proceed in accordance therewith then the Contracting Officer, acting for and on behalf of HABC shall, upon receipt of a written certificate of the fact of such failure, delay, neglect, refusal, or default, and of the failure of the Contractor to comply with such notice, have full power and authority to declare the forfeiture of the Contract, and to forfeit the rights of the Contractor in the Contract, and the Contracting Officer at his/her option may call upon the surety to complete the Work in accordance with the terms of the Contract or may have HABC take over the Work, including any or all materials and equipment on the ground as may be suitable and acceptable to HABC and may complete the Work by or on its own force account, or may enter into another contract for the completion of the Work, by or on its own force account, or may enter into a new contract for the completion of the Work or may use such other methods as in the opinion of HABC shall be required for the completion of the Work in an acceptable manner. All costs and charges incurred by HABC, together with the cost of completing the Work, shall be deducted from any moneys due or which may, become due on the Contract. In case the expense so incurred by HABC shall exceed the sum which would have been payable under the Contract, the Contractor and the surety shall be liable and shall pay to HABC the amount of such excess.

### 10. Performance and Payment Bonds

- A. GUARANTY OF FAITHFUL PERFORMANCE, PAYMENT, WORKMANSHIP AND MATERIALS AND SUCCESSFUL OPERATION - Performance and Payment Bonds meeting the standards specified herein, on the forms provided by HABC, in the amounts listed below will be required of the Contractor before any Work is commenced to guaranty



## HABC Supplemental General Conditions

that the Contractor will deliver a completed Job Orders under the Contract as may be awarded in strict compliance with the Proposal Documents, and will pay promptly all persons supplying the Contractor with labor or materials for the Work, and guaranty all labor and materials against defects for a period of one year after completion of the Contract unless otherwise stated.

Contract Number	Trade	Performance Bond Amount	Payment Bond Amount
EJ46-HAE3036	General	\$500,000	\$500,000
EJ46-HAE3037	General	\$500,000	\$500,000
EJ46-HAE3038	Mechanical	\$500,000	\$500,000
EJ46-HAE3039	Electrical	\$500,000	\$500,000

B. SURETY BOND SPECIFICATIONS - (applies to Proposal Bond, Performance and Payment Bonds). All bonds shall be written through a reputable and responsible surety bond agency licensed to do business in the State of Maryland and approved by the U.S Department of Treasury.

- (1) LIMITATIONS - Bonding limits or bonding capacity refers to the limit or amount of bonds acceptable on any one risk.
  - (a) The bonding limit of the Surety/Sureties shall not exceed ten percent (10%) of the policyholders' surplus (capital and surplus) as listed by the aforementioned Best's Key Rating Guide, on any one risk - penalty or amount of any one bond.
  - (b) Any risk or portion of any risk which shall have been reinsured (in which case these minimum requirements in paragraph (1) also apply to the reinsuring carrier) and then, assuming the reinsurer is licensed to do business in the State of Maryland and is acceptable to HABC, shall be deducted in determining the limitation of risk prescribed in this section Evidence of the reinsurance must be attached to the Surety Bond.

- (2) CO-SURETY - When two or more companies execute one bond.

When a Surety Bond Company meets the qualifications as to policyholder and financial ratings, but does not have a bonding limit or capacity equal to or greater than the penalty of the bond being executed, it may submit and be joined by one or more qualified surety bond companies. In such case of co-surety, the combined capital and surplus of all the companies shall be equal to or greater than ten (10) times (1000%) the penalty or amount of the bond.

- (3) ADDITIONAL BOND

It is further mutually agreed between the parties hereto that if, at any time after Performance and Payment Bonds have been delivered, HABC deems the surety or sureties upon the bond to be unsatisfactory, or if, for any reason, such bond amounts cease to be adequate to cover the dollar value of Job Orders issued and/or uncompleted Work, the Contractor shall at his/her expense, within five (5) days after



the receipt of notice from HABC, furnish an additional bond or bonds in such form, amount, and with such surety or sureties as shall be satisfactory to HABC. In such event, no further payments to the Contractor shall be deemed to be due, or new Job Orders issued under the Contract until such new or additional security for the faithful performance of the Work is furnished by the Contractor in manner and form satisfactory to HABC.

- (4) COMPLIANCE – HABC has the right to reject the proposal or annul the award in the event of any of the requirements outlined herein are not complied with.

### 11. Hours of Work

The Contractor shall normally accomplish the Work required by Job Orders issued hereunder during the working period of 8:30 A.M. to 4:30 P.M., Monday through Friday, HABC holidays excluded. For this purpose HABC holidays are: Columbus Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Good Friday, Memorial Day, Independence Day, Presidential Election Day, Veterans Day, and Labor Day. The Contractor will not normally be permitted to work on such HABC holidays. Work required other than during the aforementioned working period will be at HABC direction and/or and require HABC approval prior to commencement of Work activities.

### 12. General Requirements

HABC is responsible for all HABC-owned real property and infrastructure. As the responsible agent, HABC controls all Work performed upon real property and infrastructure.

A. Management:

Contractor shall provide the construction management required to perform the Work and meet all requirements.

B. Contractor Inspections:

Contractor shall inspect all facilities repaired or constructed under the Contract. Contractor shall inspect to assure that all required Work is accomplished as specified. Contractor shall prepare and maintain inspection files, which shall reflect past and current inspection dates, results of all inspections made, corrections required, and corrections made.

C. Work Control:

All Work will be controlled and monitored by HABC. All Work shall be documented by use of an appropriate authorization form.

D. Indefinite Work:

Contractor shall receive requests for Job Order Cost Proposals for firm-fixed-prices for Work requirements within the scope of the Contract. Contractor shall respond to such requests within three working days unless additional time is granted, in writing, by HABC.

E. Procedures:



Following the Joint Scope of a specific project, HABC will issue individual project Request for Cost Proposals (RFCP) to the Contractor. These RFCPs will describe the Work to be done and other pertinent information with regard to scheduling and other project information. The Contractor shall prepare a detailed proposal based on the RFCP. This proposal shall contain detailed costs, schedule, list of proposed subcontractors and any other supporting documents requested in the RFCP. The Contractor shall be held responsible for performing all Work as stated in the RFCP. It is the Contractor's responsibility to include the necessary items in his/her Job Order Cost Proposal. The cost data shall be separated as between Prepriced Tasks and Non-Prepriced Tasks. HABC will review the Contractor's proposal and if acceptable, may issue a Job Order to the Contractor.

HABC makes no commitment as to the award of individual Job Orders. All costs associated with preparing proposals shall be the responsibility of the Contractor.

- F. In addition to the unit requirements in the Construction Task Catalog<sup>®</sup> Volume II, and the Job Order Contract Technical Specifications Volume III, HABC may, from time to time, require work units not contained in these documents, but within the general Detailed Scope of Work of these documents. The parties will negotiate these requirements in accordance with the ordering clause contained in the Contract. These Non-Prepriced Task requirements will be incorporated in individual Job Orders and the Contractor shall accomplish those requirements with the same diligence as Prepriced Tasks contained the Contract within the Construction Task Catalog<sup>®</sup> and Technical Specifications.
- G. Quality Control Program:
- (1) The Contractor shall perform the quality control program approved by HABC and shall insure that all Work and requirements of the Contract are met as specified.
  - (2) The Contractor shall submit a written quality control plan and notify HABC, in writing, of any proposed change to the program. No change shall be implemented prior to review and acceptance by HABC. Once the Contractor's Quality Control Plan has been accepted by HABC, it shall become part of the Contract. Deviation from the Quality Control Plan without the expressed written approval of HABC shall place the Contractor in default of the Contract.
  - (3) The Contractor is required to maintain quality control over supplies, manufacturers, products, services, site conditions, and workmanship, to produce Work of specified quality. In addition the Contractor shall:
    - a. Designate an individual primarily responsible for ensuring quality.
    - b. Comply with industry standards except where more restrictive tolerances or specified requirements indicate more rigid standards or more precise workmanship.
    - c. Notify HABC of substantial completion.
    - d. Participate in HABC inspections and verifications as required. Perform and validate corrective actions resulting from identified deficiencies.
  - (4) The Contractor shall deliver two (2) copies of its quality control plan to HABC not later than 30 days from date of Contract award.
- H. Performance Evaluation Meetings:



The Contractor shall meet with HABC representatives as requested during Contract performance. Mutual effort will be made to resolve any problems identified. The Contractor shall prepare written minutes of these meetings. The minutes shall be signed by the designated HABC representative and the Contractor. Should HABC not concur with any minutes, HABC shall so state in writing and the differences will either be corrected to reflect mutual agreement, or if an agreement cannot be reached, HABC's statement will be filed with the minutes of the meeting.

I. Standards:

Contractor shall meet the standards set forth by the Technical Specifications, Volume III, and all other applicable regulations, codes, directives, equipment specifications, and manufacturer's instructions and recommendations inclusive of equipment or vehicles, supplies, parts, or materials utilized to provide the required Work.

J. Electrical Equipment:

All Contractor equipment utilizing HABC electrical sources must meet UL standards and be compatible with existing circuits. Contractor shall prevent operation, or attempted operation, of equipment, which requires electrical power exceeding the capacity of existing circuits.

K. Material Storage:

All materials stored at work sites shall be stored in a manner that precludes any safety or health risk to the public. Hazardous materials or waste as defined by Federal Standard 313A shall be handled in accordance with Environmental Protection Agency, Federal Regulations, State Department of Health, all applicable laws and regulations of the City of Baltimore, and the Maryland Department of Transportation procedures.

Materials requiring storage owned by HABC and to be utilized by the Contractor shall be stored in HABC approved bonded warehouses.

L. Recoverable Resources:

Recovery items such as metal scrap, scrap lumber, crating materials, empty barrels, boxes, textiles and bags, waste paper, cartons, and similar materials that retain useful, recycling, salvage, or saleable value shall become the property of the Contractor.

### 13. Construction Requirements

The Contractor shall:

- A. Acquire materials and use them to create the desired finished products.
- B. Determine all materials required for each Job Order from plans, specifications, statements of Work, instructions, etc.
- C. Consult with all interested parties at preconstruction and other conferences, necessary to resolve problems, disseminate information, etc.





- D. Maintain close coordination with HABC on matters relating to Work in progress. Perform all laboratory and field tests, as directed by HABC's representative, to demonstrate compliance with construction specifications.
- E. Perform preliminary walk-through inspections with user and inspectors to identify punch list items and discrepancies prior to final inspection. Walk-through inspections may be waived by HABC.
- F. At the final inspection, be prepared to answer any questions on operations and use of the facilities or equipment.

### 14. Not Used (Intentionally Deleted)

### 15. Design/Engineering Services

The Detailed Scope of Work required under the Contract may, on occasion, involve the need for ancillary design/engineering services in the provision of drawings, sketches, calculations, working documents, shop drawings, and "as built" drawings as permitted by State and Local law.

Ancillary design/engineering services may include single line drawings, layout sketches, elevation drawings (i.e. cabinetry), HVAC equipment or structural calculations, sample boards, shop drawings, "as built" drawings, etc. as required to supplement the DSOW or obtain permits. It is not the intent for ancillary design/engineering services requirement to be construed as requiring full scale A/E produced construction documents. HABC recommends responders include, in their overhead recovery component of their Adjustment Factor, 1% of the Maximum Contract Term Value for each Contract Term. If HABC determines that the Detailed Scope of Work on a project requires the Contractor to provide design or engineering beyond ancillary services the Contractor shall be entitled to submit a line item in the Cost Proposal for the cost the services. This cost shall be presented at HABC's discretion as either an hourly labor line item or a Non-prepriced task.

The Contractor shall:

- A. Ensure that any drawings, sketches, calculations, working documents, shop drawings, and "as-builts" drawings meet all of the requirements of the **Americans with Disabilities Act, Uniform Federal Accessibility Standards (UFAS) and all other applicable Federal, State and Local regulations, codes, and directives.**
- B. Ensure that all technical services conform strictly to the guidelines and criteria outlined in contract specifications. In case of uncertainty of detail or procedure, the Contractor should request additional instruction from HABC. The Contractor is responsible for producing competent, properly coordinated, and thoroughly checked drawings, sketches, calculations, working documents, shop drawings, and "as built" drawings.
- C. Visit all sites of proposed Work, making the measurements necessary to delineate the extent, character, and type of Work required at the project sites.
- D. The Contractor shall bear all costs for such development of said design/engineering documents for ancillary services.



**16. Ordering Procedures**

- A. Joint Scope Invitation- As the need exists for performance under the terms of the Contract, HABC will notify the Contractor of an existing requirement via an Invitation to attend and participate in a Joint Scope Meeting specifying the day, time, and location of the Joint Scope Meeting; and provide a brief preliminary scope of Work and communicate whether the selection and award will be on a competitive or non-competitive basis (See Article 24 found in the /Instructions To Responders).
- B. Contractor Participation Response- Upon receipt of this Joint Scope Invitation, the Contractor shall respond to HABC within two working days by establishing verbal contact with HABC to communicate its intention of participation or non-participation in the in Ordering Procedure process.
- C. Joint Scope Meeting- The Contractor(s) shall visit the proposed work site in the company of HABC's project manager and participate in a Joint Scope Meeting which will include discussion and establishment of the following:
  - (1) project number and title
  - (2) general scope of the Work
  - (3) methods and alternatives for accomplishing the Work
  - (4) access to the site and protocol for admission/access
  - (5) existing site conditions
  - (6) hours of operation
  - (7) staging area
  - (8) requirements for catalog cuts, technical data, samples and shop drawings
  - (9) tentative construction schedule
  - (10) utility services and shutoffs
  - (11) liquidated damages
  - (12) specific quality requirements for equipment and material
  - (13) the presence of hazardous materials
  - (14) safety issues/procedures
  - (15) resident issues/ coordination with Development Manager
  - (16) date Cost Proposals due and special breakdown (i.e. wbs, category).
- D. Detailed Scope of Work (DSOW)- Upon completion of the Joint Scope process, HABC's project manager shall draft a Detailed Scope of Work together with any sketches, drawings, photographs, and Specifications required to adequately document the Work to be accomplished and forwarded to the Contractor (if ancillary design/engineering services are required from the Contractor some of the DSOW development activities/documents may be delegated to the Contractor). The Contractor will review the Detailed Scope of Work and may request/suggest changes or modifications. Subsequent to receiving the Contractor's input, HABC's project managers shall issue a final Detailed Scope of Work in conjunction with a Request for Cost Proposal (RFCP). That Detailed Scope of Work, unless



later modified by the project manager, will be the basis on which the Contractor develops its Cost Proposal and the project manager evaluates the Contractor's Cost Proposal.

- E. Request for Cost Proposal (RFCP)- The RFCP will require the Contractor to prepare a Cost Proposal for Work directly tied to a specific (and referenced) DSOW. At a minimum, the RFCP shall include:
- (1) RFCP Due Date
  - (2) Additional or Special Instructions
  - (3) Wage Determination that shall apply to the Job Order
  - (4) A statement of whether Liquidated Damages applies or not
  - (5) If the Job Order selection and award will be on a competitive basis, the performance schedule will be established for all contractors within the RFP.

- F. For Job Orders where the two or more Contractors receive a Request for Cost Proposal (RFCP), HABC may request a lump sum price prior to the submission of the Cost Proposal. This lump sum price will be used to determine the Contractor HABC will have prepare a Cost Proposal and will represent the maximum price of the selected Contractor's Cost Proposal.

If the Contractor's Cost Proposal is higher than the lump sum amount submitted, the difference shall be deducted as a discount as per F (3) of this section. If the Cost Proposal is less than the lump sum amount then the Cost Proposal amount shall be used.

If the lump sum price requires any additional bonding the Contractor shall include proof of increased bonding capacity from a surety.

- G. The Contractor will prepare its Cost Proposal in accordance with the following:
- (1) Prepriced Tasks: For Prepriced Tasks the Contractor shall identify the task and quantities required from the Construction Task Catalog® necessary to complete the DSOW. The Contractor will apply the appropriate Adjustment Factor to each Prepriced Task, based on the wage determination issued in the RFCP from HABC. The Contractor's Cost Proposal shall include support documentation justifying that the line items from the Construction Task Catalog® utilized are reasonable for applicable DSOW to be performed. Documentation to be submitted with the Cost Proposal shall include, but not be limited to, drawings, calculations, catalog cuts, samples and specifications.
  - (2) Non-Prepriced Tasks not included in the Construction Task Catalog® but required to complete the applicable DSOW and within the general scope and intent of the Contract may be negotiated into the Contract as needs arise. Such work requirements shall be incorporated into and made a part of the Contract for the Job Order to which they pertain, and may be incorporated into the Construction Task Catalog® if determined appropriate by HABC at the base price determined in this provision. Non-Prepriced Tasks shall be separately identified and submitted in the Contractor's Cost Proposal. Information submitted in support of Non-Prepriced Tasks shall include, but not be limited to, the following:
    - (a) Complete specifications and technical data, support drawings, cost data, quality, and control and inspection requirements;



- (b) Cost data, submitted in support of Non-Prepriced Tasks shall include a cost analysis report, establishing the basis for selecting the approach proposed for accomplishment of the Work. Unless otherwise directed by HABC, cost data will be submitted demonstrating that the Contractor sought and received at least two (2) written quotes. If two quotes cannot be obtained, the Contractor shall provide HABC with a written explanation. If the explanation is accepted by HABC, the Contractor may provide less than two quotes. The Contractor shall provide an installed unit price (or demolition price, if appropriate), which shall include all costs required to accomplish the Non-Prepriced Task;
  - (c) The final price submitted for Non-Prepriced Tasks shall be in accordance with the following formula:
    - A** = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity
    - B** = Lowest of three independent quotes for all materials
    - C** = The hourly, weekly, or monthly rate for each piece of equipment not in the Construction Task Catalog® multiplied by the quantity
    - D** = Lowest of three subcontractor quotes
    - E** = Allowable Overhead and Profit =  $(A + B + C) \times 15\%$
    - F** = Subcontractor Allowance =  $D \times 10\%$
    - Total Cost of Non-Prepriced Task** =  $A + B + C + D + E + F$
  - (d) Following approval by HABC, a Non-Prepriced Task and corresponding unit price, will be entered into the computer database (JOC management software);
  - (e) The total extended price for a Non-Prepriced Task will be determined by multiplying the unit price by the quantity required. The price contained in the Cost Proposal will be determined by multiplying the total extended price by an Adjustment Factor of 1.0000; and
  - (f) After the cost for a Non-Prepriced Task has been approved, HABC may determine that such cost shall be fixed for all future Price Proposals and will not require subcontractor quotes for price determination. HABC reserves the right to request the Contractor provide current quotes for any Non-Prepriced Task approved previously.
- (3) The JOC Contractor may, on occasion, want to offer HABC a discount on a Cost Proposal due to: (1) a very large projects offering economy of scale savings, some of which can be passed on to HABC, (2) Construction Task Catalog® pricing that is higher than the market costs, (3) the contractor can obtain better than expected subcontractor or material pricing, (4) competition for an individual Job Order among JOC contractors, and (5) other unique or special circumstances. All line items applicable to a Detailed Scope of Work are to be included by the JOC contractor in his/her Cost Proposal with Adjustment Factors applied to Prepriced Tasks that are incorporated into their contract, then utilization of construction task 01205 1001 JOC Contractor Discount can be used to discount the total of the Cost Proposal. The amount of the discount offered will be derived by using the pre-established price of this Prepriced Task (i.e. -100.00) multiplied by the quantity necessary to arrive at the



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total desired discount multiplied by an Adjustment Factor of 1.0000. (e.g. the contractor wants to offer HABC a \$10,500 discount = -100.00 JOC Contractor Discount (Construction Task Catalog® task 01205 1001) x a quantity of 105 x an Adjustment Factor of 1.0000).

- (4) The Contractor's Cost Proposal shall be submitted by the date indicated on the RFCP. All incomplete Cost Proposals shall be rejected. The time allowed for preparation of the Contractor's Cost Proposal will depend on the complexity and urgency of the Job Order but should average between ten (10) and fourteen (14) days. On complex Job Orders, such as Job Orders requiring extensive approvals and permits, or requiring ancillary design/engineering services, allowances will be made to provide adequate time for preparation and submittal of the necessary documents and the Cost Proposal and so reflected in the Cost Proposal due date contained on the RFCP. In emergency work situations and minor maintenance and repair Job Orders requiring immediate completion, the Contractor's proposal may be required quickly and the due date will be so indicated on the RFCP.
- (5) The Contractor's Cost Proposal shall be initially submitted electronically, and subsequent to review and approval, the final Cost Proposal shall be submitted electronically and in paper format with original signatures. A complete Job Order Cost Proposal package shall include:
  - (a) Job Order Cost Proposal, in the format requested
  - (b) Subcontractors participation Info, including all required MWBE Information
  - (c) All required Section 3 information
  - (d) Proposed construction/progress schedule
  - (e) All supporting technical data requested (i.e. cut sheets, samples, etc.)
  - (f) Proof of bonding capacity from surety

### H. Review of the Contractors Cost Proposal and Issuance of a Job Order

- (1) HABC will evaluate the entire Cost Proposal and proposed tasks contained therein by comparison to the Detailed Scope of Work and any Independent Cost Estimate HABC may have prepared to determine the reasonableness of content, including the description, technical characteristics quantity of tasks proposed, and the means and methods of construction utilized.
- (2) HABC may request, and the Contractor shall be required, to participate in a Cost Proposal review meeting. Any changes to the Cost Proposal package mutually agreed to by both parties resulting from HABC's Cost Proposal review shall be made by the Contractor in a timely manner (typically within three (3) days) and resubmitted to HABC for final review and approval.
- (3) Each Job Order issued to the Contractor shall reference the Detailed Scope of Work; set forth the fixed price to be paid (Job Order Amount); establish a Job Order completion time; and shall cite the funds allotted for payment of the Job Order. All clauses of the Contract shall be applicable to any Job Orders issued under this clause. Job Orders will be accomplished on an appropriate form which the Contractor shall sign a copy of evidencing acceptance of the order.
- (4) By submitting a signed Cost Proposal to the Authority, the Contractor agrees to accomplish the Work outlined in the RFCP for that particular Job Order. It is the





Contractor's responsibility to include the necessary scope items in the proposal prior to delivering it to HABC.

- (5) HABC reserves the right to reject a Contractor's Cost Proposal based on unjustifiable quantities, performance periods, inadequate documentation/support, non-compliance with MWBE or Section 3 participation, or any other reasons. HABC reserves the right not to award a Job Order if HABC's requirement is no longer valid or the Contractor's Cost Proposal exceeds HABC's estimate or budget. In these instances, the Contractor has no right of claim to recoup joint scoping or proposal development expenses. Where agreement was not reached with the Contractor, HABC reserves the right to pursue accomplishing the Work by other all other means available, including use of another JOC Contractor.
- (6) HABC may select and award an individual Job Order based on a competition between two or more JOC Contractors. The selection and award of an individual Job Order may be based on the Contractor's cost proposal dollar value, the quality of the cost proposal content (i.e. line item selection related to the Detailed Scope of Work, line item quantities supported by take-off calculations, etc.), performance schedule, or other criteria, as deemed in the best interest of HABC.
- (7) Any change order(s) on a particular project will be treated as separate Job Order(s) and the ordering procedures and requirements of the Contractor for the change order(s) shall be identical to those described above.

### **17. Inspection of the Site**

- A. The Contractor is required to inspect the site of the Work of each Job Order and to examine and become familiar with the Detailed Scope of Work, plans, specifications and all other Proposal Documents pertaining to the proposed Work. The submission of a proposal shall be sufficient to establish the presumption that the Contractor has investigated the site of the Work and is satisfied as to all reasonable conditions to be encountered, quantity and quality of the Work to be performed and materials furnished in the completion thereof.
- B. Unless otherwise directed, HABC will furnish subsurface information through the use of borings. If, in the course of the Work, subsurface conditions vary materially from the record indicated by the borings, the Contractor shall give immediate notification, in writing, of such variation to the HABC and the Contract price shall be adjusted by unit prices established in the proposal or agreement, as appropriate.
- C. Contractor is required to examine and be familiar with existing contracts and Work being constructed.

### **18. Measurements to be Verified**

Before ordering any material or performing any Work, the Contractor shall verify all measurements at the site of a specific Job Order, and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated in the RFCP. Any difference, which may be found, shall be submitted to HABC for consideration before proceeding with the Work.



### 19. Caution to Contractors

Contractors are cautioned that any Job Order awarded is for all services or Work, as necessary, to repair, and construct the facilities covered by the Job Order in accordance with all Contract terms and conditions. It shall also be the duty and responsibility of the Contractor to manage, and conduct the required Work in the most effective and efficient manner possible and meet or exceed minimum critical rates or standards.

In addition, the Contractor is cautioned that no claims for additional monies will be entertained when such claim is based upon a contention that the Contract fails to mention a specific item or component of facility covered by the Contract and the Work is required in the normal course of operations. For example, surfaced area repair statements may not mention culverts. However, culverts are a normal component of roads, streets, or erosion controls and are shown on plots or maps provided. As culverts are a normal component of the system, the Contractor shall be responsible for providing all necessary repair, or replacement Work or service.

### 20. Scheduling Work

As part of the Joint Scope meeting, the Contractor and HABC will agree on a sequence of procedure; means of access to premises and building; space for storage of materials and equipment; use of approaches; use of corridors, stairways, elevators, and means of communications and the location of partitions, eating spaces, and restrooms for Contractor's employees. The Contractor will be responsible for taking these factors into consideration when developing his/her proposal and schedule.

### 21. Time and Progress

- A. It is understood and agreed that TIME IS OF THE ESSENCE, and the Contractor agrees to begin actual Work covered by Job Orders issued under the Contract in conformity with the provisions set forth herein and to prosecute the same with all due diligence, so as to complete the Work for each order within the calendar days stipulated after the date for commencement of Work is specified in the written notification to the Contractor from HABC, using double shift and holiday work when necessary.
- B. Unless otherwise provided in Supplemental Conditions, the Contractor shall submit to HABC for approval, a TIME SCHEDULE for each Job Order under the Contract, which will insure the satisfactory completion of the Work within the time specified in HABC's Request for Cost Proposal. When the Work involves multiple dwelling units, the Contractor's Time Schedule shall indicate the date for completion of each individual dwelling unit. When approved and accepted by HABC, the Contractor shall prosecute the Work under each Job Order so that the actual Work completed shall not be less than required by such approved TIME SCHEDULE.
- C. If the overall rate of progress is such that the total amount of Work accomplished by the Contractor within any time mentioned in such approved TIME SCHEDULES is less than the amount therein specified to be completed within such time, then the Contracting Officer may declare the Contract in default as provided herein.



- D. If the Contractor desires to submit a claim for increased contract duration, in excess of that stipulated in the Job Order, written notice shall be provided to HABC, in compliance with all provisions contained in the General Conditions. The claim must clearly explain and document the basis for the request of additional time.
- E. If adverse weather conditions are the basis of the claim for additional time, such claim shall be documented by data substantiating that the weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.
- F. If the basis of the claim for additional time is determined to have been by act or neglect of HABC, by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, abnormal weather, or other causes beyond control of the Contractor, the Contract TIME SCHEDULE shall be extended for a reasonable time, as determined by HABC.

### 22. Schedule for Job Orders

- A. For all Job Orders the Contractor may be required, within five days after the Work commences on the Job Order or another period of time determined by HABC, to prepare and submit to HABC 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 proposes to perform the Work, and the dates on which the Contractor contemplates starting and completing the several salient feature of the Work (including acquiring materials, plant, 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 day during the period. If the Contractor fails to submit a schedule within the time prescribed, HABC may withhold approval of progress payments until the Contractor submits the required schedule.
- B. The Contractor shall enter the actual progress on the chart as directed by HABC, and upon doing so shall immediately deliver three copies of the annotated schedule to HABC. If, in the opinion of HABC, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by HABC, without additional cost to HABC. 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 HABC deems necessary to demonstrate how the approved rate of progress will be regained.
- C. Failure of the Contractor to comply with the requirement of HABC under this clause shall be grounds for a determination by HABC that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order. Upon making this determination, HABC may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default terms of the Contract.

### 23. Surveys and Permits

- A. Unless otherwise directed, HABC will furnish all initial surveys as to land line and area; all other surveys or layouts are the responsibility and expense of the Contractor.



- B. Permits and licenses necessary to commence and prosecute the Work to completion shall be procured and paid for by the Contractor. No payment shall be made to the Contractor if required permits have not been provided.
- C. All easements and rights-of-way will be procured and paid for by HABC unless otherwise specifically provided in the Contract and Proposal Documents.

### 24. Commencement, Prosecution, and Completion of Work

The Contractor shall be required to commence Work required by a Job Order at the time specified on the Job Order, prosecute the Work in a timely manner, and because as stated herein, TIME IS OF THE ESSENCE, complete the entire Work not later than the completion time specified on the Job Order. The time stated for completion shall include final cleanup of the premises. Subsequent to the approval of each individual Job Order a Job Order will be issued.

### 25. Site Preparation and Cleanup

The Contractor shall:

- A. Coordinate with HABC on a sequence of procedures for gaining access to the premises, space for storage of materials and equipment, use of approaches, corridors stairways, and similar features of a structure. This coordination is required prior to commencement of Work at a time directed by HABC.
- B. Move the furniture and portable office equipment in the immediate work area to a designated location prior to start of Work, and replace these items to their original location upon completion of the Work. The Contractor will be liable for damages incurred while moving furniture and equipment, and be responsible for contacting appropriate agencies for movement of vending machines.
- C. Perform clean up and site restoration prior to final walk-through inspection. All projects shall be delivered in a clean, orderly and usable condition.

### 26. Changes in the Work

- A. HABC, without invalidating the Job Order, may order changes in the Work by altering, adding to or deducting from the Work, the Job Order sum being adjusted accordingly. All such Work shall be executed under the conditions of the original Job Order.
- B. No changes shall be made unless in pursuance of a written order from HABC Contracting Officer, stating that HABC has authorized the extra Work or change, and no claim for an addition to the Job Order sum shall be valid unless so ordered.
- C. Cost Proposals for additional Job Orders for change orders shall include credits for deleted Prepriced Tasks and Non-Prepriced Tasks. Deleted tasks shall result in a credit equal to 100% of the value at which those tasks were included in the original Cost Proposal.





**27. Inspection of Work**

- A. Quality Assurance (QA). HABC will monitor Contractor using QA procedures established in the Job Order. However, HABC reserves the right to use other methods to assure Contractor compliance with all terms and conditions of the Contract. In no event will HABC's right to inspect be restricted.
- B. Notice of Completion of Job Order. The Contractor shall notify HABC upon completion of each individual Job Order. The Contractor shall give five (5) days advance notice of the date the Work will be fully completed and ready for final inspection.

**28. Correction of Work and Guarantee**

- A. The Contractor shall re-execute, at no additional expense to HABC, any Work which fails to conform to the requirements of the Contract and which appears during the progress of the Work. The Contractor shall guarantee the Work and shall remedy any defects due to faulty materials or workmanship, which appear within two (2) years from the date of completion. In certain instances, HABC will require that the Contractor shall guarantee the Work and shall remedy any defects due to faulty materials or workmanship, which appear for a period greater than two (2) years from the date of completion. In these cases, the Contractor will be notified of the extended warranty period during the development of the Joint Detailed Scope of Work. Neither the final certificate of payment nor any provision in the Proposal Documents shall relieve the Contractor of the responsibility for negligence, defects of manufacture, faulty materials and/or workmanship within extent and period provided by law, and upon written notice, the Contractor shall remedy any defects due thereto and pay all expenses for any damage to other work resulting therefrom. The expiration date of the two (2) year guarantee period shall be recorded on the Project Completion Notification by HABC.
- B. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, HABC may have the defects corrected and the Contractor and the Surety will be liable for all expense incurred. Such action by HABC shall not relieve the Contractor of further guarantee liability.
- C. The provisions of this Article apply to Work done by subcontractors, as well as to Work done by direct employees of the Contractor.
- D. The Contractor remains responsible for any negligence which does not immediately manifest at the expiration of the contract warranty period.

**29. Request for Payments**

- A. The Contractor must certify by letter, when requesting full payment, that:
  - (1) The amounts requested are only for performance in accordance with the specifications, terms and conditions of the subject Job Order and
  - (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 sub-contract agreements.
  - (3) Contractor shall complete a Certificate of Release prior to final payment.



- B. The Contractor must certify by letter, when requesting partial payment, that:
- (1) The amounts requested are only for performance in accordance with the specifications, terms and conditions of the subject 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 sub-contract agreements.
  - (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 except those amounts withheld or retained in accordance with the terms and conditions of the subcontract.

### 30. Payments to the Contractor

- A. Requests for payment must be submitted to HABC. Payment will normally be made within thirty (30) days following approval by HABC. Payments shall be made on inspected and approved Work only. Payments will be made electronically only.

If an individual Job Order requires forty-five (45) days or less for completion, HABC will normally make one payment to the Contractor after completion and final acceptance of all Work contained under the Job Order. For Job Orders requiring greater than forty-five (45) days performance period, HABC will consider a request for partial payments to the Contractor.

The Contractor shall submit to HABC three (3) copies of completed invoice, final MBE subcontractor list, certified payrolls and other information required regarding the Work during the period covered by said requisition in sufficient time as may be required by HABC so that HABC may inspect the Work done, certify the request and forward the Contractor's requisition for approval and payment.

- B.. The Contractor agrees that the signature on his/her invoice constitutes a sworn statement, and that all materials and/or labor represented by amounts indicated after each item of material and labor have been paid by the Contractor.
- C. After the first payment and before making any other payment to the Contractor, HABC may require that the Contractor shall produce and deliver to HABC satisfactory proof or evidence that all labor performed and materials furnished up to the date of the preceding statement have been fully paid for and that as of the said date, no claims exist if that be the fact. This partial release of claim must be executed with the same formality as the Contract.
- D. For Job Orders in an amount less than \$250,000, HABC shall retain ten percent (10%) of the amount of progress payments until completion and acceptance of all work under the Job Order; except that if upon completion of 50% of the work, the Contracting Office, determines that the Contractor's performance and progress are satisfactory, HABC 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,



HABC shall reinstate the ten percent retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

Unless a Job Order between HABC and a Contractor is for work on a project funded wholly or in part by or through the Maryland State Department of Housing and Community Development, or unless HABC reasonably determines that the Contractor's performance under a Job Order provides reasonable grounds for holding a higher retainage, HABC shall retain five percent (5%) of the amount of progress payments until completion and acceptance of all work under the Job Order, for Job Orders in an amount of \$250,000 or more. If upon completion of 50% of the work, the Contracting Officer determines that the Contractor's performance and progress are satisfactory, HABC 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, HABC shall reinstate the five percent retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

- E The Contractor shall submit payrolls or certified copies thereof, pertinent to the Job Order for which payment is requested. The payroll records shall contain the name, address and social security number of each employee, his/her correct classification, rate of pay, daily and weekly number of hours worked, Itemized deductions made and actual wages paid. The Contractor bills will be audited and corrected against the certified Payrolls, falsification of which is an offense punishable by law. The Contractor shall maintain adequate staff, herein defined as a full-time employee who has as his/her primary responsibility, submission of certified payrolls and resolution of all related problems and/or issues. In the event that the Contractor fails to provide acceptable management of their certified payroll responsibilities, as solely determined by HABC, HABC may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default terms of the Contract.

### 31. Payments to Subcontractors

The Contractor shall pay all subcontractors and suppliers within seven (7) calendar days of payment by HABC to the Contractor.

### 32. Laws, Codes and Regulations To Be Observed

- A. The Contractor shall become familiar and comply with all Federal, State, Local, HUD and HABC policies and procedures, laws, ordinances or regulations controlling the action or operation of those engaged in the Work, or affecting materials used, and operate in accordance therewith. Particular attention must be paid to the **Americans with Disabilities Act, Public Law 101-336**.
- B. In accordance with this requirement, it has not been considered necessary to enumerate all wiring, plumbing and other requirements covered by the codes, including those requirements in the Baltimore City Building, Fire and Related Codes- Edition 2004, as amended and the International Building Code 2000, as amended. The Contractor, in making a proposal, agrees that the requirements of such ordinances will be as carefully adhered to as if they were specifically set forth in the specifications.
- C. The Contractor does hereby indemnify and hold harmless HABC and all of its officers, agents and servants against any claims or liability arising from, or based upon the violation of such



laws, by-laws, ordinances, regulations, orders or decrees, whether by the Contractor or the Contractor's employees, except where the instance of violation is constructed in accordance with the specifications.

### 33. Discrepancies, Interpretations and Omissions

Should the Contractor find any discrepancy, omission, violation of applicable codes, or be in doubt as to the meaning of any HABC furnished Proposal Documents, the Contractor shall stop Work in progress, if that Work is affected by the particular discrepancy, omission or interpretation needed, and consult HABC. The Contractor shall be held responsible for any loss or damage where there is a doubt as to what is required when proceeding with the Work without consulting HABC.

### 34. Delays

- A. If the Contractor is delayed wholly or in part at any time in the progress of the Work on any individual Job Order, for the causes or reasons listed below, provided that the cause or reason is beyond the Contractor's control and that the Contractor is not a party to such cause or reason, the Contract time for that specific Job Order shall be extended by change order for such reasonable time as HABC may approve.

To be granted a time for extension, the Contractor must show how the progress of the Work was delayed by such cause or reason, and that such delay has affected without question the completion of the Work. Examples of circumstances that may meet this definition include:

- (1) Act of neglect of HABC, or HABC's representative;
  - (2) Separate Contractor(s) employed by HABC, including labor strike against said Contractor(s), and provided that said strike delays the Contractor;
  - (3) Changes ordered in the Work;
  - (4) Act or regulation of government agencies;
  - (5) Labor strike against the Contractor or any of the subcontractors;
  - (6) Fire, tornado, floods, cyclone, hurricane, earthquake, epidemics or other similar catastrophe;
  - (7) When subsurface conditions vary materially from subsurface information during the development of the Detailed Scope of Work;
  - (8) War, insurrection, riot or civil commotion; or
  - (9) Jurisdictional dispute, provided that the Contractor has, within a reasonable time, referred the dispute for adjudication.
- B. Any requirements of the DSOW or Technical Specifications that prohibit work for a specific time period based on work conditions (i.e. rain, temperature, etc.) will result in time extensions being granted to the Contractor.
- C. The Contractor shall, regardless of the cause or reason of delay, continue to prosecute all Work not directly affected by said cause or reason for delay and with respect to such





portion(s) of the Work affected, and shall take all reasonable measures to minimize the effect of said cause of delay.

- D. Should the Contractor contend that the progress of the Work is delayed for any of the above reasons; the Contractor shall notify HABC in writing within three (3) calendar days after the occurrence of the cause of the delay.
- E. The Contractor shall submit a written request for extension of time within five (5) days after the delay has ceased to exist. The request shall precisely and exactly state which portion(s) of the Work was delayed and the number of calendar days that the total project was delayed. It shall describe in detail the cause(s) and reason(s) for the delay and shall include exhibits as backup and proof of the cause(s) and reason(s). Such a request shall show how the delay directly affects the completion of the Work.
- E. Only the portion of the delay actually affecting the completion of the Work will be considered as a legitimate time extension.
- F. No monetary damages shall accrue to the Contractor for a justified and approved delay. The Contracting Officer, in his/her duty as fiduciary agent of HABC, shall, in his/her sole discretion, make a reasonable determination whether the delay was justified. The provisions of the Contract concerning delays shall provide solely for extension of time for the acceptance of the project.
- G. The foregoing provisions shall be strictly adhered to and, if the Contractor fails to comply, the Contractor shall be deemed to have waived the claim. Waiver may be granted by HABC for extenuating circumstances.

### 35. Failure to Complete Work

- A. Timely completion of Job Orders issued under the Contract is of the essence. It is understood and agreed that HABC shall sustain substantial monetary and other injury and damages, including but not limited to, increased costs, expenses, and liabilities in the event of failure to complete the Work within the HABC approved Time Schedule for each Job Order. Accordingly, should the Contractor not complete the Work within the Time Schedule, as adjusted by any Change Order, then a charge specified in the Scope of Work shall be assessed as Liquidated Damages against any money due or that may become due the Contractor for each calendar day of delay beyond the Time Schedule, as adjusted by any Change Order.
- B. When the DSOW explicitly subdivides the Work for purposes of assessing Liquidated Damages and scheduling (i.e. by scattered site property address or by apartment unit address; by sitework and interior and exterior building renovations; or by some other logical subdivision of the Work), the Liquidated Damages amount per day, as determined in the DSOW shall be assumed to apply to each identified subdivision of the Work on a prorated basis calculated by using the dollar amount of each subdivision of the Work within the Contractor's Cost Proposal. The Contractor shall provide a CPM schedule as part of its Cost Proposal Package identifying scheduled completion dates for each subdivision of the Work identified in the DSOW and a Cost Proposal with subtotals for each subdivision of the Work contained in the DSOW. Claims for delays and time extensions and any subsequent time extensions granted by HABC may not apply to all subdivisions of the Work, and



consequently, prorated Liquidated Damages may be assessed for those subdivisions of the Work that are not completed per the contractual Time Schedule pertaining to the applicable subdivision of Work.

- C. The amounts of the charges in the Schedule for Liquidated Damages in the DSOW, are agreed upon as fixed Liquidated Damages due HABC after the expiration of the Time Schedule pertaining to each Job Order. The Contractor and its Surety shall be liable for any Liquidated Damages in excess of the amount due the Contractor on the Final Payment. The Liquidated Damages are not established as a penalty but are calculated and agreed upon in the DSOW by the owner and the Contractor as to the actual direct, incidental, and consequential damages which are incurred by HABC as a result of the failure on the part of the Contractor to complete the Work within the Time Schedule approved by HABC on each Job Order. The Contractor consents and agrees that it is not necessary for HABC to prove monetary loss. Liquidated Damages shall start upon notification in writing that work has gone beyond the agreed upon Time Schedule. Liquidated Damages as they accrue will be deducted from periodic partial payments to the extent they are sufficient to cover the Liquidated Damages owing; provided that any excess liquidated damages owing over the periodic partial payment amount may be deducted from retainage. Such deduction shall be in addition to the retainage provided for in the Contract. The remaining amount of Liquidated Damages owing upon completion will be deducted from any amounts owing as Final Payment to the Contractor or his/her Surety. Any excess amount owing as Liquidated Damages shall be payable upon demand.
- D. Nothing in this Article shall be construed as limiting the right of HABC to proceed under the Article entitled "Termination for Cause" in the HABC Supplemental Conditions.

### **36. Disruption of Community Activities**

The Contractor shall not cause any disruption to on-going community activities at the work site. Planned activities will be coordinated with HABC and construction will be accomplished in accordance with the schedule set forth in Job Orders issued hereunder. Schedule revisions shall be made known to HABC on a timely basis.

### **37. Trucking**

The Contractor shall require that all trucks entering or leaving the project site with loose materials be loaded and covered in a manner that will prevent dropping of materials on streets while in transit. Suitable tarpaulins shall be placed over the loads for materials subject to blowing.

### **38. Toilet Facilities**

Contractor's personnel will normally not be permitted to use toilet facilities on project premises subject to regulation and control of HABC staff. The Contractor shall provide adequate and suitable temporary facilities.

### **39. Elevators**



- A. Any temporary use of existing elevators shall be by arrangement with HABC staff. Such use will be of an intermittent nature. The Contractor shall provide and maintain suitable and adequate protection covering for the elevator machinery, the hatchway entrance, and the interior of the elevator during the periods of temporary use. Elevators shall not be loaded in excess of the rated capacity of the elevator.
- B. HABC will bear the cost of electrical current for such temporary existing elevator usage. On completion of the Work, the Contractor shall remove the protective coverings together with any resultant dirt and debris.

### 40. Utilities

Utilities, such as electrical, water, sewage, etc., shall be provided by the Contractor. HABC will identify service tie-in points but connections to these tie-in points shall be the responsibility of the Contractor. The Contractor shall not be liable for any claims for costs associated with temporary outages or unavailability of these utilities.

### 41. Contractor Staff Qualifications and Experience

- A. The Contractor shall provide personnel that possess the required certifications and licenses to perform the Work required under the Contract.
- B. Project Manager- The Project Manager shall, at a minimum possess a high school diploma and five (5) years construction experience in developing Cost Proposals, ordering construction materials, and scheduling and supervising Contractor personnel. The Contractor's Project Manager shall act as the technical point of contact for the Job Order and shall be fully responsible for the performance of all Job Orders under the Contract in full conformance of all terms of the Proposal Documents. If during the duration of the Contract, the Project Manager is replaced, HABC shall be notified and furnished a resume for the new Project Manager within seven (7) working days. Replacement of the Project Manager is subject to approval by HABC.
- C. Superintendent- The Contractor shall keep on the Work, during its progress, a competent, English speaking (fluently), superintendent (also known by some Contractors as Site Supervisors or Foremen) and any necessary assistance, all satisfactory to HABC. The Superintendent shall, as a minimum, possess five (5) years' experience as on-site construction Superintendent. The Superintendent shall be responsible for on-site supervision of all Contractor and subcontractor personnel and all coordination necessary to ensure the Job Order is being performed in accordance with the Proposal Documents and in conformance with the approved schedule. If during the duration of the Job Order Completion Time, the Superintendent is replaced, HABC shall be notified and furnished a resume for the new Superintendent within seven (7) working days. Replacement of the Superintendent is subject to approval by HABC. **Subcontractor's personnel may not be utilized as Superintendents on Job Orders in which their employer is an active subcontractor.**
- D. Quality Control (QC) Manager- The Quality Control Manager shall have, at a minimum, three (3) years' experience in performing/managing construction quality control for work similar in



nature and size to the Work to be performed under the Contract. If during the duration of the contract, the Quality Control Manager is replaced, HABC shall be notified and furnished a resume for the new Quality Control Manager within seven (7) working days. Replacement of the Quality Control Manager is subject to approval by HABC. The Quality Control Manager does not have to be a separate position but it can be a shared position as the Contractor determines to be in its best interest. If the Contractor chooses to share the Quality Control Manager position it in no way relieves the Contractor from fully adhering to the quality control requirements set forth in this Contract.

- E. The Contractor shall provide competent and efficient management, supervision, and quality control for all Work performed under the Contract. The Contractor shall carefully study and compare all drawings, specifications and all other components of the Proposal Documents and shall at once report to HABC any error, inconsistency or omission which may be discovered, but shall not be held responsible for their existence or discovery.
- F. In the event that the Contractor fails to provide acceptable project management, on-site supervision, or quality control, as solely determined by HABC, HABC may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default terms of the contract.

### **42. Project Manager Status**

- A. The Project Manager will be responsible for developing the DSOW,, reviewing Contractor's proposals, general inspection and direction of the Work.
- B. The Project Manager is the representative of HABC only to the extent specified in the Contract and Proposal Documents, beyond which the Project Manager will exhibit special written authority to the Contractor in special instances. The Project Manager is given, and at all times will retain, authority to stop the progress of the Work whenever, in the opinion of the Project Manager, such stoppage is necessary to ensure proper execution of the Work and fulfillment of the Contract. Any modification to the Contract must be made in writing by the HABC Contracting Officer.

### **43. Project Manager's Decisions**

- A. It shall be the duty of the Project Manager, within a reasonable time and as promptly as possible, to make and render decisions in the interpretation of the specifications, the drawings, and other Proposal Documents.
- B. In the event that the Contractor disagrees with the decision of the Project Manager, the Contractor shall immediately notify the HABC Contracting Officer, in writing, setting forth the reasons and objections for such decisions.

### **44. Access to Buildings**

- A. It shall be the Contractor's responsibility, through HABC and appropriate HABC staff, to obtain access to buildings and facilities and arrange for the buildings to be opened and closed. It shall be the Contractor's responsibility to arrange for adequate security of the work site(s) at the end of each workday and on weekends.





- B. It is the responsibility of the Contractor to prohibit the opening of locked areas by the Contractor's employees to permit the entrance of personnel other than the Contractor's employees engaged in the performance of assigned Work in those areas.

### 45. Equipment and Furniture

- A. Furniture and portable equipment in the immediate area of Work will be moved by the Contractor and replaced to original position upon completion of Work. If the Work required by the Job Order will not allow furniture and portable office equipment to be replaced to its original positions, HABC will be notified and new locations will be designated by HABC for replacement of the furniture and equipment by the Contractor.
- B. Work of materials and equipment and accomplishment of Work shall be made with a minimum of interference to HABC operations and personnel.
- C. The Work shall, so far as practicable, be done in definite sections or divisions and confined to limited areas. Work shall be completed in the section before Work in other sections or divisions is started.

### 46. Regulations

The site of the Work is on HABC property and all rules and regulations issued covering fire, safety, sanitation, severe weather conditions, conduct of operations, etc., shall be observed by the Contractor, Contractor's employees, and subcontractors. The regulations include:

- A. Fire Prevention:

Contractor's and subcontractor's employees shall be cognizant of, and shall comply with, all requirements for handling and storing combustible supplies and materials, daily disposal of combustible waste, trash, etc., in accordance with National Fire Code and National Association of Fire Underwriters. The Contractor will require employees to become familiar with methods of activating HABC fire alarms and any Baltimore City requirements regarding same.

- B. Safety:

All rules of safety which are or may be imposed upon the Contractor by Federal, State, or local code or regulation shall be effectively carried out in the performance of the Work set forth herein. Specific attention is called to adherence to all applicable rules governed by the Maryland Occupational Safety and Health Administration. Contractor shall take proper safety and health precautions to protect the Work, the Contractor's employees, the public and the property of others.

- C. Sanitation:

The Contractor is responsible for and shall maintain all areas used by the Contractor in performance of the Contract in a clean, neat, orderly, sanitary, and safe condition. The premises shall be kept free from accumulation of waste material and rubbish resulting from Work at all times. Combustible materials shall be removed daily.



**D. Conduct:**

Contractor and Contractor's employees shall be subject to the same general rules of conduct while on HABC property that apply to a HABC employee. HABC reserves the right to refuse access to any Contractor's employee if HABC determines it to be in the best interests of HABC.

**47. Contractor Liable and Responsible to HABC**

- A. The Contractor shall be held liable by HABC for the performance of all the Work provided for under the Contract. These specifications make no attempt to fix the scope of the Work of the subcontractors or the responsibility of any such subcontractors, it being understood that the Contractor shall fix the scope of all Work and responsibilities of the subcontractors.
- B. Any disputes which may arise in this connection between the Contractor and any subcontractor must be settled between the parties concerned. HABC will not undertake or be in any way responsible for the settlement of such disputes.

**48. Environmental Protection**

- A. The Contractor shall be responsible to protect the environment of work areas as affected by the Contract. Contractor shall be responsible for the proper disposal of all hazardous, solid, liquid, and gaseous contaminants and refuse in accordance with all Federal, State, and local codes and regulations.
- B. All chutes for refuse, and the like shall be covered or of such a design to fully confine the material to prevent the dissemination of dust.

**49. Protection of Work and Property**

- A. The Contractor shall continuously maintain adequate protection of all the Contractor's Work from damage, and shall protect HABC's property from injury or loss arising in connection with the Contract. The Contractor shall make good any such damage, injury or loss, except as may be directly due to or caused by agents or employees of HABC.
- B. The Contractor shall adequately protect adjacent property as provided by law and the Proposal Documents.
- C. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection and security required by public authorities or local conditions.
- D. In an emergency affecting the safety of life, of the Work, or of adjoining property of HABC, the Contractor, without special instructions or authorization from HABC, is hereby permitted to act in at the Contractor's discretion to prevent such threatened loss or injury.
- E. Any compensation claimed by the Contractor on account of emergency work as set forth in D above shall be determined by agreement of HABC and the Contractor.



- F. The Contractor shall carefully protect all trees, shrubs, and hedges, not specified as being removed, from injury during building work and pay for damages to same resulting from insufficient or improper protection.
- G. The Contractor shall send proper notice, make all necessary arrangements and perform all other services required for the care, protection and maintenance of all public utilities, including mail boxes, fire plugs, power and telephone poles and wires, and all other items of this character on or around the building site.
- H. Building materials, Contractor's equipment, and other supplies necessary to the project may be stored on the premises with approval of HABC. This shall in no manner relieve the Contractor from full responsibility for such materials.
- I. Where materials are not sold or furnished in packages or containers, the Contractor, when requested by HABC, shall obtain invoices from the manufacturer or its agents covering such materials showing the name and brand of the materials furnished, which invoices must be furnished to HABC.
- J. In the event of accidental damage to or disruption of any of HABC's equipment, utilities, or facilities by the Contractor or any of the subcontractors, or when life or property are endangered, the Contractor shall immediately take all necessary steps to replace/repair all pieces/parts of any damaged equipment/materials, make all necessary repairs and restore all services to normal. Further, the Contractor shall engage any and all required additional subcontractors, labor, individuals or other outside services, deemed necessary by HABC, to operate on a continuous, "around-the-clock" basis until all restoration is complete. Also, the Contractor shall provide and install all required materials and equipment.
- K. All costs involved in making repairs and restoring disrupted services to normal shall be borne by the Contractor.
- L. HABC may, in its sole discretion, collect, inspect and copy any and all other invoices which the Contractor obtains from any vendor for the purchase of material used on the project described herein. Where a vendor furnishes goods and services without an invoice, HABC may require the Contractor to furnish documentation, including an affidavit from the Contractor, describing the goods and services purchased, the purchase price, including any unit breakdown on said price, and the amount of goods and services obtained.

### 50. Project Site Maintenance

The Contractor shall store all supplies and equipment on project site(s) so as to preclude mechanical and climatic damage and maintain project sites in a neat and orderly manner at all times. Materials to be stored on the site shall be neatly stacked and protected and kept clear of all passageways. The Contractor shall coordinate the Work in such a manner as to reduce the disturbances and inconveniences to the tenants to a minimum.

### 51. Site Protection

- A. The Contractor shall provide adequate climatic protection for exposed part of buildings wherever Work under the Contract is performed.



- B. The Contractor shall cover equipment that is to remain in place within the area of Contract operations and protect it against damage or loss. This includes equipment that is removed in the performance of Job Orders where directed for reuse in Work as required by drawings and specifications. Equipment temporarily removed that is in good operating condition at the time of removal shall be protected, cleaned and replaced equal to or better than its conditions prior to its removal. Security for equipment or material that is to be reused and is removed for temporary storage at the work site shall be the sole responsibility of the Contractor. If the Contractor considers the equipment to be at risk after removal, arrangements should be made for storage while removed. Transportation to and from the storage site shall be provided for and at the Contractor's risk.

### 52. Safety and Health

- A. General:
- (1) Applicable Publications: The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.
    - a. Code of Federal Regulations (CFR):
    - b. OSHA General Industry Safety and Health Standards (29 CFR 1910), Publication V2206; OSHA Construction Industry Standards (29 CFR 1926). One source of these regulations is OSHA Publication 2207, which includes a combination of both Parts 1910 and 1926 as they relate to construction safety and health. It is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.
    - c. National Emission Standards for Hazardous Air Pollutants (40 CFR, Part 61).
    - d. Federal Standard (Fed. Std.):
    - e. 313A Material Safety Data Sheets, Preparation and the Submission of:
- B. Work covered by this section: This section is applicable to all Work covered by the Contract.
- C. Definition of Hazardous Materials: Refer to hazardous and toxic materials/substances included in Subparts H and Z of 29 CFR 1910; and to others as additionally defined in Fed. Std. 313. Those most commonly encountered include asbestos, polychlorinated biphenyls (PCBs), explosives, lead, radon and radioactive material, but may include others. The most likely products to contain asbestos are spray-on fireproofing, insulation, boiler lagging, and pipe covering.
- D. HABC reserves the right to halt work on any project where hazardous materials are suspected to be present. This stoppage will allow for proper testing and the development a corrective action plan.
- E. Asbestos:
- (1) THE CONTRACTOR IS WARNED THAT EXPOSURE TO AIRBORNE ASBESTOS HAS BEEN ASSOCIATED WITH FOUR DISEASES: LUNG CANCER, CERTAIN GASTROINTESTINAL CANCERS, PLEURAL OR PERITONEAL MESOTHELIOMA AND ASBESTOSIS. Studies indicate there are significantly increased health dangers





to persons exposed to asbestos who smoke, and further, to family members and other persons who become indirectly exposed as a result of the exposed worker bringing asbestos-laden work clothing home to be laundered.

- (2) The Contractor is advised that friable and/or nonfriable asbestos-containing material may be encountered in area(s) where the Work is to be performed. Friable asbestos-containing material means any material that contains more than one percent asbestos by weight that hand pressure can crumble, pulverize or reduce to powder when dry. Nonfriable asbestos-containing materials are materials in which asbestos fibers are bound by a matrix material, saturant, impregnant or coating. Nonfriable asbestos-containing materials do not normally release airborne asbestos fiber during routine handling and end-use. However, excessive fiber concentrations may be produced during uncontrolled abrading, sanding, drilling, cutting, machining, removal, demolition or other similar activities.
- (3) Care must be taken to avoid releasing or causing to be released, asbestos fibers into the atmosphere where they may be inhaled or ingested. The Occupational Safety and Health Administration (OSHA) has set standards at 29 CFR 1910.1001 for exposure to airborne concentrations of asbestos, fibers, methods of compliance, medical surveillance, housekeeping procedures, and other measures that must be taken when working with or around asbestos-containing materials. 29 CFR 1910.1001 has been identified as applicable to construction (29 CFR 1926.55 gases, vapors, fumes, dusts and mists). The Environmental Protection Agency (EPA) has established standards at 40 CFR 61.140-156 for the control of asbestos emissions to the environment and the handling and disposal of asbestos wastes. Additionally the Maryland Occupational Safety and Health Administration standards are applicable to the Contract.
- (4) Friable asbestos containing materials are not permitted by current criteria and shall not be used in new construction or modification projects (ETL 1110-1-118, 27 May 1983). Plans and specifications for all new construction and modification projects will be reviewed to ensure that the use of friable asbestos-containing materials is not used/specified.
- (5) Maintenance, modification, or demolition activities where exposure to asbestos dust may occur from previously installed friable or nonfriable asbestos-containing material will be identified. All precautions, to include proper work practices, medical surveillance, respiratory protection, industrial hygiene, and environmental protection requirements of OSHA (29 CFR 1910.1001), EPA (40 CFR 61.140-156) and DA Circular 40-834, as applicable, shall be strictly adhered to by the Contractor.
- (6) All applicable parts of the Baltimore City Building, Fire and Related Codes- Edition 2004, as amended, and in particular, the Building Code portion thereof, and the International Building Code Edition 2000, as amended, shall be strictly adhered to, especially those portions dealing with Hazardous Materials.

### 53. Energy Conservation

Contractor shall comply with energy conservation plans, and promote efficient use of all energy. In addition, the Contractor shall;



- A. Use lights only in areas where Work is actually being performed.
- B. Turn off faucets, valves, and equipment after required usage has been accomplished.
- C. Not use HABC telephones for personal reasons nor make any toll or long-distance calls.

### **54. Salvage and Salvage Disposal**

- A. The material and equipment, which are removed or disconnected and, in the opinion of HABC, are of value, but are not specified for reuse, shall remain the property of HABC. A HABC representative shall be informed of the presence of the property and disposition instructions shall be requested.
- B. Debris, rubbish, hazardous waste, and non-usable material resulting from the Work under the Contract to which HABC does not claim a further interest as a result of the preceding paragraph, shall be disposed of by and at the expense of the Contractor at a location off HABC property. Hazardous wastes must be disposed of in accordance with the Resource Conservation and Recovery Act and state and local regulations. The Contract Adjustment Factor includes the cost of all clean-up, including final cleanup on each individual Job Order.

### **55. Disposition of Recyclable Debris**

- A. The Contractor shall be responsible for complying with all City of Baltimore Ordinances concerning recyclable debris disposal in effect at the time of demolition. The Contractor is to note that current ordinances require that whenever recyclable debris cleared from a site exceeds 5 tons, at least 30% of that recyclable debris shall be immediately transported to a licensed recycling firm for export outside the city.
- B. For the purpose of interpreting applicability of the ordinance: 1) Recyclable debris means materials that if not recycled, would become solid waste for disposal in a solid waste acceptance facility and may be collected, separated, or processed and returned to the marketplace in the form of materials or products; and 2) Recyclable debris does not include materials that are derived solely from the demolition of 1 or 2 family dwellings and disposed of at the City's Quarantine Landfill.

### **56. Worker Experience**

For both direct and subcontract Work performance, the Contractor shall be responsible for and shall ensure that no critical facility or utility equipment (plant type equipment) construction or repair work is performed by personnel with an experience level less than journeyman. However, personnel with lesser experience may serve as a helper. In all instances, for any Work performed under Contract, personnel who have an experience level below journeyman shall be under the immediate supervision of a person with experience level at or above journeyman as appropriate to the occasion. The Contractor shall assure that a journeyman, foreperson, master, etc., as appropriate, performs or supervises all required Work or service. Davis- Bacon Act standard rules apply to the Contract.

### **57. Work by HABC**



HABC reserves the right to undertake performance by another JOC contractor, other contractor or HABC force labor for the same type or similar work as provided for hereunder, as HABC deems necessary or desirable, and to do so will not breach or otherwise violate the Contract.

### **58. Materials and Workmanship**

- A. All labor and Work described in these specifications or shown on Proposal Documents shall be executed in a thoroughly substantial and workmanlike manner. All materials, fixtures and apparatus shall be first class in every respect, and shall be delivered to the site of the building and installed in a workmanlike and undamaged condition, without exception.
- B. The Contractor shall be responsible for the proper care and protection of all materials, equipment, and other supplies delivered to the site.
- C. Whenever materials are sold by the manufacturer in sealed packages, they must be delivered on the job in such original, unopened and undamaged packaging.
- D. HABC, by its engineering division, shall have a right to inspect any material to be used in carrying out the Contract.
- E. HABC does not assume any responsibility for the availability of controlled materials or other materials and equipment required under the Contract.
- F. The Contractor shall be responsible for the contracted quality and standards of all materials, components or completed Work furnished under the Contract up to the time of final acceptance by HABC.
- G. Materials, components or completed Work not complying therewith may be rejected by the Contracting Officer and shall be replaced by the Contractor at no cost to HABC.
- H. Any materials or components rejected shall be removed within a reasonable time from the premises of HABC at the entire expense of the Contractor after written notice has been mailed by HABC to the Contractor that such materials have been rejected.

### **59. HABC Furnished Equipment/Materials**

- A. From time to time HABC may elect to supply its own materials and/or equipment on a specific Job Order. In those cases the Contractor shall provide transportation of any HABC furnished equipment/materials supplied on the Job Order. Applicable transportation tasks contained in the Construction Task Catalog<sup>®</sup> related to transporting any HABC furnished equipment/materials to the site will be allowed, in appropriate quantities within the Contractor's Cost Proposal. The equipment/materials will be transported from HABC storage area to the work site indicated on the Job Order. The Contractor assumes the risk and responsibility for the loss or damage to HABC-furnished property. The Contractor shall follow the instructions of HABC's representative regarding the disposition of all HABC-furnished property not consumed in performance of a Job Order.
- B. The Construction Task Catalog<sup>®</sup> included in the Contract was developed on the assumption that the Contractor would furnish all of equipment and materials to accomplish the requirements of a Job Order in the majority of cases. However, it is agreed between the



parties that from time to time (1) it may be advantageous for HABC to furnish equipment and/or materials for an individual Job Order; or (2) during the performance of the Job Order, for some reason it becomes necessary for HABC to furnish equipment and materials to accomplish the requirements of a Job Order. If HABC's furnishing of the materials, equipment and/or materials is established in the original DSOW, the Contractor's Original Cost Proposal shall utilize the Construction Task Catalog® with the omission of the applicable equipment and/or material component (a function allowed by HABC furnished software) to reflect the value of HABC furnished equipment/materials. If HABC's furnishing of materials, equipment and/or materials is established as a modification to the original DSOW, the Contractor shall be required to submit a credit Cost Proposal (modification) utilizing the Construction Task Catalog® crediting the applicable equipment and/or material component (a function allowed by the HABC furnished software) to HABC, reflecting the value of HABC furnished equipment/materials.

### 60. ADP/ Communication Support Requirements

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

### 61. Job Order Contracting Software, JOC System License and Cooperative Purchasing

A. HABC selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under the JOC Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by HABC.. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™.** The JOC System License Fee applies to each and all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors.

#### B. Cooperative Purchasing

1. Other agencies or members of cooperative purchasing entities ("Entities") may purchase construction services from the Contractor utilizing this Contract ("ezIQC® Project"). **If the Contract is utilized by Entities, the Contractor agrees to pay Gordian a 6.25% license fee (ezIQC® License Fee) due and payable within five (5) days from the date the Contractor receives payment from an Entity.** License Fees not paid by the specified deadline shall bear an interest rate of 1½% per month until paid. To compensate the Contractor for the 6.25% ezIQC® License Fee, the Contractor's Adjustment Factors will be adjusted by dividing the bid Adjustment Factors by 0.9375.
2. **Reimbursable Tasks for ezIQC® Projects:** To compensate the Contractor for the cost of the ezIQC® License Fee on reimbursable tasks, all reimbursable tasks for ezIQC® Projects shall have an adjustment of 1.0667 applied.





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3. Gordian and the Contractor shall mutually utilize ezIQC® to track utilization, fees, and payments. The Contractor shall have no claim or right to any portion of the License Fees. Failure to pay License Fees in a timely manner shall be considered a material breach of this Contract and, at HABC's sole discretion, may be deemed grounds for termination of the Contract.
4. The Contractor and The Gordian Group, Inc. acknowledge that The Gordian Group, Inc. will administer cooperative purchases through the Contract and that HABC has no obligation to administer purchases by Entities. However, the Contractor and the Entities will enter into separate contracts from the JOC Contracts formed hereunder.
5. Gordian authorizes the Contractor the use of Gordian's names, logos, trademarks, and and Gordian's provided materials solely for the presentation and promotion of the availability and use of the Contract by Entities and potential Entities. The Contractor authorizes Gordian the use of the Contractor's name, logos, trademarks, and Contractor provided materials in the presentation and promotion of the availability and use of this Contract by Entities and potential Entities.
6. HABC and Gordian shall not be liable or responsible for any obligation, including, but not limited to, payments due under a Job Order, Purchase Order or similar purchasing document issued to the Contractor by the Entity ("Purchase Order").
7. Remittance of License Fees. The Contractor shall remit License Fees as follows:

**Payments Made Payable to:** The Gordian Group, Inc.

**Mail Checks to:** The Gordian Group, Inc.  
PO Box 79341  
Baltimore, MD 21279-0341

8. The Contractor shall, within two (2) business days of receipt of a Purchase Order from an Entity, provide notification to the Authority and Gordian of each Purchase Order by forwarding a copy of the Purchase Order via email to [PO@ezIQC.com](mailto:PO@ezIQC.com) or via facsimile to (864) 233-9100.
9. The Contractor shall, within two (2) business days of sending an invoice to an Entity, provide notification to the Authority and Gordian of each invoice by forwarding a copy of the invoice via email to [Invoice@ezIQC.com](mailto:Invoice@ezIQC.com) or via facsimile to (864) 233-9100.
10. HABC and Gordian may request records from the Contractor for all cooperative purchasing through this Contract and payment of all License Fees. The Contractor hereby agrees and authorizes HABC and/or Entity to provide a copy of each Purchase Order issued to Gordian. If discrepancies exist between cooperative purchasing activity and License Fees paid, HABC or Gordian will provide written notification to the Contractor of discrepancies and allow the Contractor ten (10) days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of HABC and/or Gordian, HABC and/or Gordian reserve the right to engage a third party to conduct an independent audit of the Contractor's records and, in the event Contractor is not in compliance with this Contract, Contractor shall reimburse the appropriate party for the cost and expense related to such audit.

### 62. Not Used (Intentionally Deleted)



**63. Accounting of HABC Property**

A. If the Contract prescribes that the Contractor shall utilize HABC property for the performance of the Contract there shall be an appendix to the Contract listing all HABC property that is expected to be used. HABC property is defined as property acquired by HABC and furnished to the Contractor for the performance of the Contract, or property to be acquired directly by the Contractor with funds paid under the Contract, for the performance of the Contract. For the purposes of this section, use of the word "property" shall mean all HABC property as herein above described.

B. Title to all property furnished to the Contractor by HABC shall remain with HABC. Title to all property acquired by the Contractor shall vest in HABC upon purchase of such property.

C. The property shall be used solely for the performance of the Contract unless otherwise directed by HABC. The Contractor is responsible and accountable for property used for the Contract and is required to keep separate records of, and furnish reports to HABC concerning all property used for the Contract.

D. The Contractor must submit written notification to the Contracting Officer of any purchase of property within twenty-four hours (24) of such purchase. This notification must include a complete description of each item purchased, date acquired, vendor of the property, cost, manufacturer's serial number or other identification number, location of the equipment, and proposed disposition of equipment at the completion of the Contract. All property acquired by the Contractor must be clearly identified and labeled as the property of HABC. The Contractor must contact HABC to obtain such labels. The Contractor must submit a monthly report to the contracting officer accounting for the location and condition of the property. This report must account for all property listed on the initial and subsequent notification forms. The Contractor must make the property available for inspection by the Contracting Officer or his/her designee(s) without prior notice to the Contractor, irrespective of whether such property is in the actual possession of the Contractor. The Contractor shall not dispose of such property without prior written approval of HABC.

E. The Contractor is liable for any loss of or damage to the property including any such property furnished by the Contractor to its subcontractors. The Contractor shall maintain adequate insurance coverage on the property, naming HABC as an additional insured, and shall safely maintain, use and protect the property. If the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of, or damage to the property, written notification of such action must be sent to the Contracting Officer. At HABC's direction, the proceeds shall be used to repair, renovate or replace the property involved, or shall be credited or reimbursed to HABC against the cost of the Work covered by the Contract.

F. At the conclusion of the term of the Contract and prior to completion of final payment, the Contractor shall deliver to HABC an updated listing of property furnished to, or acquired by the Contractor, showing as to each property item, the description, location, and condition of the property. Upon termination of the Contract, HABC may require the Contractor, and the Contractor agrees to either deliver to HABC, any and all property furnished to, or acquired by the Contractor for the performance of the Contract or otherwise dispose of such property as directed by HABC.

**64. Sanitary Facilities**

The Contractor shall furnish, install and maintain ample sanitary facilities for his/her workmen, located to the satisfaction of HABC.



**65. Communications**

- A. All papers required to be delivered to HABC shall, unless otherwise specified in writing to the Contractor, be delivered to the Office of the Acting Senior Vice President, Division of Energy, Engineering, and Capital Improvements, Housing Authority of Baltimore City, Room 301, Charles L. Benton, Jr. Building, 417 East Fayette Street, Baltimore, Maryland 21202, and any notice to or demand upon HABC or the Architect shall be sufficiently given if so delivered, or deposited in the United States mail in a sealed, postage-prepaid envelope, or delivered with charges prepaid to any telegraph company for transmission to said Acting Senior Vice President of the Division of Energy, Engineering, and Capital Improvements at the above address or such address as HABC may subsequently specify in writing to the Contractor for such purpose.
- A. 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 would have been received in due course of post; or in the case of telegrams, at the time of actual receipt.

**66. Specifications and Drawings for Construction**

- A. HABC is not required to furnish drawings and specifications for jobs under the Contract. HABC may, however, choose to do so. If HABC provides such drawings and specifications the provisions listed below apply.
- B. In case of conflict between requirements, the requirement which meets all the codes and, which in the opinion of HABC is more advantageous to HABC, shall govern.
- C. Paragraph 9.(h) of the HUD General Conditions of the Contract for Construction shall be amended to read as follows:

"The Contractor shall review, stamp with his/her approval, and submit to HABC with reasonable promptness, so as to cause no delay, a minimum of six copies of the required shop drawings. The Contractor is responsible for all of the designs and modifications shown on the shop drawings unless he/she specifically states on the drawings and in a letter, which accompanies the drawings, his/her lack of agreement or an approval of any aspect of the drawings. If any disagreement should arise, HABC reserves the right to reject the drawing and demand one which is approved without qualification."

**67. Protection of Existing Vegetation. Structures, Equipment  
Utilities and improvements**

The Contractor and/or his/her subcontractors shall furnish, erect and maintain such signs as may be required by compliance with local codes and/or safety regulations for the purposes of controlling traffic and safeguarding life and property.

**68. Insurance**

Replace Paragraph 36 of the HUD General Conditions of the Contract for Construction with the following:



Before commencing Work, the Contractor and each subcontractor shall furnish HABC with certificates of insurance evidencing the following insurance is maintained and in force (for the entire Contract duration), providing coverage for all operations under the Contract. In addition, all insurance policies shall be written naming HABC as an Additional Insured; as their interests may appear. All insurance shall be carried with financially responsible companies possessing an A.M. Best's Rating of B+VI or better and shall be procured from a company(s) licensed to do business in the State of Maryland. 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 the reinstated coverage to the Contracting Officer (any lapse in coverage is cause for immediate termination of the Contract). All certificates of insurance, as evidence of coverage, shall provide that no coverage may be cancelled or non-renewed by the Insurance Carrier until at least 30 days' prior written notice has been given to the Contracting Officer. HABC may, at its sole discretion, add, raise, waive or reduce in limits, any insurance coverage required under the Contract as set forth below:

1. Workers Compensation Insurance- The Contractor including subcontractors shall obtain and maintain during the term of the Contract, Workers Compensation Insurance (including Employer's Liability) and shall apply and be in accordance with all Maryland Statutory requirements.
2. General Liability Insurance- The Contractor including subcontractors shall obtain and maintain during the term of the Contract coverage with a combined Single Limit for "bodily injury" (including death, public liability & personal injury) and "property damage" of not less than \$1,000,000 per occurrence, to protect the Contractor and each subcontractor against claims for injuries and damage to the property of others. This shall also cover the use of all equipment, hoists, and vehicles on the site(s) not covered by the Automobile Liability Insurance under section 3 below. If the Contractor has a "claims made" policy, then the following additional requirements apply: The policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period ("Tail") may not be less than five years following the completion date of the Contract.
3. Automobile Liability Insurance- The Contractor including subcontractors shall obtain and maintain during the term of the Contract, coverage on all motor vehicles owned and non-owned, hired, leased or otherwise used on the site(s) or in connection therewith. This insurance shall provide coverage for "bodily injury" (including death and "property damage" with a Combined Single Limit in the amount not less than \$1,000,000 per occurrence and shall be in accordance with all Maryland Statutory requirements.
4. Pollution Liability Insurance- The Contractor/Supplier including subcontractors shall obtain and maintain during the term of the Contract, insurance covering hazardous material exposures, releases, damage and pollution resulting from construction, renovation, remodeling, repair or demolition. This insurance shall provide coverage for "bodily injury" and "property damage" with a Combined Single Limit in the amount not less than \$1,000,000 per occurrence. The Certificate of Insurance must name the Authority as an additional insured.
5. When the Contractor is asked to provide Ancillary Design services and HABC requests the drawings be signed/stamped by a Maryland licensed engineer or architect, said professional shall provide HABC an insurance certificate conforming to the following coverage:





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Professional Liability Insurance- The Contractor/Supplier including subcontractors shall obtain and maintain Professional Liability/Malpractice insurance during the term of the Contractor any professional services rendered protecting against claims for damages which may arise from operations under the contract, whether such operations be by the Contractor or by any employees, agents or representatives of the Contractor (including subcontractors). Limits for this coverage shall be not less than \$1,000,000 per occurrence.

Builder's Risk- Insurance shall be in place before commencing any Work. The Contractor shall furnish HABC with a Certificate of Insurance evidencing Builder's Risk (Fire and Extended Coverage) Insurance covering all work in-place and /or materials stored at the building site(s), including foundations and building equipment. The Builder's Risk Insurance shall be for the benefit of the Contractor and HABC, 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 HABC shall carry insurance on such equipment from the time the Contractor takes possession thereof and until the Contract Work is accepted by HABC. The Builder's Risk Insurance need not be carried for excavations, piers, footings or foundations until such time as Work on the super-structure is started. It need not be carried on landscape work. Policies shall furnish coverages at all times for the full cash value of all completed construction, as well as materials stored "on-site", "off-site", in-place", and "in-transit", all of which shall be the responsibility of the Contractor, whether or not partial payment has been made by HABC. The Contractor is not required to carry Builder's Risk Insurance for modernization work, which does not involve structural alterations or additions or where HABC's existing Fire and Extended Coverage policy can be endorsed to include such work. The Contractor may terminate this insurance, on those buildings accepted by HABC as of the date of said acceptance.

The Contractor shall furnish a "Builder's Risk" policy as specified in the proceeding paragraph, covering the following:

New Construction- Work shall be insured with "Builder's Risk" Insurance (Builder's Risk Insurance only insures value of improvement(s) and not existing structure) in the amount of the full Contract value (or sector value where HABC assigned work sectors), providing full replacement value of all new construction on an "all Risk" including Flood and Earthquake (special Form) basis.

Existing Structures- which are vacant during renovation shall in addition to 5.(a.) above(Builder's Risk-New Construction), be insured with "Fire & Extended Coverage" Insurance in the amount of a minimum of a \$120,000 per structure. This insurance shall provide full replacement value of the existing structure(s) on "All Risk" including Flood and Earthquake (Special Form) basis. If there is a loss and this amount is deficient, the deficiency shall be borne by HABC except for the deductible portion, if any, provided for under the policy provisions.

In addition to the above requirements to obtain and maintain Workers Compensation, General Liability, Automobile Liability insurances, HABC is to be named as Additional Insured on all policies. The Contractor including subcontractors shall also agree to hold HABC, its officers, agents and employees, harmless from any and all claims against HABC's officers, agents and employees which arise out of any action or omission of the Contractor or any the Contractor's officers, employees or agents, which are not covered pursuant to the requirements of insurance in the above paragraphs. The agreement to hold HABC, its officers, agents and employees harmless shall not be limited to the level of liability insurance required under the provisions



## **HABC Supplemental General Conditions**

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of this RFP or Contract, or any document or instrument the provisions of this RFP are or shall be made a part.

**69. List of Attachments**

The following are attachments, which are made a part of these HABC Supplemental Conditions.

<u>Attachment Number</u>	<u>Title</u>
1	Acronyms

**Attachment 1- Acronyms**

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AI	The Asphalt Institute.
ANSI	American National Standards Institute
AREA	American Railway Engineering Association
AQL	Acceptable Quality Level
ARI	Air-Conditioning and Refrigeration Institute
ARD	Automatic Release Date
ASAE	American Society of Agriculture Engineers
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASSE	American Society of Sanitary Engineers
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
CDR	Contract Discrepancy Report
CSI	Construction Specification Institute
CONSTRUCTION TASK CATALOG®	
GVW	Gross Vehicular Weight
IAW	In Accordance With
JOC	Job Order Contract(ing)
LIN	Line Item Number
NEC	National Electrical Code
NEMMA	National Electrical Manufacturers Association
NRPA	National Fire Protection Association
PM	Project Manager
POL	Petroleum, oil, and Lubricants
QA	Quality Assurance
QASP	Quality Assurance and Surveillance Plan
QC	Quality Control
QCP	Quality Control Program
RFP	Request for Proposal
RFCP	Request For Cost Proposal



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## HABC SPECIAL CONDITIONS

### ARTICLE 1. CERTIFICATION OF NONSEGREGATED FACILITIES (Applicable to Contracts Exceeding \$10,000)

In reference to 10(a) of the Representations, Certifications, and Other Statements of Bidders (HUD form 5369-A) note the following:

The Responders' attention is also called to the Equal Opportunity Provisions of the HABC Special Conditions.

In reference to 10(d)(3) of the Representations, Certifications, and other Statements of Bidders (HUD form 5369-A) note the following:

The certification may be submitted either for each subcontractor or for all subcontractors on a quarterly basis.

### Article 2. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENT

During the performance of the 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 disability.
- b. The Contractor shall take 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 disability. 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 disability.
- e. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other 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, the 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.

### **ARTICLE 3. PRECONSTRUCTION CONFERENCE AND NOTICE TO PROCEED**

Add the following as Paragraph (c) to HUD General Conditions No. 5 on page E-3:

#### **Equal Opportunity Requirements**

- 1. Fair Housing and Equal Opportunity Office (FH&EO) is responsible for developing and implementing HABC's Equal Opportunity Programs.
- 2. During the Preconstruction Conference, a representative of the FH&EO Office will advise the Prime Contractor of all necessary equal requirements. The equal opportunity requirements shall be submitted to the FH&EO Office within 10 days after the Preconstruction Conference.
- 3. All equal opportunity requirements must be complied with prior to the FH&EO Office approving the Notice To Proceed.

### **ARTICLE 4. PAYMENT**

When submitting the certification reference in Paragraph No. 27(e)(2) (Payments) of the HUD General Conditions on page E-10, note the following:

A Contractor shall pay all subcontractors and suppliers, including minority and women business enterprises in a timely fashion. A payment is timely if it is mailed, delivered or transferred to a subcontractor or suppliers within seven (7) calendar days of acceptance of the Work, or portions thereof, by HABC. Beginning with the second pay request from the Contractor to HABC, the



Contractor shall provide HABC with evidence that all subcontractors have been duly paid out of the proceeds of the prior payment which the Contractor received from HABC, unless a bona fide dispute, documented in writing, exists between the Contractor and the unpaid subcontractor.

### ARTICLE 5. EXECUTIVE ORDER 11246 – EQUAL EMPLOYMENT OPPORTUNITIES

The Contractor agrees to comply with Executive Order 11246, as amended and the rules, regulations and orders of the Secretary of Labor.

1. The following section applies to all contractors and subcontractors which hold any federal or federally assisted construction contracts in excess of \$10,000. The regulations in this part are applicable to all of the construction Contractor's or subcontractor's construction employees who are engaged in on-site construction, including those construction employees who work on a non- federal or non-federally assisted construction site.
2. Notice Of Requirement For Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

- a. The Responder's or Responder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by specifications set forth in 41 CFR 60-4.3(a) The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- d. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this RFP. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.
    - e. As used in this Notice, and in the Contract resulting from the RFP, the "covered area" is City of Baltimore, State of Maryland.
3. Standard Federal Equal Employment Opportunity Construction Contract specifications (Executive Order 11246)



a. As used in these specifications:

1. "Covered area" means the geographical areas described in the RFP from which the Contract results;
2. "Director" means the Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
3. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
4. "Minority" includes:

Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race);

Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identifications).

- b. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications.
- c. If the Contractor is participating (Pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan, is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- d. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these





specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

- e. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- f. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - 1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - 2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - 3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or, if referred, not employed by the Contractor, shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.
  - 4. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's effort to meet its obligations.
  - 5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under G-2 above.



6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
8. Disseminate the Contractor's EEO policy externally by including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one (1) month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
11. Validate all tests and other selection requirements where there is obligation to do so under 41 CFR Part 60-3.
12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to insure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.



15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- g.. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (G-I through 16). The efforts of a contractor association, joint contractor-union, contractor- community, or other similar groups of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under G-I through 16 of these. Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's, and failure of such a group to fulfill an obligation, shall not be a defense for the Contractor's noncompliance.
- h.
- i. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
  - j. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
  - k. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
  - l. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41CFR-4.8.
  - m. The Contractor shall designate a responsible official to monitor all employment to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade union affiliation (if any), employee identification number (when assigned), social security number, race, sex, status (for example: mechanic, apprentice,



trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

- n. Nothing herein provided shall be construed as a limitation upon the application of other laws, which establish difference standards of compliance or upon the application of requirements for the hiring of local or other areas residents (for example, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

### ARTICLE 6. SECTION 3 HOUSING AND URBAN DEVELOPMENT (HUD) ACT OF 1968

#### 1. General

The Contract is considered a Section 3 covered contract pursuant to Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C.A. Section 1701u, et seq., and the implementing regulations issued pursuant thereto, 24 C.F.R. part 135 et seq. ("Section 3"). Section 3 requires that each applicant, recipient, contractor, or subcontractor undertaking work on a Section 3 covered project shall assure that, to the greatest extent feasible, contracts for work to be performed in connection with the project are awarded to business concerns located within the Section 3 covered project area or business concerns owned in substantial part by persons residing in the Section 3 covered area. HUD in consultation with the Small Business Administration will establish for the Section 3 covered project area a registry of business concerns which meet the definition contained in Paragraph 135.5 (b) and (c). Each applicant, recipient, Contractor or Subcontractor undertaking work in connection with a Section 3 covered project shall fulfill his/her obligations to utilize business concerns located within or owned in substantial part by persons residing in the Section 3 covered project area by developing and implementing an affirmative action plan.

#### 2. Section 3 – Employment and Training of Lower Income Persons, Subcontracting With Section 3 Businesses --135.20 Assurance of Compliance with Regulations (Section 3 Clause)

The Contractor and its subcontractors shall insert in all contracts for work in connection with the Contract awarded under this RFP, the following clause (referred to as the Section 3 Clause):

- a. The Work to be performed under the Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. Section 3 required that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for Work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.
- b. The parties to the Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135.2B, and all applicable rules and orders of the



Department issued thereunder prior to the execution of the Contract. The parties to the Contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.

- c. The Contractor will send to each labor organization or representative of workers with which he/she has a collective bargaining agreement or other Contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The Contractor will include this Section 3 clause in every subcontract for Work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135.2B. The Contractor will not subcontract with any Subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135.2B and will not let any subcontract unless the Subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135.2B, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Contractors and Subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.2B.135.

### 3. Bidding and Negotiation Requirements

Every applicant and recipient shall require prospective Contractors for Work in connection with Section 3 covered projects to provide, prior to the signing of the Contract, a preliminary statement of work force needs (skilled, semiskilled, unskilled labor and trainees by category) where known; where not known, such information shall be supplied prior to the signing of any Contract between Contractors and their subcontractors.

- 4. Utilization of Businesses Located In Or Owned In Substantial Part By Persons Residing In the Section 3 Area
- 5. 135.70 Development Of An Affirmative Action Plan

In developing an affirmative action plan, each applicant, recipient, Contractor and subcontractor preparing to undertake work pursuant to a Section 3 covered contract shall:

- a. Set forth the approximate number and dollar value of all contracts proposed to be awarded to all businesses within each category (type or Profession) over the duration of the Section 3 covered project in question.
- b. Analyze the information set forth in paragraph (a) of this section and the availability of eligible business concerns within the project area doing business in professions





or occupations identified as needed in paragraph (a) of this section, and set forth a goal or target number and estimated dollar value of contracts to be awarded to the eligible businesses and entrepreneurs within each category over the duration of the Section 3 covered project.

- c. Outline the anticipated program to be used to achieve the goals for each business and/or professional category identified. This program should include, but not be limited to, the following actions:
  - (1). Insertion in the bid documents, if any, of the affirmative action plan of the applicant, recipient, Contractor, or Subcontractor letting the contract; and
  - (2). Identification with the bid documents, if any of the applicable Section 3 project area.
- d. Indicate the anticipated process and steps which have been taken and/or will be taken to secure the cooperation of Contractors, subcontractors, and unions in meeting the goals and carrying out the affirmative action plan developed pursuant to this subpart.
- e. Take steps to insure that the appropriate business concerns included in the Department's registry for the Section 3 covered project area are notified of pending contractual opportunities either personally or through locally utilized media. All applicants, recipients, contractors, and subcontractors which so notify concerns included in the Department's registry of available contracts and of opportunities to submit bids shall satisfy all requirements of this Part for notification of business concerns located within the Section 3 covered project area and business concerns owned in substantial part by persons residing in the Section 3 covered project area.
- f. Take steps to ensure that contracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- g. Where competitive bids are solicited, require the Responders to submit their utilization goals, and their affirmative action plans for accomplishing their goals, and in evaluating each bid, to determine its responsiveness, carefully evaluate the Responders' submission to determine whether the affirmative action plan proposed will accomplish the stated goals.
- h. Where advantageous, seek the assistance of local officials of HUD in preparing and implementing the affirmative action plan.
- i. In implementing its affirmative action plan, each applicant, recipient contractor, or subcontractor shall make a good faith effort to achieve its goal or target number and estimated dollar amount of contracts to be awarded to the eligible businesses and entrepreneurs within each category over the duration of the Section 3 covered project. Each applicant, recipient, Contractor, or Subcontractor seeking to establish that a good faith effort has been made to implement its affirmative action plan, as required by this paragraph, shall as a minimum, set forth evidence acceptable to the Secretary that it has implemented the steps required by paragraphs (C), (D), (E), (F), (G) and (H) of this section and has ascertained from the Department's Regional Administrator, Area Office Director, or FHA Office Director having jurisdiction over the Section 3 covered project, the boundaries of



the Section 3 covered project area, if available, and attempted to recruit from the appropriate areas the necessary eligible business concerns through: Local advertising media, signs placed at the proposed site for the project; and community organizations and public or private institutions operating within or serving the project area such as Project Area Committees (PAC), Office of Economic Development (OED), citizen advisory boards, Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, or the U.S. Employment Service, as well as the Chamber of Commerce and any equivalent organizations in the Section 3 covered project area.

### ARTICLE 7. SECTION 3

#### RESIDENT EMPLOYMENT

- a. It is the policy of HABC that, to the greatest extent feasible, opportunities for training and employment be given by the Contractors and subcontractors to residents of public housing owned by HABC.
- b. The Contractor agrees to use its best efforts to carry out this policy in accordance with HABC's Affirmative Action Plan and in the awarding of its subcontracts to the fullest extent consistent with the efficient performance of the Contract.
- c. The Resident Employment Goal for the Contract is that 50% of all new hires for Work accomplished under the Contract be current residents of public housing.
- d. Names of residents who would be suitable for this Work may be obtained from HABC. The Contractor shall give primary consideration to those residents equally qualified to perform the Work over non-residents.

#### CONTRACTORS DISCLOSURE OF BEST EFFORTS BEFORE ISSUE OF JOB ORDER:

A Job Order will not be awarded to a Contractor (that intends to offer training and employment opportunities in connection with the Contract) unless the Contractor has disclosed to HABC the best efforts that the Contractor intends to undertake to meet the Section 3 training and employment preference, and the HABC has approved these efforts in accordance with the following procedures:

The Fair Housing & Equal Opportunity Office (FH&EO) is responsible for implementing the HABC Section 3 Program. Through the HABC Special Conditions contained in Volume I of the Proposal Documents- Proposal Information and Contractual Documents the FH&EO Office has provided notice of the Section 3 requirements.

#### SECTION 3 REQUIREMENTS MUST AT A MINIMUM INCLUDE THE FOLLOWING FOR ALL CONTRACTS.

- a. 50% of all new hires must be project area residents:
  1. Public Housing Project Area Resident
  2. Public Housing Non Project Area Resident
  3. Youth Build Participant
  4. Baltimore Metropolitan Area Resident
  - \* Baltimore Metropolitan Area Resident/Project Area



b. All Prime Contractors will be responsible for notifying their sub-contractors of the Section 3 requirements.

c. All prime Contractors must identify to the FH&EO Office a Section 3 plan, which will include:

1. What steps will be used to implement the hiring of Section 3 residents and to utilize Section 3 business concerns.
2. Identify proposed Section 3 business trades and/or services needed for each specific purchase order. Also identify the proposed specific job force.
3. The aforementioned information must be submitted with each Cost Proposal prepared for jobs under the Contract with a copy being provided to FH&EO. Failure to provide the FH&EO the requested Section 3 information set forth above may result in the rejection of the proposal.
4. Package subcontracts for work to be done in a manner that will provide to the maximum extent feasible, opportunities for Section 3 businesses to participate. Consideration will be given to items such as:
  - i. Size of subcontract (dollar amount), and
  - ii. Scope of work or type of work identified Section # businesses are able to provide.
5. Termination Because Of Failure To Comply With The Requirement For Training And Employment Of Lower Income Persons.

A breach of any of the Paragraphs contained in the Section 3 Paragraphs of these Special Conditions may be grounds for termination of the Contract and for debarment as provided in 24 CFR 135.

6. Examination of Contractor's Records

On all contracts (except those of \$10,000 or less) HABC, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor or Subcontractors which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

The successful Responder for all contracts in excess of \$50,000 will be required to provide prior to the signing of the Contract, a preliminary statement of work force needs (skilled, unskilled labor and trainees by category). The Contractor will be required to maintain a list of all project area residents who train and hire project area residents.

### PROCEDURES FOR EXECUTING SECTION 3 REQUIREMENTS:

The activities described in this section should be undertaken by the prime Contractor and the subcontractors in order to implement Section 3 training and employment initiatives. Prime Contractors and subcontractors are not limited to these actions and are encouraged to develop innovative methods to increase training and employment opportunities for low-income persons. **Contractors are especially encouraged to offer certified apprenticeship training available to residents whenever possible.**



The following indicates activities which may be taken in any combination, and which may demonstrate affirmative efforts to offer training and employment opportunities to low-income persons:

- a. Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required and where to obtain additional information about the application process).

In order to assist the Contractors, the FH&EO Office, with the assistance of on-site housing management, resident councils, and other resident organizations, and the on-site employment service (when available) will make certain flyers are properly distributed through-out the project area.

- b. Contacting resident councils, resident management corporations, or other resident organizations, and advising them of the opportunities for employment.
- c. Job information meetings will be conducted by the FH&EO Office and the Contractor representative (s) at the development where the work is being done prior to commencing work at the project.
- d. The FH&EO Office will arrange for a location in the housing development where job applications may be delivered to and collected by the Contractor(s) or their representative.

To assist the Contractor with the recruitment of Section 3 residents, the Housing Authority has obtained the assistance of the Department of Economic and Employment Development (DEED). DEED will undertake on behalf of the Contractor, the efforts to match eligible and qualified low-income persons with the training and employment positions that the Contractor intends to fill. The service will also assist the Housing Authority with establishing and maintaining a viable pool of applicants.

**A list of DEED Office locations is available at the FH&EO Office.** Residents may complete applications at DEED Office locations and arrangements may be made through the DEED Office for Contractors to conduct interviews on-site.

- e. The FH&EO Office will monitor Section 3 residents participating on Section 3 projects. The FH&EO Office must be notified of residents who are terminated within 24 hours of the termination. Additionally the Contractor should replace the terminated resident with another Section 3 employee within 48 hours.
- f. This list of available Section 3 outreach activities may not be inclusive, therefore, any concerns or questions which the Contractors may have regarding implementation of the Section 3 program should be addressed to the:

Housing Authority of Baltimore City  
Fair Housing and Equal Opportunity Office  
417 E. Fayette Street, Suite 412  
Baltimore, Maryland 21202

ATTN: Angela Showell, Equal Opportunity Assistant

(443) 984-1963



## ARTICLE 8. EQUAL OPPORTUNITY REPORTING FORMS

REFER TO PAGES G21-26 FOR SAMPLES OF THE REQUIRED SECTION 3 REPORTING FORMS.

## ARTICLE 9. MINORITY BUSINESS ENTERPRISE PROGRAM

A. The Responder agrees that in connection with the performance of services under the Contract, the Responder shall comply with any applicable HABC program concerning Minority Business Enterprises (MBE), Women-owned Businesses (WBE), Small Disadvantaged Businesses, and/or any such program that may be adopted, amended and/or implemented by HABC.

B. Definition:

"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 member, 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 member, and whose management and daily operations are controlled by one or more such individual. For the purpose of this definition, minority group members are: African-Americans, Hispanic Americans, Asian Pacific Americans, Native Americans, and Asian Indian Americans.

C. Minority Business Certification:

A minority business must be certified by an authorized certifying agency. HABC will accept minority business certification from any authorized city, state, or federal certifying agency.

D. Advertisements:

Preparation of bids and notices of letting will be done in a timely manner with at least 7 to 10 days for preparation of a response.

E. Grouping of Work Items:

Steps to ensure equal opportunity participation will include dividing total requirements, when feasible, into smaller tasks, quantities, or small dollar amounts to permit maximum participation by all business enterprises.

F. Payments to Subcontractors:

**A Contractor shall pay all subcontractors, and suppliers, including minority and women business enterprises, in a timely fashion.** A payment is timely if it is mailed, delivered or transferred to a subcontractor no later than 7 days after the Contractor's receipt of payment from HABC.. Beginning with the second pay request from the Contractor to HABC., the Contractor shall provide HABC with written evidence that all subcontractors have been duly paid out of the proceeds of the prior payment which the Contractor received from HABC, unless a bona fide dispute, documented in writing, exists between the Contractor and the unpaid subcontractor.

G. Advertising Subcontract Opportunities:





In the event HABC or its JOC consultant provides a website for posting and or advertising subcontract opportunities, the Contractor agrees to post and/or advertise individual Job Order subcontract opportunities on such site in a timely manner, and as directed by HABC.

## **ARTICLE 10. CONTRACTORS OBLIGATIONS FOR COMPLIANCE WITH EQUAL OPPORTUNITY REQUIREMENTS**

General Conditions:

- A. In accordance with Executive Orders 12432 and 11625 the Contractor agrees that minority and women business enterprises shall have equal opportunity to participate in this project.
- B. Final approval of all subcontractors (including tier contracts) will be determined by the Fair Housing and Equal Opportunity (FH&EO) Office and the Engineering Division. The prime Contractor will be held responsible for any violation of this portion of the minority business enterprise program.
- C. The Contractor agrees to comply with all other Equal Opportunity requirements for the Contract.

## **ARTICLE 11. CONTRACTOR'S REQUIREMENTS**

The Contractor shall, as a minimum, take the following actions to assure full equal opportunity to minority business enterprises:

1. Designate a liaison officer who will act as the firm's Equal Opportunity Officer and who will administer the Contractor's equal opportunity program.
2. Award subcontracts to procure supplies, services, construct and/or reconstruct, rehabilitate and demolish structures, parks and/or sidewalks etc. Also to make improvements or renovations under the Modernization Program.
3. Cooperate fully with HABC in any reviews of the Contractor's procedures and practices with respect to all equal opportunity requirements.

### **A. Records**

1. To identify all activities (contracts, services, and supplies) provided to minority and all other business enterprises, the prime Contractors are requested to supply all information on the Business Utilization Form. A sample of the Business Utilization Form is attached on page G24.
2. The prime Contractor will submit upon request by the FH&EO Office and maintain such records as are necessary to determine compliance with its MBE Utilization obligations. The records kept by the Contractor will be designed to show:
  - a. The number of minority and non-minority subcontractors and the type of work being performed on this project.
  - b. Maintain records showing procedures, which have been adopted, to comply with the Policies set forth herein for a period not to exceed three (3) years. Such documentation shall include correspondence, contacts,



telephone calls, etc., and copies of canceled checks issued jointly or solely to minority business enterprises, to obtain the service of minority business enterprises on this project.

- c. The progress and efforts being made in seeking out minority Contractor organizations and individual minority Contractors for work on this project.

### B. Monitoring

1. Submit upon request by the FH&EO Office, records indicating contracts and other business activity with MBEs to reflect the records referred on the Business Utilization Form in such form and manner as prescribed by HABC to the agency's FH&EO Office..
2. All such records must be maintained for a period of three (3) years following completion of the Contract work and will be available for inspection by HABC and HUD.

## ARTICLE 12. WOMEN'S BUSINESS ENTERPRISE

In compliance with Executive Order 12138, HABC will take appropriate affirmative action to assist women's business enterprises and shall maintain information and reports documenting actions and accomplishments. All Contractors must indicate all women owned businesses used on any project on the Business Utilization Form.

## ARTICLE 13. RESIDENT-OWNED BUSINESSES

HABC strongly encourages participation of resident-owned businesses and will make affirmative efforts to contract with resident-owned businesses to carry out modernization activities. Contractors should provide information indicating all resident-owned businesses performing on HABC contracts to the FH&EO Office.

## ARTICLE 14. SUBCONTRACTING SOLICITATION INFORMATION

The Contractor shall submit with each Job Order Cost Proposal a Bid Solicitation Summary on the form provided by HABC (see page G-24) communicating to HABC the following information: Type of contract; total # of solicitations; method of solicitation, total number of bids received; names of the Bidders; M/WBE and Section 3 status of each Bidder.

## ARTICLE 15. POSSIBLE FUTURE UTILIZATION OF HABC FH&EO SOFTWARE

The Contractor's contract compliance responsibilities will include a requirement that Contractors and their subcontractors use a specific software or web-based software application that will be accessed by HABC, its employees, consultants and agents, but not by third parties (collectively, the "Web-based Application"), to provide and/or track their compliance under the terms and conditions of their JOC Contract and subcontracts, including but not limited to MBE, WBE and Section 3 participation. The Contractor herein agrees to utilize such Web-based Application to provide all such compliance data and information on a monthly basis or as otherwise determined by HABC. The Contractor further agrees to require its subcontractors to comply with such contract



compliance requirements and to include a clause in all subcontracts resulting from the JOC Contract notifying the subcontractors of the Web-based Application reporting requirements. Authorization for use of the Web-based Application by Contractors and their subcontractors will be provided pursuant to a licensing agreement between HABC and the Web-based Application provider at no cost to Contractors and their subcontractors. Therefore, Contractors and their subcontractors will not be required to purchase any software or licenses. However, Contractors and subcontractors will be required to have access to the Internet at their sole expense, or access to any other Internet service that may be available to the public free of charge. Training on the use of the Web-base Application will be provided by the HABC FH&EO Office free of charge to Contractors and their subcontractors.





## TECHNICAL QUALIFICATIONS

### SECTION 1: Related Experience and Past Performance

#### A. Related Contract Experience and Past Performance.

1. List all the Indefinite Delivery Indefinite Quantity (IDIQ) construction contracts (JOC, SABRE, DOC, WOC, MATOC or other IDIQ contracts) your firm has been awarded since 1/1/2011.
  - a. For each contract provide the following:
    1. Contract title.
    2. Contract number.
    3. Owner.
    4. Geographic location.
    5. Owner contact name, title, address and phone number.
    6. Contract amount (include description of base and option periods).
    7. Identify any option periods executed or rejected by the Owner.
    8. Identify the approximate dollar amount of Work under contract and Work completed.
    9. Identify the approximate number of Job Orders issued under the contract.
    10. Identify the primary type(s) of facilities or infrastructure that are being constructed, repaired, maintained, etc.

Note: Previous successful IDIQ experience is a plus, but **not** a requirement.

2. List the five largest multi-disciplined contracts your firm has been awarded since 1/1/2011 (if any are among those contracts listed in #1 above, just list the contract title and make the statement "see information above").
  - a. For each contract provide the following:
    1. Contract title.
    2. Contract number.
    3. Owner.
    4. Geographic location.
    5. Owner contact name, title, address and phone number.
    6. Contract amount.
    7. Contract duration.
    8. Identify the approximate dollar amount of Work completed.
    9. Provide a general description of the Detailed Scope of Work.
3. Provide any additional information or statements that you feel will demonstrate your firm's ability to successfully manage the Maximum Contract Term Value annually in general construction, with multiple project locations (as many as 10 concurrently), and





while managing multiple trade subcontractors at each project site. Information and statements will be considered with particular attention paid to: (1) demonstrable past experience with regard to mechanical, electrical, demolition, and residential rehabilitation contracts; and , (2). Residential rehabilitation in compliance with the Rehabilitation Act (Section 504), Americans with Disabilities Act (ADA), and Fair Housing Accessibility Guidelines (FHAG). *Do not exceed four (4) pages.*

4. Under the terms of the Contract, the Responder will be required to provide design and engineering services. The cost of those ancillary services is to be included in the Responder's overhead calculation, which needs to be incorporated into the Responder's Adjustment Factors submitted as the Price Proposal. Additional design and engineering services may be required to assist HABC in developing the Scope of Work. Briefly describe your firms experience since 1/1/2004 managing contracts that involved a direct contractual relationship between your firm and architectural/engineering firms (if your firm self-performed the design or engineering work, state that and provide the remaining information. *Do not exceed five (5) examples and two (2) pages.*
  - a. Cite specific projects.
  - b. Briefly explain the scope of the design/engineering services.
  - c. Provide the approximate value of the design/engineering subcontract.
  - d. Identify the name of the design or engineering firm.
  - e. Provide a contact name address and phone number at said firm.
  - f. Provide any additional information or statement that demonstrates your firm's ability to manage the delivery of ancillary design services. .
5. Describe your firm's senior management involvement in ensuring your customer's satisfaction. Cite examples of successful intervention by your firm's senior management where customer dissatisfaction had become an issue or cite examples where your firm went beyond the terms of your contract to deliver customer service. For each example cited, provide a brief description and an Owner contact and phone number so that the Evaluation Panel may verify the event occurrence and resolution. *Do not exceed two (2) pages.*

## SECTION 2: Contract Management Plan

- A. When developing and submitting the Management Plan, for the purpose of the Technical Qualifications portion of this proposal, assume the following:
  1. The Contract volume will be equal to the Maximum Contract Term Value annually.
  2. You will receive all Optional Contract Terms, and thus be issued Job Orders throughout the five (5) year maximum contract duration.
  3. Job Orders will be issued at a level frequency throughout the five (5) year maximum contract duration.



4. The mix of Job Orders will be 50% applicable to the Residential Wage Decision and 50% applicable to the Building Wage Decision. 20% in Occupied Units and 80% in Other than Occupied Units.
5. Each Job Order will be for Work performed at a unique project site.
6. There will be no concentration of Work in any particular trade.
7. It will take a minimum of six (6) months after the last Job Order is issued to complete and close-out all Job Orders.

The Evaluation Panel is interested in the ability to make a direct comparison of each Responder's Management Plan, using the same assumptions, to compare and contrast the Responder's understanding of the contract requirements and the quality of the plan related to the delivery of said requirements. Therefore, please incorporate the above assumptions into your management plan.

HABC feels that the assumptions above reasonably reflect its plans, based on current conditions, of managing the Contracts covered under this RFP. However, Responders should in no way construe the above assumptions as a guarantee or implication of: future volume or frequency of Work, execution of Optional Contract Terms, the mix, type or size of Job Orders issued, or the time necessary for the contractor to complete construction and close-out activities.

If the Responder wishes to make different assumptions **for the purpose of preparing its Price Proposal**, that is their prerogative.

- B. Provide an organizational chart indicating the functions, responsibilities and identities of your on-site project management staff, including general manager, project managers, estimators, superintendents, quality control personnel and their chain of supervision. Indicate the extent of their time you anticipate them being assigned to this contract. At the bottom of the organizational chart sum the number of man-years, by position description, you assume necessary to fulfill your obligations under this contract. Note that manpower should include the entire Contract duration, including the time subsequent to the last Job Order being issued and construction and close-out being completed on all Job Orders (i.e. 5 and ½ years). Provide a resume for each individual with their education, work experience, and indicate how long each individual has worked for your firm. **If you list personnel, HABC expects them to be assigned to the Contract!**
- C. Provide a description of how your on-site project management staff will be supervised, by whom, and from what geographic location. Provide resumes for those individuals that will be providing supervision. *Do not exceed two (2) pages, excluding resumes.*
- D. Provide a description of how you plan to provide the ancillary design and engineering requirements required under the terms of this contract. Assume design/engineering fee volume will be approximately 1% of the annual contract volume. Describe any existing relationships your firm has with local design/engineering firms, open-end contracts, in-house capabilities, etc. Assume that all design drawings and engineering calculations must be stamped by a Maryland licensed architect or engineer, as applicable. *Do not exceed two (2) pages.*



- E. Provide a description of your plan for coordinating and controlling subcontractors (see previous assumptions in the Technical Qualifications section of these Proposal Documents for assumed volume of Job Orders, Job Order sizes and number of project sites, etc.). Focus specifically on your plan to ensure that subcontractors show up on the job site every day they are scheduled, with appropriate staff and materials, and make reasonable progress. HABC is particularly interested in a plan that demonstrates capabilities to accomplish the majority of the supervision and management tasks early each workday to minimize elapsed unproductive time. *Do not exceed two (2) pages.*

HABC is interested in the Responder demonstrating past experience in subcontracting to and managing a significant number of trade contractors. Provide a representative list of subcontractors you intend to use or solicit bids from during the duration of the Contract. For each subcontractor, list the city and state of its office location. HABC recommends that to maximize the score for this component of the Technical Qualifications you include, at a minimum, one contractor for each trade area listed below or note your intent to self-perform in that specific trade area. In addition, HABC will give significant weight as to whether or not those listed are local (Baltimore metro area) subcontractors, and if the Responder has demonstrated experience and/or knowledge of the local subcontractor market.

1. Trade Areas: Demolition, carpentry, concrete, asphalt, masonry, roofing, painting, flooring, drywall finishing, mechanical/plumbing, electrical, lead paint abatement, and asbestos abatement.
  2. For each trade contractor provide the following information:
    - a. Approximate number of times your firm has contracted with the trade contractor since 1/1/2004.
    - b. Approximate average size of each subcontract.
    - c. Contact and phone number for each trade contractor.
- F. Provide a description of the procedures your firm has in place and processes your firm plans to utilize to manage the Responder's certified payroll responsibilities under the Contract. Specifically identify the assistance your firm plans to provide to subcontractors and the quality control procedures you firm plans to utilize with said subcontractor payrolls prior to submitting the payrolls to HABC. *Do not exceed two (2) pages.*
- G. Provide a description of the bonding and insurance requirements your firm will impose on all subcontractors. *Do not exceed one (1) page.*
- H. Describe your firm's policy of making progress payments to subcontractors after acceptance (including partial payments) but prior to being paid by HABC, particularly to smaller contractors. *Do not exceed one (1) page.*
- I. Describe the approach your firm will use to "buy out the job" and solicit prices from subcontractors. Include a discussion of your firm's typical schedule for a \$200,000 multi-trade project. *Do not exceed two (2) pages.*
- J. Describe your firm's intent to self-perform the Work and in what specific trades, if any. *Do not exceed one (1) page.*



- K. Describe your firm's approach to punching-out and closing projects in a time efficient manner. *Do not exceed two (2) pages.*

### SECTION 3: Quality Control Plan

- A. Describe the specific qualifications of each member of your quality control staff. Indicate their levels of authority to redirect or put a stop to work and on what basis. *Do not exceed two (2) pages.*
- B. Describe the detailed procedures to be followed by your quality control staff in visiting the sites; documenting the progress and quality of the Work; directing subcontractors in the correction of deficiencies; and directing Work in the event of problems, design changes, change orders, etc. *Do not exceed five (5) pages.*
- C. Describe the approach your firm will utilize to inspect Work and correct deficiencies prior to HABC staff being informed that the Work is ready for inspection. *Do not exceed two (2) pages.*

### SECTION 4: MBE and WBE Subcontracting Compliance Strategy

- A. Responders are advised to review the MBE utilization requirements set forth in Section 7 of the RFP Overview (See page C-7) above and in this Section 4 in preparing and submitting their Proposals. Proposals that do not address the MBE participation and/or waiver requirements set forth in this RFP may be deemed unacceptable. Each Responder must provide the following information in its Proposal:
1. MBE Utilization Plan: The Responder shall provide information concerning its plan for achieving MBE participation for the proposed Contract, which shall include, at the least, the following:
    - a. An initial representative list of MBE and WBE firms, by trade/profession, from which the Responder may subcontract as each Job Order is issued, depending upon the subcontracting opportunities generated, and trades required for such Job Order;
    - b.. Letters of introduction or intent between the Responder and such MBEs and WBEs with which the Responder may subcontract if awarded a Contract and a Job Order; and
    - c. A description of the Responder's plan to market subcontract opportunities to the MBE and WBE subcontractor community.
  2. Prior MBE/WBE Utilization: Provide three (3) recent examples of the Responder's utilization of MBE and WBE firms in similar or major contracts. Provide total cost of the prime contract, total amount awarded to MBEs and total awarded to WBEs and percentages.
- B. Request for Waiver: The Responder may request a waiver in part or in whole, of the MBE participation requirements by submitting a written request for a waiver with supporting documentary evidence, all of which must be submitted by the Responder with its Proposal or before the deadline for Proposal submission. The documentary evidence must reasonably demonstrate that MBE participation was unable to be obtained or was unable to be obtained at a reasonable price. Such evidence shall include, at the least:



1. Correspondence, records, and other documents showing: efforts made to contact and negotiate with MBEs;
2. A description of the specifications, plans, bonding requirements, anticipated schedule of delivery and other pertinent information provided by the Responder to MBEs;
3. A list of MBEs that responded to solicitations or inquiries by the Responder including contact information of each MBE and quotes or Proposals submitted by MBEs; and
4. A list of MBEs contacted by the Responder and found to be unavailable including addresses and phone numbers of each MBE and dates of each such contact.

**C. Requirements After Contract Award:**

1. **MBE Utilization Information:** After contract award, the JOC Contractor will be requested to provide the following information with its Job Order Cost Proposal:
  - a. The name, address, telephone number and contact person for each MBE/WBE that will be performing work on the Job Order.
  - b. A specific description of the work to be performed by each MBE/WBE and the proposed schedule for delivery of services.
  - c. The fee structure showing the dollar amount to be awarded to each MBE/WBE to be utilized, and the total value of each proposed MBE subcontract.
  - d. A letter of intent between the JOC Contractor and each MBE/WBE agreeing to enter into a contract in the event that Job Order is awarded to the JOC Contractor; and
  - e. A current and valid MBE/WBE certification for each MBE/WBE to be utilized, and evidence that the MBE/WBE has been certified in the trade, field, or profession for which the JOC Contractor intends to utilize such MBE/WBE.

## **SECTION 5: Section 3 Compliance Strategy**

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

Responders are required to direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from this contract to Section 3 residents in the following order of priority: (1) Residents of the housing development or developments for which the Section 3 covered assistance is expended; (2) Residents of other housing developments owned or managed by HABC; (3) Participants of HUD Youthbuild programs implemented in the Baltimore metropolitan area; (4) Other Baltimore metropolitan area low and very-low income residents.

To assist the Responder in complying with the Section 3 requirements, HABC encourages Responders to solicit applicants from the HABC Office of Resident Services, People Accessing Continued





Employment Program (P.A.C.E.); and use other employee recruitment services only if PACE has no qualified referrals that meet the Responder's employment, training or subcontracting needs. P.A.C.E. is an employment initiative funded by HABC to provide direct job placement, support services, and post placement support, skills training opportunities, job replacement and job retention services. (See appendix \_)

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

(ii) If you plan to meet Section 3 requirements by subcontracting with Section 3 businesses, provide the names, addresses and telephone numbers of all Section 3 businesses that will be performing work on this project. Provide a description of the work to be performed by such firms and a proposed percentage of the total contract dollar amount that will be awarded to each firm. You must include a letter of intent between your firm and each Section 3 business with which you will subcontract if you are awarded the contract. It is the responder's responsibility to provide proof that such firms meet the definition of Section 3 business concern as established by HUD. See CFR Part 135.5 for definitions of Section 3 business concerns or contact the HABC Office of Fair Housing and Equal Opportunity (FH&EO) at (410) 396-3246 for additional information.

(iii) If you are claiming preference as a Section 3 business concern, you must provide proof of your firm's eligibility for preference as a Section 3 business concern. See 24 CFR Part 135.5 for definitions of Section 3 business concerns or contact the FH&EO for additional information. Firms claiming eligibility for Section 3 preference must also submit a Section 3 compliance strategy.

(iv) In the event that you determine that it is not feasible to comply with Section 3, you must state with specificity, in your Section 3 Compliance Plan, the reasons why you cannot comply with Section 3. Any Responder that has determined that it is not feasible to comply with Section 3 assumes the risk that its claim of non-feasibility will be deemed unacceptable by HABC. (See Attachment 9B to be completed by Responder).

## SECTION 6: Financial Capability

A. The Responder shall be required to demonstrate that it has the financial capability to perform and manage a JOC contract with volume equal to the Maximum Term Value annually. Responders are reminded that HABC expects contract mobilization and construction management services in advance of payments on the initial Job Orders. It is necessary for JOC contractors to do the following to meet the expectations of HABC under the terms of this contract:

1. Mobilize before initial Job Orders are issued.
2. Provide staff for JOC training before initial Job Orders are issued.
3. Perform joint scope, estimating, and subcontracting related activities prior to the first Job Orders being issued.
4. Routinely pay for ancillary design services prior to the applicable Job Order being issued.
5. Compete for some Job Orders for which may be awarded to another JOC contractor.
6. Provide financial assistance to smaller subcontractors, particularly M/WBE and Section 3 firms. This assistance may be in the areas of purchasing materials; assisting in the



## Technical Qualifications

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establishment of credit with material suppliers; making weekly payrolls; paying subcontractors after acceptance of Work by HABC, but prior to payment by HABC; providing business training; and other assistance.

7. Be prepared to provide services with no payments from HABC for at least 120 days from the date of award. Be prepared to absorb negative cash flow for a significantly longer period of time than the 120 days.
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- B. To demonstrate the ability to meet the requirements of this contract and the service expectations of HABC, the Responder shall provide audited or CPA prepared (by a CPA not employed by your firm) Financial Statements for the most recently completed fiscal year.



## PRICE PROPOSAL/AFFIDAVIT OF NON-COLLUSION

FOR: Job Order Contract- \_\_\_\_\_  
Responder Fill in Contract Number

TO THE: Housing Authority of Baltimore City,  
Purchasing Section, Room 401  
Charles L. Benton, Jr. Building  
417 East Fayette Street -  
Baltimore, Maryland 21202

1. The undersigned, having familiarized himself/herself with the local conditions affecting the cost of the Work, and with the Proposal Documents (including the Construction Task Catalog®, the Technical Specifications, RFP Overview/Instructions to Responders, Technical Qualifications, this Price Proposal, the Price Proposal Support, the form of the Proposal Bond/Guarantee, the form of the Performance and Payment Bonds, the form of Non-Collusive Affidavit, the form of the Contract, the Supplemental Conditions and amendments and supplements thereto, the Wage Decisions, and all other portions of the Proposal Documents, and addenda, if any thereto as issued by HABC hereby proposes to serve as the Job Order Contractor for HABC as required by the Contract, to perform everything required to be performed and to provide and furnish all of the labor, materials, tools, equipment, expendable and otherwise, and to perform and complete in a workmanlike manner and within the specified time the Work required, all in accordance with the Proposal Documents and HABC's Unit Prices as adjusted as hereinafter set forth; and
2. The undersigned declares that the Adjustment Factors hereinafter set forth, include a proportionate amount of the total cost for all Work to be performed under the Contract; and
3. The undersigned understands that he/she shall be prepared to provide the satisfactory documentation to the Contracting Officer relating to his/her performance ability and possession of necessary facilities, financial and technical resources and adequate insurance as called for in the Proposal Documents; and
4. The undersigned firm certifies that it is not barred from contracting with any unit of Federal, State or local government as a result of a conviction for the violation of State laws prohibiting bid-rigging or bid-rotating; and
5. Security in the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), in the form of \_\_\_\_\_ is submitted herewith in accordance with the Proposal Documents. The undersigned represents that any surety on bonds securing contracts and that the said surety is classified as a company eligible to write such bonds by virtue of its inclusion in the current United States Treasury Circular No. 570. The undersigned further represents that the selected surety is registered to write bonds within the State of Maryland, and
6. In submitting this proposal, the undersigned understands that HABC reserves the right to reject any or all proposals, to waive minor informalities in any proposal, to award the Contract in part or in whole in the best interest of HABC, and to modify the conditions and Proposal Documents by mutual agreement with the successful Responder up to the time the Executive Director executes the Contract on behalf of the HABC. If written notice of acceptance of this proposal is mailed, facsimiled or delivered to the undersigned within one hundred eighty days (180) after the opening thereof, the undersigned agrees to execute and deliver a Contract in the prescribed form and to



## Price Proposal/Affidavit of Non-Collusion

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furnish the required insurance and payment and performance bonds within ten days (10) after the Contract is presented to the undersigned for signature; and

7. The undersigned agrees to complete the Previous Participation Certificate, Form HUD 2530, which may be relied upon by HABC in determining whether a Responder is responsible and/or responsive. Failure to complete the form may disqualify the Responder from further consideration; and
8. The undersigned acknowledges receipt and inclusion as a part of the Proposal Documents the following addenda (if none has been issued and received, enter the word "NONE"):

Print legibly. Insert all required information. Attach riders, as needed. (Fill in the following blanks)  
IF THERE ARE ANY ADDENDA TO THESE PROPOSAL DOCUMENTS, EACH ADDENDUM  
MUST BE NOTED BELOW. FAILURE TO ACKNOWLEDGE ANY ADDENDUM MAY RESULT IN  
THE PROPOSAL BEING DECLARED "NONRESPONSIVE".

ADDENDUM NO \_\_\_\_\_ DATE \_\_\_\_\_ NO. OF PAGES \_\_\_\_\_

ADDENDUM NO \_\_\_\_\_ DATE \_\_\_\_\_ NO. OF PAGES \_\_\_\_\_

ADDENDUM NO \_\_\_\_\_ DATE \_\_\_\_\_ NO. OF PAGES \_\_\_\_\_

ADDENDUM NO \_\_\_\_\_ DATE \_\_\_\_\_ NO. OF PAGES \_\_\_\_\_



Schedule of Price:

9. The undersigned agrees to perform all Work required, necessary for, or incidental to completing the Work specified in each individual Job Order issued under this Job Order Contract using the Construction Task Catalog® and Technical Specifications. The price to be paid to the Contractor will be the product of the Unit Prices contained in the Construction Task Catalog® for the appropriate construction tasks, necessary to complete the Detailed Scope of Work, multiplied by appropriate quantities multiplied by the applicable Adjustment Factor from those specified below:

- A. **Construction Type: Residential (Construction projects consisting of single family homes and apartments up to and including 4 stories) in an occupied unit:** The undersigned shall perform any or all functions called for in the Proposal Documents and Detailed Scope of Work associated with each Job Order for those projects where the U.S. Department of Housing and Urban Development ("HUD"), or its designated representative, has determined the wage decision Construction Type: Residential applies for the Unit Prices contained in the Construction Task Catalog® for the appropriate construction tasks, necessary to complete the Detailed Scope of Work, multiplied by appropriate quantities multiplied by the applicable Adjustment Factor immediately below.

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Specify to four (4) decimal places

- B. **Construction Type: Building (Non Residential and Residential Construction excluding single family homes and apartments up to and including 4 stories)in an occupied unit:** The undersigned shall perform any or all functions called for in the Proposal Documents and Detailed Scope of Work associated with each Job Order for those projects where the U.S. Department of Housing and Urban Development ("HUD"), or its designated representative, has determined the wage decision Construction Type: Building applies for the Unit Prices contained in the Construction Task Catalog® for the appropriate construction tasks, necessary to complete the Detailed Scope of Work, multiplied by appropriate quantities multiplied by the applicable Adjustment Factor immediately below.

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Specify to four (4) decimal places

- C. **Construction Type: Residential (Construction projects consisting of single family homes and apartments up to and including 4 stories) in other than an occupied unit:** The undersigned shall perform any or all functions called for in the Proposal Documents and Detailed Scope of Work associated with each Job Order for those projects where the U.S. Department of Housing and Urban Development ("HUD"), or its designated representative, has determined the wage decision Construction Type: Residential applies for





## Price Proposal/Affidavit of Non-Collusion

the Unit Prices contained in the Construction Task Catalog® for the appropriate construction tasks, necessary to complete the Detailed Scope of Work, multiplied by appropriate quantities multiplied by the applicable Adjustment Factor immediately below.

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Specify to four (4) decimal places

- D. Construction Type: Building (Non Residential and Residential Construction excluding single family homes and apartments up to and including 4 stories) in other than an occupied unit:** The undersigned shall perform any or all functions called for in the Proposal Documents and Detailed Scope of Work associated with each Job Order for those projects where the U.S. Department of Housing and Urban Development ("HUD"), or its designated representative, has determined the wage decision Construction Type: Building applies for the Unit Prices contained in the Construction Task Catalog® for the appropriate construction tasks, necessary to complete the Detailed Scope of Work, multiplied by appropriate quantities multiplied by the applicable Adjustment Factor immediately below.

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Specify to four (4) decimal places

**NOTICE** - The attention of Responders is particularly called to the fact that, unless the proposal is submitted in strict conformity with the directions given, it will be considered informal and may be rejected. In addition, if the components in the Schedule of Prices above are determined by the Authority to be materially unbalanced (as defined in HUD Procurement Handbook 7460.8 Rev-1, Chapter 4-Source Selection and Contract Formation), the proposal may be rejected.



10. **Award Criteria Figure:** The following formula has been developed for the sole purpose of evaluating the Responder's Price Proposal. Each Responder must complete the following Award Criteria Figure Formula.

### Award Criteria Figure Formula

Line 1. Construction Type: Residential Adjustment Factor in a occupied unit (9A above).	_____
Line 2. Multiply Line 1 by .10	_____
Line 3. Construction Type: Building Adjustment Factor in a occupied unit (9B above).	_____
Line 4. Multiply Line 3 by .10	_____
Line 5. Construction Type: Residential Adjustment Factor in other than a occupied unit (9C above).	_____
Line 6. Multiply Line 1 by .40	_____
Line 7. Construction Type: Residential Adjustment Factor in other than a occupied unit (9D above).	_____
Line 8. Multiply Line 1 by .40	_____
Line 9. Summation of lines 2, 4, 6, and 8	_____
	(Award Criteria Figure)

Notes: Specify lines 1 through 9 to (4) decimal places. Use conventional rounding methodology (i.e. if the number in the 5<sup>th</sup> decimal place is 0-4, the number in the 4<sup>th</sup> decimal remains unchanged; if the number in the 5<sup>th</sup> decimal place is 5-9, the number in the 4<sup>th</sup> decimal is rounded upward).

The weights in lines 2, 4, 6, and 8 above are for the purpose of calculating an Award Criteria Figure ONLY. No assurances are made by the Authority as to the percentage of Work that will be ordered under the Contract for which the Construction Types: Residential or Building shall apply.

11. HABC reserves the right to revise all arithmetic errors in calculations for correctness.
12. All Adjustment Factors and other information required on the Price Proposal must be typewritten or written in ink.



## Price Proposal/Affidavit of Non-Collusion

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13. The Responder represents that he/she has ( ), has not ( ), (**Responder to select, as applicable**) participated in a previous contract or subcontract subject to the equal opportunity clause prescribed by Executive Order 10925, 11114 or 11246 or the Secretary of Labor requirements; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts that are exempt from the clause).
14. Certification of Nonsegregated Facilities: By signing this Price Proposal, the Responder certified that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The Responder agrees that a breach of this certification is a violation of the Equal Opportunity clause in the Contract. As used in the certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, national origin, because of habit, local custom, or otherwise. He/she further agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of any subcontract exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he/she will forward a notice of his/her proposed subcontractors as provided in the instructions to Responders.

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

Date \_\_\_\_\_, 20\_\_\_\_ (Signature) \_\_\_\_\_



## Price Proposal/Affidavit of Non-Collusion

Name of Responder:

\_\_\_\_\_

BY: \_\_\_\_\_  
(Print Name of Person Signing Above)

Official Address:

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

CITY OF \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes

and says; That (s) he/she is \_\_\_\_\_ (a partner or officer of the firm or etc.) \_\_\_\_\_ the party submitting the foregoing Price Proposal, that such Price Proposal is genuine and not collusive or sham; that said Responder has not colluded, conspired, connived, or agreed, directly or indirectly, with any Responder or person to put in a sham Price Proposal or to refrain from responding and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person to fix the Price Proposal of affiant or of any other Responder, or to fix any overhead, profit, or cost element of said Price Proposal, or of that of any other Responder, or to secure any advantage against the Housing Authority of Baltimore City, or any person interested in the proposed Contract; and that all statements in said Price Proposal are true.

\_\_\_\_\_, Title \_\_\_\_\_  
(Signature)

To be signed by the Responder, if the Responder is an individual, or by a partner if the Responder is a partnership, or by a duly authorized officer if the Responder is a corporation.

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

\_\_\_\_\_

NOTARY PUBLIC

My Commission expires \_\_\_\_\_, 20\_\_\_\_



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## PRICE PROPOSAL SUPPORT

### Adjustment Factor Support

- A. There are significant differences between the wage rates in the Residential Wage Decision (applicable to projects deemed Residential projects) and the wage rates in the Building Wage Decision (applicable to projects deemed Building projects), contained in these Proposal Documents. Based on HABC's certified payroll records, there exists a significant difference between market labor rates for certain individual trades and those wage rates required to be paid in Building Wage Decision. Given that the prices contained in the Construction Task Catalog<sup>®</sup> were derived using market wage rates for all trades, HABC can reasonably expect that if a balanced Price Proposal is received it will reflect an Award Criteria Figure comprised of two Adjustment Factors that are significantly different.
- B. Complete the following calculation:
1. Residential Adjustment Factor from Section 10, line 1 of the Price Proposal:  
  
\_\_\_\_\_
  2. Building Adjustment Factor from Section 10, line 3 of the Price Proposal:  
  
\_\_\_\_\_
  3. Divide Line 2 above by Line 1 above and insert the result below calculated to two (2) decimal places (i.e. 1.10). Use conventional rounding methodology (i.e. if the number in the 3<sup>rd</sup> decimal place is 0-4, the number in the 2<sup>nd</sup> decimal remains unchanged; if the number in the 3<sup>rd</sup> decimal place is 5-9, the number in the 2<sup>nd</sup> decimal is rounded upward).  
  
\_\_\_\_\_
- C. If the resulting calculation in B(3) above is less than 1.10, you are required to attach a brief explanation of your rationale and reference specific details of your Management Plan that will make possible the execution of Job Orders in a manner that allows your firm to make a profit while being responsive to HABC (and while maintaining a balanced Price Proposal) on projects that mandate the Building Wage Decision rates be paid. If the resulting calculation in B(3) above is equal to or greater than 1.10, you are required to submit nothing more, at this time, to support the rationale of your Adjustment Factors. *Do not exceed two (2) pages.*



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## PROPOSAL BOND

Bond No: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned

\_\_\_\_\_  
as Principal (hereinafter called "Principal"), and

\_\_\_\_\_  
as Surety(hereinafter called "Surety"), are hereby held and firmly bound unto the Housing Authority of Baltimore City (hereinafter called "HABC") for the sum of \$25,000 submitted for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a proposal to HABC, attached hereto and hereby made a part hereof to enter into a Contract, in writing, for the Job Order Contract - \_\_\_\_\_  
(Insert Contract Number)

NOW, THEREFORE,

If the Authority shall accept the proposal of the Principal and the Principal shall enter into a Contract with HABC in accordance with the terms of such proposal, and give such bonds as may be specified in the Proposal Documents with a good and sufficient Surety for the faithful performance of said Contract and for prompt payment of labor and material furnished in the prosecution thereof, or in the event of failure of the Principal to enter such Contract and give bond or bonds, if the Principal shall pay to HABC the difference not to exceed the penalty hereof between the amount specified in said proposal and such larger amount for which HABC may in good faith contract with another party to perform Work covered by said proposal or an appropriate amount as specified in the Proposal Documents then this obligation shall be void, otherwise to remain in full force and effect.



## Proposal Bond/Guarantee Form

---

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness:

\_\_\_\_\_

\_\_\_\_\_(SEAL)

(Principal)

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

Witness:

Surety:

\_\_\_\_\_

By \_\_\_\_\_  
Attorney-In-Fact



**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**

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Previous edition is obsolete

form HUD-5369-A (11/92)





## 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) \_\_\_\_\_



**HOUSING AUTHORITY OF BALTIMORE CITY (HABC)  
CONFLICT OF INTEREST STATEMENT**

**PART I. CONFLICT OF INTEREST**

1. Neither the Housing Authority of Baltimore City (HABC) nor any of its Contractors or their subcontractors may enter into any contract or arrangement in connection with a project in which any of the following classes of people has an interest, direct or indirect, during his/her or her tenure or for one year thereafter:
  - a. Any present or former member or officer of the governing body of HABC or any member of the immediate family of such member or officer. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policy-making position with the resident corporation, HABC or a business entity.
  - b. Any employee of HABC who formulates policy or who influences decisions with respect to the project(s) or any member of the employee's immediate family, or the employee's partner.
  - c. Any public official, member of the local governing body, or State or local legislator, or any member of -such individual's immediate family, who exercises functions or responsibilities with respect to the project(s) or HABC.
2. Any member of these classes of persons must disclose the member's interest or prospective interest to HABC and the United States Department of Housing and Urban Development (HUD).
3. Any Responder/Responder who submits a bid or proposal in response to an HABC RFP must disclose in its bid or proposal, the interest, direct or indirect, of any member of these classes of persons in such Responder/Responder, and shall also make the disclosures required in Parts II and III below. "Responder" as used in Parts II and III below, refers to Responders in sealed bidding and Responders in competitive proposal procurement actions, and "offer" shall refer to bids and proposals.
4. For purposes of this section, the term, "immediate family member" means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative, a "half" or "step" relative, e.g. a half-brother or stepchild).
5. No member of or delegate to the Congress of the United States of America or any representative of HABC shall be admitted to any share or part of any contract or to any benefits which may arise from it

**Part II. ORGANIZATIONAL CONFLICTS OF INTEREST NOTIFICATION**

1. It is HABC's policy to avoid situations which place an Responder in a position where its judgment may be biased if awarded the contract because of any past, present, or currently planned interest, financial or otherwise, that the Responder may have which relates to the Work to be performed pursuant to the proposed contract or where the Responder receives an unfair competitive advantage in submitting a bid or proposal for the proposed contract, such as, for example, an Responder who submits a bid or proposal after acting as a consultant to HABC in preparing the specifications or performing a study for the proposed contract. Such situations which may either



impair the Responder's objectivity in performing the proposed contract work, or result in an unfair competitive advantage to the Responder are considered organizational conflicts of interest.

2. Where an Responder is aware of, or has reason to be aware of an organizational conflict of interest, whether an actual or apparent conflict, the Responder shall provide a statement which describes in a concise manner all relevant facts concerning any past, present, or currently planned interest, financial, contractual, organizational, or otherwise, relating to the Work to be performed hereunder and bearing on whether the Responder has a possible organizational conflict of interest with respect to:
  - a. being able to render impartial, technical sound, and objective assistance or advice, or
  - b. being given an unfair competitive advantage.
3. The Responder may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions of the organization and how that structure or system would avoid or mitigate such organizational conflict.
4. In the absence of any relevant interests referred to above, or any conflict of interest, financial, organizational, contractual or otherwise, Responders shall complete the certification in Part III below, titled "Conflict of Interest Certification of "Responder".
5. No award shall be made until the disclosure or certification has been evaluated by the Contracting Officer. Failure to provide the disclosure or certification will be deemed to be a minor infraction and the Responder will be permitted to correct the omission within a timeframe established by the Contracting officer.
6. Refusal to provide the disclosure or certification and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant information shall disqualify the Responder.
7. If the Contracting officer determines that a potential conflict exists, the selected Responder shall not receive an award unless the "Conflict" can be avoided or otherwise resolved as determined by the Contracting Officer.
8. In the event the Responder is aware of an organizational conflict of interest and intentionally does not disclose the existence of such conflict to the Contracting officer before the award of the Contract, HABC may terminate the Contract for default.

### **PART III. CONFLICT OF INTEREST CERTIFICATION OF RESPONDER**

1. Responder certifies that to the best of its knowledge and belief and except as otherwise disclosed, no member of the classes of persons listed in Part I above has an interest or prospective interest, direct or indirect, financial, contractual, organizational or otherwise, in the Responder.
2. The Responder certifies that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any actual or apparent 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 Responder's organizational, financial, contractual or other interests may:
  - a. Result in an unfair competitive advantage to the Responder; or





## HABC Conflict of Interest Statement

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- b. Impair the Responder's objectivity in performing the Contract Work.
3. The Responder agrees that if the Contract is awarded to the Responder, and after award it discovers an actual or apparent conflict of interest, financial, contractual, organizational or otherwise, with respect to the Contract, it 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 resolve the conflict. HABC may, however, terminate the Contract for the convenience of HUD and/or HABC.
4. The Responder agrees that if the Contract is awarded to the Responder, the terms of this conflict of interest clause and any necessary provisions to eliminate conflicts of interest shall be included in all subcontracts and consulting agreements resulting from the proposed Contract.
5. In the absence of any interest in the Responder held by any member of the classes of persons referred to above and in the absence of any actual or apparent conflict, I,

---

(Name and Address of Responder)

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 the proposed Contract. The undersigned official certifies that he/she is authorized to sign this Price Proposal for the firm.

SIGNED BY:

---

(Name and Title of Authorized Official)

Date

---

Witness

---

Date



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### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS SOURCE: 24 C.F. PART 24, APPENDIX B TO PART 24; FEDERAL REGISTER, VOL. 60, NO. 122, JUNE 26, 1995

#### Instructions for Certification:

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower-tier covered transaction participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections or rules implementing Executive Order 12549. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause title "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



## Certification Regarding Debarment

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9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a Lower-tier covered transaction with a person who is proposed for debarment under 48 C.F.R- part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

\_\_\_\_\_  
PROSPECTIVE PARTICIPANT

DATE

(Printed) Name and Title of Official)



## Authorization of Responder For Verification of References

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### AUTHORIZATION OF RESPONDER FOR VERIFICATION OF REFERENCES

The undersigned Responder has submitted a proposal to the Housing Authority of Baltimore City ("HABC") in response to RFP No. B-1924-21 For Job Order Contracting Services. The undersigned hereby authorizes and requests any and all persons, firms, corporations and/or government entities to furnish any information requested by HABC in verification of the references provided, for determination of the quality and timeliness of the services provided by Responder, and all other legal purposes. A copy of this document, after execution by the Responder, presented by HABC to any such person, firm, corporation and/or government entity shall be as valid as the original.

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Printed Name and Address of Responder

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Printed Name and Title of Authorized Representative  
or Official of Responder

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Signature of Authorized Representative or Official of Responder

Date





## Authorization of Responder For Verification of References

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## WAGE RATE DECISIONS

The prevailing wage rates:

- a. General Decision Number: MD20210061 01/01/2021, issued January 01, 2021 by the Secretary of Labor.
- b. General Decision Number: MD20210031 01/15/2021, issued January 15, 2021 by the Secretary of Labor.

with respect to the Job Order Contract(s) follow this page. Wage decision changes, such as modifications and superseding decisions, shall be effective, if published before Contract award, unless prior to their issuance by the Secretary of Labor, construction has started, the mortgage has been initially endorsed, or proposals have been opened.

Please note that the Contractor will be required to certify that all laborers and mechanics engaged in the construction of the project, including those employed by the subcontractors, have been paid at least the wage rate required by the effective wage decision, including all changes and additions.

The above reference wage rate decisions will be in effect for twelve (12) months from the date the Contract is executed. Thereafter, if HABC executes an option to extend the Contract for an additional Optional Contract Term, new wage decisions or modifications thereto will be issued - at the same time the Economic Price Adjustment is issued by HABC to increase/decrease the Contractors Adjustment Factors based on the ENR's Construction Cost Index (CCI). For example, if the Contract is active for the maximum term, new wage decisions and/or modifications thereto and Economic Price Adjustments would be issued in months 13, 25, 37 and 48.

Should there be any questions concerning this issuance, please contact Towanna Johnson, Administrative Specialist/Compliance Division of Energy, Engineering and Capital Improvements, at (410) 396-1274.



General Decision Number: MD20210061 01/01/2021

Superseded General Decision Number: MD20200061

State: Maryland

Construction Type: Residential

County: Baltimore City County in Maryland.

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/01/2021

\* CARP0251-007 05/01/2020

	Rates	Fringes
FLOOR LAYER: Carpet.....	\$ 29.26	14.63
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SUMD2012-021 06/25/2014		
	Rates	Fringes
BRICKLAYER (Insulator Foam).....	\$ 21.60	0.00



CARPENTER, Excludes Drywall Hanging, and Metal Stud Installation.....	\$ 19.41	3.11
CEMENT MASON/CONCRETE FINISHER...	\$ 18.92	0.00
DRYWALL HANGER AND METAL STUD INSTALLER.....	\$ 16.36	0.62
ELECTRICIAN.....	\$ 22.59	0.81
IRONWORKER, ORNAMENTAL.....	\$ 17.31	0.00
LABORER: Common or General, including brick mason tending and cement mason tending.....	\$ 13.81	0.00
LABORER: Pipelayer.....	\$ 16.19	2.15
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 18.40	4.42
OPERATOR: Loader.....	\$ 20.25	2.06
PAINTER (Brush and Roller), Includes Drywall Finishing/Taping.....	\$ 15.23	0.70
PLUMBER (HVAC Pipe Installation Only).....	\$ 17.60	0.00
PLUMBER, Excludes HVAC Pipe Installation.....	\$ 20.48	0.00
ROOFER.....	\$ 26.80	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 18.82	1.20
SPRINKLER FITTER (Fire Sprinklers).....	\$ 26.06	6.52

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave  
for Federal Contractors applies to all contracts subject to the  
Davis-Bacon Act for which the contract is awarded (and any  
solicitation was issued) on or after January 1, 2017. If this  
contract is covered by the EO, the contractor must provide  
employees with 1 hour of paid sick leave for every 30 hours



they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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

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

### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average





rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

### Union Average Rate Identifiers

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

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

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### WAGE DETERMINATION APPEALS PROCESS

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

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

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



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

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

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

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

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

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

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

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

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END OF GENERAL DECISION



General Decision Number: MD20210031 01/15/2021

Superseded General Decision Number: MD20200031

State: Maryland

Construction Type: Building

County: Baltimore City County in Maryland.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/01/2021
1	01/15/2021

ASBE0024-007 04/01/2020

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 38.01	17.37+a

Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Day,



Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day provided the employee works the regular work day before and after the paid holiday.

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CARP0197-003 09/01/2020

	Rates	Fringes
CARPENTER (Including Drywall Hanging, Drywall Finishing, Form Work, Metal Stud Installation and Scaffold Building).....	\$ 29.25	13.79

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CARP0219-002 06/08/2020

	Rates	Fringes
MILLWRIGHT.....	\$ 33.06	16.18

-----  
CARP0441-002 05/01/2020

	Rates	Fringes
PILEDRIVERMAN.....	\$ 32.63	15.53

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ELEC0024-012 11/29/2020

	Rates	Fringes
ELECTRICIAN (Including low voltage wiring for and installation of alarms; HVAC controls).....	\$ 40.25	5.25%+16.44

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ELEC0024-013 05/31/2020

	Rates	Fringes
ELECTRICIAN (Communication and Sound Equipment).....	\$ 28.63	4.75%+14.12

PAID HOLIDAYS: New Year's Day, Memorial Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day

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ENGI0037-029 04/01/2020

	Rates	Fringes
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 29.08	13.05+a



## Wage Decisions

OPERATOR: Bulldozer.....	\$ 31.03	13.05+a
OPERATOR: Crane (All Cranes and Tower Cranes).....	\$ 33.09	13.05+a
OPERATOR: Excavator.....	\$ 31.03	13.05+a
OPERATOR: Forklift.....	\$ 31.03	13.05+a
OPERATOR: Gradall.....	\$ 31.03	13.05+a
OPERATOR: Loader (Front End) 1 1/4 yards and over.....	\$ 31.03	13.05+a
1 Yard and Under.....	\$ 29.08	13.05+a
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 31.03	13.05+a
OPERATOR: Roller excluding Asphalt.....	\$ 25.45	13.05+a

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and Christmas Day.

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IRON0016-012 04/01/2016

	Rates	Fringes
GLAZIER.....	\$ 28.48	19.45
IRONWORKER (Fence Erection-Chain Link/Cyclone).....	\$ 28.23	19.45
IRONWORKER, ORNAMENTAL, REINFORCING AND STRUCTURAL.....	\$ 28.48	19.45
IRONWORKER, SHEETING.....	\$ 28.73	19.45

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LABO0710-004 04/01/2019

	Rates	Fringes
LABORER: Mason Tender - Cement/Concrete.....	\$ 19.41	6.06

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PAIN0051-023 08/01/2020

	Rates	Fringes
PAINTER Brush, Roller, Spray and Paperhanging.....	\$ 25.05	11.17
Industrial.....	\$ 32.10	12.83

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PLAS0891-005 07/01/2018

	Rates	Fringes
PLASTERER.....	\$ 29.53	6.80

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PLAS0891-006 02/01/2020

	Rates	Fringes
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## Wage Decisions

CEMENT MASON/CONCRETE FINISHER...\$ 28.82 11.68

PLAS0891-008 08/01/2016

	Rates	Fringes
PLASTERER (Fireproofing Including Sprayer, Mixer, and Handler)		
Handler.....	\$ 16.50	4.89
Mixer/Pump.....	\$ 18.50	4.89
Sprayer.....	\$ 23.00	4.89

\* PLUM0486-012 12/16/2020

	Rates	Fringes
PIPEFITTER (Including HVAC Pipe and System Installation)....	\$ 41.92	21.67

ROOF0030-033 07/01/2019

	Rates	Fringes
ROOFER, Excludes Installation of Metal Roofs.....	\$ 26.44	12.24

SHEE0100-026 11/01/2020

	Rates	Fringes
SHEET METAL WORKER, Includes HVAC Duct Installation (Excludes Metal Roof Installation).....	\$ 34.66	21.73

SUMD2010-079 04/30/2010

	Rates	Fringes
ABATEMENT WORKER: ASBESTOS (Removal from Mechanical Systems).....	\$ 12.51	3.91
BRICKLAYER (Excludes Pointing, Caulking and Cleaning).....	\$ 22.81	4.54
CARPENTER (Acoustical Ceiling Installation Only).....	\$ 16.00	2.60
ELEVATOR MECHANIC.....	\$ 29.66	9.34

LABORERS



## Wage Decisions

Common or General; Brick and Stone Mason Tenders.....\$ 13.03	2.75
Grade Checker.....\$ 16.00	2.90
Landscape.....\$ 10.00	
Mason Tender for Pointing, Caulking and Cleaning.....\$ 12.47	
Mortar Mixer.....\$ 16.61	9.08
Pipelayer.....\$ 14.29	5.90
MASON - STONE.....\$ 29.82	10.05
OPERATOR: Asphalt Roller.....\$ 21.35	5.38
OPERATOR: Backhoe.....\$ 19.92	7.42
OPERATOR: Boom.....\$ 21.44	8.29
OPERATOR: Grader/Blade.....\$ 16.75	5.79
PLUMBER.....\$ 27.33	8.95
POINTER, CAULKER, CLEANER, Includes pointing, caulking, cleaning of existing masonry, brick, stone and cement structures (restoration work); excludes pointing, caulking, cleaning of new or replacement masonry, brick, stone or cement.....\$ 19.31	0.00
SHEET METAL WORKER (Metal Roofs Installation).....\$ 20.71	6.23
SPRINKLER FITTER (Fire Sprinklers).....\$ 27.69	4.94
TILE FINISHER.....\$ 17.32	0.00
TILE SETTER.....\$ 21.38	4.65
TRUCK DRIVER: Dump Truck.....\$ 15.40	1.96
TRUCK DRIVER: Tractor Haul Truck.....\$ 17.87	9.98

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave  
for Federal Contractors applies to all contracts subject to the



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

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

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

### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

### Survey Rate Identifiers



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

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

### Union Average Rate Identifiers

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

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

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### WAGE DETERMINATION APPEALS PROCESS

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

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the



Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION





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**HOUSING AUTHORITY OF BALTIMORE CITY  
FAIR HOUSING AND EQUAL OPPORTUNITY  
417 E. FAYETTE STREET, SUITE 412  
BALTIMORE, MD 21202**

**SECTION 3 OF THE HUD ACT OF 1968, AS AMENDED  
FIRST SOURCE HIRING AGREEMENT**

If Section 3 employment or training opportunities will be generated from this contract, HABC requires/encourages responders to comply with the First Source Hiring Agreement. In accordance with the First Source Hiring Agreement, Responders agree to solicit applicants from the HABC, Resident Services People Accessing Continued Employment (PACE) Program.

**Instructions**

1. Complete the attached First Source Hiring agreement statement and submit with your proposal.
2. Contact the HABC Office of Resident Services, P.A.C.E. program within ten (10) days of receiving the notice to proceed. P.A.C.E. will assist you with meeting your workforce needs for the contract.

Tracey Oliver-Keyser, SVP of Resident Services  
HABC Office of Resident Services  
922 N. Eager Street, 2<sup>nd</sup> floor  
Baltimore, MD 21202  
410-396-2967  
[Tracey.oliver-keyser@habc.org](mailto:Tracey.oliver-keyser@habc.org)

3. Complete the Section 3 Employee Tracking form at 25%, 50%, 75% and 100% of the completed contract and submit to:

Angela Showell, Equal Opportunity Assistant  
Fair Housing and Equal Opportunity Office  
417 E. Fayette Street, Suite 412  
Baltimore, MD 21202  
443-984-1963

[angela.showell@habc.org](mailto:angela.showell@habc.org)

4. HABC may withhold final payment or any other retainage until the Section 3 Tracking reports are submitted.



**HOUSING AUTHORITY OF BALTIMORE CITY**  
**FAIR HOUSING AND EQUAL OPPORTUNITY**  
417 E. FAYETTE STREET Suite 412  
BALTIMORE, MD 21202

**SECTION 3 OF THE HUD ACT OF 1968, AS AMENDED**  
**FIRST SOURCE HIRING AGREEMENT**

Submission deadline: \_\_\_\_\_  
Contractor's name: \_\_\_\_\_  
Contractor's address: \_\_\_\_\_  
Contractor's telephone number: \_\_\_\_\_  
Contractor's email address: \_\_\_\_\_  
Contract title: \_\_\_\_\_  
Contract number: \_\_\_\_\_

PACE is the recruitment and referral service used by HABC to help Responders comply with the Section 3 requirements. In accordance with the First Source Hiring Agreement, Responders are required to contact PACE within ten (10) days from the date the contract is awarded and advise PACE of the number of jobs or training opportunities generated from the awarded contract; and the classification of the available positions. Upon receipt of the Responders employment and training needs, PACE will refer qualified HABC residents to the Responders to interview for the available positions. Responders agree to use other referral sources only if PACE cannot refer qualified applicants to Responders within three (3) business days of being notified of Responders employment and/or training needs.

The undersigned Prime Contractor agrees to utilize HABC's PACE program to meet its Section 3 employment, training and Section 3 business needs under this contract with HABC. The undersigned shall comply with the terms of Section 3 of the HUD Act of 1968, as amended as described in the solicitation documents. Under this agreement, contract awardees will complete and submit this certification with the bid package.

I, \_\_\_\_\_, representing \_\_\_\_\_  
(Name and Title) (Name of Responder)

certify that I will contact the PACE program within ten (10) days of the award if there is a need for additional employees. I agree to interview qualified Section 3 eligible applicants *First* for available positions. I agree to submit a Section 3 Employee Tracking form indicating the number of total workers and number of Section 3 residents on payroll at 25%, 50% 75% and 100% completion of the contract as a condition of release of a final payment or any and all retainage.

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

Signature of Prime Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

[illegible]

1= P.A.C.E  
2= M.O.E.D.  
3= OTHER

Individual residing within the Section 3 area whose family income does not exceed 80% of the median income in the Metropolitan Statistical Area or the country if not with a MSA in which the Section 3 covered project is located.



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Job Order Contract # \_\_\_\_\_

## CONTRACT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_\_ by and between: \_\_\_\_\_

a corporation organized and existing under the law of the State of \_\_\_\_\_ hereinafter called the "Contractor" and the Housing Authority of Baltimore City, hereinafter referred to as "HABC".

WITNESSETH, that the Contractor and the HABC for the consideration stated herein mutually agree as follows:

**ARTICLE 1: Statement of Work** The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as required by the Proposal Documents.

**ARTICLE 2: Contractor** The Contractor is an independent Contractor and nothing in this agreement shall be construed as implying the relationship of principal and agent or employer and employee between HABC and Contractor, the Contractor's employees or designees. The independent Contractor shall exercise daily control over his/her employees' activities.

**ARTICLE 3: The Contract Term** The Initial Contract Term is one (1) year from the date of Contract execution or when the Maximum Contract Term Value has been ordered, whichever occurs first. The Contract shall have a unilateral option provision for extending the Contract for an additional four (4) Optional Contract Terms, at the Authority's sole discretion. The Total Contract Term (duration), including all Optional Contract Terms, shall not exceed five (5) years.

**ARTICLE 4: The Contract Sum** The Contract is an indefinite-quantity contract for the repair and/or construction of the items specified. The Contractor will at a minimum be provided the opportunity to be issued Job Orders totaling at least \$50,000 during the Initial Contract Term. The maximum amount that may be ordered in any one Contract Term under the Contract is \$\_\_\_\_\_. It is understood that if there is unused Contract value at the expiration of any Contract Term, HABC reserves the right to carry over the unused portion of the Maximum Contract Term Value into future Optional Contract Terms. The Maximum Contract Total Value that may be ordered under the Contract is \$\_\_\_\_\_.

**ARTICLE 5: Proposal Documents** The Contract shall consist of the component parts:

\* This Instrument, and:

1. Executive Summary, Pages B-1 through B-4.
2. RFP Overview C-1 through C-10.
3. Instructions To Responders, Pages D-1 through D-16.
4. General Conditions of the Contract for Construction, HUD Form 5370, Pages E-1 through E-20.
5. HABC Supplemental General Conditions, Pages F-1 through F-46.
6. HABC Special Conditions, Pages G-1 through G-26.
7. Technical Qualifications, Pages H-1 through H-8.





8. Price Proposal/Affidavit of Non-Collusion, Pages I-1 through I-6.
9. Price Proposal Support, Pages K-1 through K-2.
10. Proposal Bond/Guarantee Form, Pages J-1 through J-2
11. Representations, Certifications, and Other Statements of Bidders, HUD
12. Form 5369-A, Pages L-1 through L-4.
13. HABC Conflict of Interest Statement, Pages M-1 through M-4.
14. Certificate Regarding Debarment, Pages N-1 through N-2.
15. Authorization of Responders For Verification of References, Pages O-1 through O-2.
16. Wage Rate Decisions, Page P-1, MD20030007 pages P2-P4 and MD20030001 pages P5-P10.
17. Contract, Pages Q-1 through Q-4.
18. Sample Job Order Pages R-1 through R-2; S-1 through S-2; T-1 through T-2; U-1 through U-4;
19. Volume I, Proposal Information and Contractual Documents
20. Volume II, Construction Task Catalog®.
21. Volume III, Technical Specifications.
22. Addenda (where applicable).

This instrument, together with the other documents enumerated in Article 5 form in full Job Order Contract # \_\_\_\_\_, as if all said parts of said Job Order Contract were presented consecutively. In the event that any provisions in any component part of the Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this Article 5, shall govern, except as otherwise specifically stated. The various provisions in the Addenda shall be construed in order of preference of the component part of the Contract which each modifies.

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

COUNTERSIGNED:

HOUSING AUTHORITY OF BALTIMORE CITY

\_\_\_\_\_  
(Witness)

BY \_\_\_\_\_  
Senior Vice President of Procurement

\_\_\_\_\_  
(Contractor)

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

TITLE: \_\_\_\_\_

(Corporate Seal)



CERTIFICATION:

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_  
Title

of the Corporation named as Contractor herein; and that who signed the Contract on behalf of the Contractor, was then \_\_\_\_\_ of said Corporation, that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

By \_\_\_\_\_

Title \_\_\_\_\_



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## Sample Job Overview/Purpose

### Overall Purpose

The purpose of including a sample project in the Proposal Documents is to communicate to the Responders the nature of the Job Order Cost Proposals (hereinafter, "Cost Proposals") HABC expects the Contractor to generate in response to a Request for Cost Proposal (RFCP) for a specific Job Order. Specifically, the Responder's attention is called to the limitations of what will be accepted by the authority with regard to content of said Cost Proposal.

The Responder is directed to familiarize itself with the Detailed Scope of Work (S-1), the Joint Scope Take-Off Notes (S-2), and the Request for Proposals (T-1 through T-2) of the sample project prior to reviewing the related sample Cost Proposal (U-1 through U-4).

### Specific Limitations and Observations Regarding the Sample Project Cost Proposal

All Responders submitting proposals acknowledge the following, as demonstrated in the sample Cost Proposal:

1. Few general conditions items will be allowed in the Cost Proposals. Most typical construction contract general conditions items (trailers, portable bathrooms, mobilization, bonding, safety items, etc.) are covered in the Responder's Adjustment Factors. Responders are instructed to carefully read the several pages of notes beginning on page 01 of the Construction Task Catalog® - Volume IIa of the Proposal Documents. The items allowed in the sample Cost Proposal are specifically spelled out in the referenced notes.
2. Note that only quantities mutually agreed upon during the Joint Scoping of the project and recorded in the Joint Scope Take-Off Notes shall be allowed.
3. Note that only those construction or demolition tasks associated with the performance of activities specifically noted in the Detailed Scope of Work shall be permitted. Furthermore, those demolition and construction tasks extracted from the Construction Task Catalog® must be the most appropriate task available from the Construction Task Catalog®. (i.e. material selection and means and methods).
4. Note that no miscellaneous labor has been allowed in the proposal. Miscellaneous labor shall only be allowed in the Cost Proposal if specifically directed by HABC.
5. Note that both deduct and add modifiers have been included in the Cost Proposal (i.e. deduct modifier for cap sheet instead of gravel and gravel stops and an add modifier for the 20 year warranty). HABC expects to see all applicable deduct modifiers used, in all cases, inclusive of those modifiers that deduct from the unit prices for quantity discounts.



6. Note that there is no use of Non-Prepriced items if all the required tasks necessary to complete the Detailed Scope of work exist in the Construction Task Catalog®.

The observations and guidelines noted above will be applied uniformly to each and every Cost Proposal submitted by the Responder for the entire duration of the Contract. The Responder is instructed to consider observations and guidelines discussed above when calculating their Adjustment Factors.





## EJ01-0XX-EXXX Detailed Scope of Work

### General:

Demo and replace the built-up roofing system and related roofing accessories at the following properties:

<u>Schedule of Property Locations</u>	<u>Presence of Asbestos</u>
1611 Aisquith Street	Yes
1613 Aisquith Street	Yes
1621 Aisquith Street	Yes
1733 Ashland Street	Yes
1829 Ashland Street	Yes

All work to be performed in compliance with the Technical Specification E-XXX issued 01/01/06.

### Specific:

1. Demolish existing built-up roofing system. Note the schedule above for whether or not the roofing system has tested positive for asbestos. Detailed asbestos survey prepared by XYZ consulting and dated 01/01/2006 is attached for reference.
2. Remove all demolished debris from the site.
3. Install a SBS modified bituminous roofing system with base sheet, 4 plies of fiberglass felt and cap sheet. Replace all flashing, penetration boots, drip edge and cant strips. Provide a 20-year manufacturer's warranty. Use hot mopped asphalt application.
4. Replace any damage decking as necessary. Notify inspector if damaged decking is found to confirm quantity prior to covering work. Use ½" exterior grade plywood. For Cost Proposal purposes use 10% replacement area.
5. Replace any damaged rafters as necessary. Notify inspector if damaged rafters are found to confirm quantity prior to covering work. Use Douglas Fir rafters. For Cost Proposal purposes use 0% replacement area.
6. Replace aluminum gutters and downspouts. Use 5" "K" gutter of .032" aluminum. Use 3"x4" .024" Aluminum downspouts. Gutters and downspouts are shall be white enamel. The lowest 10 feet of downspout shall be schedule 40 PVC. Fasten per specifications. Provide vinyl mesh gutter leaf guards.
7. Replace fascia with 2x8 treated lumber and wrap with .019" aluminum coil stock.
8. Scrape and Paint Cornice. Use exterior latex. One coat primer and two finish coats.



## Joint Scope Take-Off Notes

Area	UOM	1611 Aisquith St.	1613 Aisquith St.	1621 Aisquith St.	1733 Ashland St.	1829 Ashland St.	Total
Dimension Upper		42x18	42x18	40x18	36x15	43x14	
Dimension Lower		15x13	15x13	14x7 + 9x18	12x15		
Area of Upper Roof	SF	756	756	720	540	602	
Area of Lower Roof	SF	195	195	260	180		
Total Area	SF	951	951	980	720	602	4,204

Items							
Fascia Board 2x8	LF	31	31	43	30	14	149
Aluminum Coil	SF	31	31	43	30	14	149
Aluminum Gutter	LF	31	31	43	30	14	149
Gutter Guard	LF	31	31	43	30	14	149
Aluminum	LF	10	10	24	13	10	67
PVC Downspout	LF	10	10	10	10	10	50
PVC Clamps	EA	2	2	2	2	2	10
PVC Elbow	EA	1	1	1	1	1	5
PVC/Alum. Adapter	EA	1	1	1	1	1	5
Sheathing	SF	95	95	98	72	60	420
Cornice	SF	54	54	54	45	52	259



**Housing Authority of Baltimore City**

**Energy, Engineering & Capital Improvements Division**

**Request for Proposal**

**Date:** 3/10/2006

**To:** John Smith  
Sample Contractor  
300 N. Charles Street  
Baltimore, MD 21202

**From:** Charles Allen  
Housing Authority of Baltimore City  
417 East Fayette Street  
Baltimore, MD 21202

**Re:** Sample Roof Replacement  
Work Order Number - EJ50-001-HAE1234

Dear John Smith:

The Housing Authority of Baltimore City requests that you provide a JOC Cost Proposal, M/WBE Estimate Report M/WBE Forms, Work Schedule, Electronic copy and backup for non-prepriced items as appropriate for the above referenced project.

The scope of work was discussed at the site on 01 March 2006 with the following individuals.

<b>Name</b>	<b>Organization</b>	<b>INV.</b>	<b>ATTN.</b>
Charles Allen	Housing Authority of Baltimore City	Yes	Yes
John Smith	Sample Contractor	Yes	Yes
Ed Snow	The Gordian Group	Yes	Yes

**Additional Requirements:**

**Drawing and Technical Information:** None

**Material Submittals:** Only if materials vary from HABC master submittal approval database.

**Proposed Work Schedule:** 30  
Liquidated damages will apply

**Additional Instructions:** None

**Wage Determination:** Residential (Low Rise)

**Please reference the Detailed Scope of Work for additional information regarding this job order.**

Your proposal is due on or before 17-March-2006.

Sincerely,

Charles Allen,

JOC Job Order Package - EJ50-001-HAE1234

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Request for Proposal

Page 1 of 1



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## Sample Contractor's Job Order Cost Proposal

### Housing Authority of Baltimore City

#### Energy, Engineering & Capital Improvements Division

#### Contractor's Cost Proposal

Date: March 10, 2006

Re: Project #: EJ50-001-HAE1234  
 Title: Sample Roof Replacement  
 Contractor: Sample Contractor  
 Proposal Name: Sample Roof Replacement  
 Proposal Value: 43,910.25

Sect.	Item	Mod.	UOM	Description	Line Total
<b>Section 01</b>					
01510	2017	EA		40 CY Dumpster (13 Ton Capacity) "Construction Debris" Note: Price Includes Service To Deliver And Pick-up Of Dumpster, Hauling Of Debris, Rental Of Dumpster And Disposal Fee.	3,354.15
				Quantity Unit Price Factor Total	
				Installation 5.00 x 670.83 x 1.0000 = 3,354.15	
01540	1101	CCF		Scaffolding With Bracing Accessories - Area Based On 5' Wide x 7' Long Sections (CCF / Month)	1,557.20
				Quantity Unit Price Factor Total	
				Installation 136.00 x 11.45 x 1.0000 = 1,557.20	
01540	1101	1113 PCT		For Quantities > 50 To 150 (> 141.6 m2 to 424.8 m2), Add	156.40
				Quantity Unit Price Factor Total	
				Installation 136.00 x 1.15 x 1.0000 = 156.40	
01540	1201	CCF		Scaffolding Erection And Dismantling - Height Up To 20' Per CCF Of Scaffolding And Accessories. Cost Includes Both Erection And Dismantling Of Scaffolding	1,768.00
				Quantity Unit Price Factor Total	
				Installation 136.00 x 13.00 x 1.0000 = 1,768.00	
01907	2001	SQ		Roofing System, Complete With 75# Base Sheet Note: 1/2" plywood, 2 ply Type 4 fiberglass felt, 1 cap sheet granular modified bitumen, cant strip, cap flashing/curbing.	26,003.42
				Quantity Unit Price Factor Total	
				Installation 42.04 x 618.54 x 1.0000 = 26,003.42	
<b>Subtotal for 01</b>					<b>32,839.17</b>
<b>Section 02</b>					
02464	3102	LF		4" PVC Drain And Sewer Pipe	191.00
				Quantity Unit Price Factor Total	
				Installation 50.00 x 3.82 x 1.0000 = 191.00	
02464	3202	EA		4" 90 Degree Elbow, PVC Drain And Sewer Fitting	86.05
				Quantity Unit Price Factor Total	
				Installation 5.00 x 17.21 x 1.0000 = 86.05	
02464	3704	EA		3" x 4" x 4" Downspout, Drain And Sewer Fitting	141.35
				Quantity Unit Price Factor Total	
				Installation 5.00 x 28.27 x 1.0000 = 141.35	
<b>Subtotal for 02</b>					<b>418.40</b>
<b>Section 06</b>					



## Sample Contractor's Job Order Cost Proposal

Sect.	Item	Mod.	UOM	Description					Line Total
Section 06									
06110	8313		LF	2"x8" (5cm x 20cm) Treated Blocking To Wood					442.53
				Quantity	Unit Price		Factor	Total	
				Installation	149.00	x 2.45 x	1.0000 =	365.05	
				Demolition	149.00	x 0.52 x	1.0000 =	77.48	
06160	1103		SF	1/2" (12mm) Thick CDX Plywood Roof DeckingNote: Applied To Wood Rafters					365.40
				Quantity	Unit Price		Factor	Total	
				Installation	420.00	x 0.87 x	1.0000 =	365.40	
06160	1103	1232	PCT	For Exterior CC Grade Plywood, Add					29.40
				Quantity	Unit Price		Factor	Total	
				Installation	420.00	x 0.07 x	1.0000 =	29.40	
Subtotal for 06								837.33	
Section 07									
07425	3002		SF	Aluminum Cladding, 0.019" Thick					418.69
				Quantity	Unit Price		Factor	Total	
				Installation	149.00	x 2.81 x	1.0000 =	418.69	
07631	1104		LF	0.024" Aluminum Downspout, 3"x4", Mill Finish					235.32
				Quantity	Unit Price		Factor	Total	
				Installation	67.00	x 2.22 x	1.0000 =	148.74	
				Demolition	117.00	x 0.74 x	1.0000 =	86.58	
07631	1104	1131	PCT	For Enameled Finish, Add					14.74
				Quantity	Unit Price		Factor	Total	
				Installation	67.00	x 0.22 x	1.0000 =	14.74	
07631	1202		LF	5" Box Type Aluminum Gutter, 0.032" Thick, Mill Finish					487.23
				Quantity	Unit Price		Factor	Total	
				Installation	149.00	x 2.50 x	1.0000 =	372.50	
				Demolition	149.00	x 0.77 x	1.0000 =	114.73	
07631	9002		LF	Vinyl Mesh Gutter Leaf Guard					114.73
				Quantity	Unit Price		Factor	Total	
				Installation	149.00	x 0.77 x	1.0000 =	114.73	
07660	5011		EA	PVC Downspout Clamps Up To 4"					74.10
				Quantity	Unit Price		Factor	Total	
				Installation	10.00	x 6.66 x	1.0000 =	66.60	
				Demolition	10.00	x 0.75 x	1.0000 =	7.50	
Subtotal for 07								1,344.81	
Section 09									
09910	8201		SF	Paint Exterior Wood Trim, 1 Coat Primer, Brush Work					119.14
				Quantity	Unit Price		Factor	Total	
				Installation	259.00	x 0.46 x	1.0000 =	119.14	
09910	8203		SF	Paint Exterior Wood Trim, 2 Coats Paint, Brush Work					235.69
				Quantity	Unit Price		Factor	Total	
				Installation	259.00	x 0.91 x	1.0000 =	235.69	
09945	1502		SF	Hand Scrape Wood Surfaces					44.03
				Quantity	Unit Price		Factor	Total	
				Installation	259.00	x 0.17 x	1.0000 =	44.03	
Subtotal for 09								398.86	
Section 13									
13281	5123		SF	1001 Sf To 5000 Sf Built-up Tar And Felt Roofing, > 2" Average Thickness					8,071.68
				Quantity	Unit Price		Factor	Total	
				Installation	4,204.00	x 1.92 x	1.0000 =	8,071.68	
Subtotal for 13								8,071.68	





## Sample Contractor's Job Order Cost Proposal

Sect.	Item	Mod.	UOM	Description	Line Total
<b>Project Proposal Total</b>					<b>43,910.25</b>

This work order proposal total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding of the line totals and sub-totals.

**The Percent of NPP on this Proposal: 0.00%**

\_\_\_\_\_  
John Smith, Project Manager

\_\_\_\_\_  
Date



## Sample Contractor's Job Order Cost Proposal

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**EXHIBIT**

**HUD 5370**

**General Conditions for Construction Contracts**

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# General Conditions for Construction Contracts - Public Housing Programs

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

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

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

Clause		Page	Clause		Page
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2.	Contractor's Responsibility for Work	2	25.	Contract Period	9
3.	Architect's Duties, Responsibilities and Authority	2	26.	Order of Precedence	9
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5.	Preconstruction Conference and Notice to Proceed	3	29.	Changes	10
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7.	Site Investigation and Conditions Affecting the Work	3	31.	Disputes	11
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9.	Specifications and Drawings for Construction	4	33.	Liquidated	12
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20.	Inspection and Acceptance of Construction	7	44.	Royalties and Patents	15
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24.	Prohibition Against Liens	9	48.	Procurement of Recovered Materials	19

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## 1. Definitions

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

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

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

## 2. Contractor's Responsibility for Work

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

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

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

#### **Construction Requirements**

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

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

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

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

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

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



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

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

## 8. Differing Site Conditions

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

## 9. Specifications and Drawings for Construction

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

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

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

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

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

#### 10. As-Built Drawings

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

#### 11. Material and Workmanship

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

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

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

#### 12. Permits and Codes

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

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

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

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

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

### 14. Temporary Heating

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

### 15. Availability and Use of Utility Services

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

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

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

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

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

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

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

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

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

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

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

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

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

## 21. Use and Possession Prior to Completion

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

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

## 22. Warranty of Title

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

## 23. Warranty of Construction

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

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

#### 24. Prohibition Against Liens

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

#### Administrative Requirements

#### 25. Contract Period

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

#### 26. Order of Provisions

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

#### 27. Payments

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

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

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

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

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

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

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

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

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

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



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

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

## 28. Contract Modifications

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

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

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

## 29. Changes

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

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

### 30. Suspension of Work

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

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

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

### 31. Disputes

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

### 32. Default

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

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

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

### 33. Liquidated Damages

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

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

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

### 34. Termination for Convenience

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

### 35. Assignment of Contract

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

### 36. Insurance

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

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

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

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

### 37. Subcontracts

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

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

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

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

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

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

### 39. Equal Employment Opportunity

During the performance of this contract, the ContractorÁ Ñ^|Á| agrees as follows:Á

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

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

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

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

(i) The contractor/seller will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

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#### 41. Interest of Members of Congress

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

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

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

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

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

#### 44. Royalties and Patents

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

#### 48. Procurement of Recovered Materials.

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