|  |  |
| --- | --- |
| **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 75. The form is required for construction contracts awarded by Public Housing Agencies (PHAs). The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, PHAs would be unable to enforce their contracts. There are no assurances of confidentiality. HUD may not conduct or

sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.



|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **T** | | | |  |  |
| **Clause** | | **Page** | **Clause** | | **Page** |
| 1. | Definitions | 2 |  | **Administrative Requirements** |  |
| 2. | Contractor’s Responsibility for Work | 2 | 25. | Contract Period | 9 |
| 3. | Architect’s Duties, Responsibilities and Authority | 2 | 26. | Order of Precedence | 9 |
| 4. | Other Contracts | 3 | 27. | Payments | 9 |
|  | **Construction Requirements** |  | 28. | Contract Modifications | *10* |
| 5. | Preconstruction Conference and Notice to Proceed | 3 | 29. | Changes | 10 |
| 6. | Construction Progress Schedule | 3 | 30. | Suspension of Work | 11 |
| 7. | Site Investigation and Conditions Affecting the Work | 3 | 31. | Disputes | 11 |
| 8. | Differing Site Conditions | 4 | 32. | Default | 11 |
| 9. | Specifications and Drawings for Construction | 4 | 33. | Liquidated | 12 |
| 10. | As-Built Drawings | 5 | 34. | Termination of Convenience | 12 |
| 11. | Material and Workmanship | 5 | 35. | Assignment of Contract | 12 |
| 12. | Permits and Codes | 5 | 36. | Insurance | 12 |
| 13. | Health, Safety, and Accident Prevention | 6 | 37. | Subcontracts | 13 |
| 14. | Temporary Buildings and Transportation Materials | 6 | 38. | Subcontracting with Small and Minority Firms, Women’s Business Enterprise, and Labor Surplus Area Firms | 13 |
| 15. | Availability and Use of Utility Services | 6 | 39. | Equal Employment Opportunity | 13 |
| 16. | Protection of Existing Vegetation, Structures,  Equipment, Utilities, and Improvements | 6 | 40. | Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968 | 14 |
| 17. | Temporary Buildings and Transportation Materials | 7 | 41. | Interest of Members of Congress | 15 |
| 18. | Clean Air and Water | *7* | 42. | Interest of Members, Officers, or Employees and  Former Members, Officers, or Employees | 15 |
| 19. | Energy Efficiency | 7 | 43. | Limitations on Payments Made to Influence | 15 |
| 20. | Inspection and Acceptance of Construction | 7 | 44. | Royalties and Patents | 15 |
| 21. | Use and Possession Prior to | 8 | 45. | Examination and Retention of Contractor’s Records | 15 |
| 22. | Warranty of Title | 8 | 46. | Labor Standards-Davis-Bacon and Related Acts | 15 |
| 23. | Warranty of | 8 | 47. | Non-Federal Prevailing Wage Rates | 19 |
| 24. | Prohibition Against | 9 | 48. Procurement of Recovered | | 19 |

Liens Materials

Previous editions are obsolete Page 1 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

**1. Definitions** (a) The Contractor shall furnish all necessary labor,

materials, tools, equipment, and transportation necessary

1. “Architect” means the person or other entity engaged by for performance of the work. The Contractor shall also

the PHA to perform architectural, engineering, design, furnish all necessary water, heat, light, and power not

and other services related to the work as provided for in made available to the Contractor by the PHA pursuant to

the contract. When a PHA uses an engineer to act in this the clause entitled Availability and Use of Utility Services

capacity, the terms “architect” and “engineer” shall be herein.

synonymous. The Architect shall serve as a technical (b) The Contractor shall perform on the site, and with its own

representative of the Contracting Officer. The Architect’s organization, work equivalent to at least [ ] (12 percent

authority is as set forth elsewhere in this contract. unless otherwise indicated) of the total amount of work to

1. “Contract” means the contract entered into between the be performed under the order. This percentage may be

PHA and the Contractor. It includes the forms of Bid, the reduced by a supplemental agreement to this order if,

Bid Bond, the Performance and Payment Bond or Bonds during performing the work, the Contractor requests a

or other assurance of completion, the Certifications, reduction and the Contracting Officer determines that the

Representations, and Other Statements of Bidders (form reduction would be to the advantage of the PHA.

HUD-5370), these General Conditions of the Contract for (c) At all times during performance of this contract and until

Construction (form HUD-5370), the applicable wage rate the work is completed and accepted, the Contractor shall

determinations from the U.S. Department of Labor, any directly superintend the work or assign and have on the

special conditions included elsewhere in the contract, the work site a competent superintendent who is satisfactory

specifications, and drawings. It includes all formal to the Contracting Officer and has authority to act for the

changes to any of those documents by addendum, Contractor.

change order, or other modification. (d) The Contractor shall be responsible for all damages to

1. “Contracting Officer” means the person delegated the au- persons or property that occur as a result of the

thority by the PHA to enter into, administer, and/or Contractor’s fault or negligence, and shall take proper

terminate this contract and designated as such in writing safety and health precautions to protect the work, the

to the Contractor. The term includes any successor workers, the public, and the property of others. The

Contracting Officer and any duly authorized Contractor shall hold and save the PHA, its officers and

representative of the Contracting Officer also designated agents, free and harmless from liability of any nature

in writing. The Contracting Officer shall be deemed the occasioned by the Contractor’s performance. The

authorized agent of the PHA in all dealings with the Contractor shall also be responsible for all materials

Contractor. delivered and work performed until completion and

1. “Contractor” means the person or other entity entering acceptance of the entire work, except for any completed

into the contract with the PHA to perform all of the work unit of work which may have been accepted under the

required under the contract. contract.

1. “Drawings” means the drawings enumerated in the (e) The Contractor shall lay out the work from base lines and

schedule of drawings contained in the Specifications and bench marks indicated on the drawings and be

as described in the contract clause entitled Specifications responsible for all lines, levels, and measurements of all

and Drawings for Construction herein. work executed under the contract. The Contractor shall

1. “HUD” means the United States of America acting through verify the figures before laying out the work and will be

the Department of Housing and Urban Development held responsible for any error resulting from its failure to

including the Secretary, or any other person designated to do so.

act on its behalf. HUD has agreed, subject to the provisions of an (f) The Contractor shall confine all operations (including

Annual Contributions Terms and Conditions (ACC), to storage of materials) on PHA premises to areas

provide financial assistance to the PHA, which includes authorized or approved by the Contracting Officer.

assistance in financing the work to be performed under (g) The Contractor shall at all times keep the work area,

this contract. As defined elsewhere in these General including storage areas, free from accumulations of

Conditions or the contract documents, the determination waste materials. After completing the work and before

of HUD may be required to authorize changes in the work final inspection, the Contractor shall (1) remove from the

or for release of funds to the PHA for payment to the premises all scaffolding, equipment, tools, and materials

Contractor. Notwithstanding HUD’s role, nothing in this (including rejected materials) that are not the property of

contract shall be construed to create any contractual the PHA and all rubbish caused by its work; (2) leave the

relationship between the Contractor and HUD. work area in a clean, neat, and orderly condition

1. “Project” means the entire project, whether construction satisfactory to the Contracting Officer; (3) perform all

or rehabilitation, the work for which is provided for in specified tests; and, (4) deliver the installation in

whole or in part under this contract. complete and operating condition.

1. “PHA” means the Public Housing Agency organized (h) The Contractor’s responsibility will terminate when all

under applicable state laws which is a party to this work has been completed, the final inspection made, and

contract. the work accepted by the Contracting Officer. The

(j) “Specifications” means the written description of the Contractor will then be released from further obligation

technical requirements for construction and includes the except as required by the warranties specified elsewhere

criteria and tests for determining whether the in the contract.   
requirements are met.

(l) “Work” means materials, workmanship, and manufacture **3. Architect’s Duties, Responsibilities, and Authority**

and fabrication of components.

(a) The Architect for this contract, and any successor, shall

**2. Contractor’s Responsibility for Work** be designated in writing by the Contracting Officer.

Previous editions are obsolete Page 2 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

1. The Architect shall serve as the Contracting Officer’s

technical representative with respect to architectural, **6. Construction Progress Schedule** engineering, and design matters related to the work

performed under the contract. The Architect may provide (a) The Contractor shall, within five days after the work

direction on contract performance. Such direction shall be commences on the contract or another period of time

within the scope of the contract and may not be of a determined by the Contracting Officer, prepare and

nature which: (1) institutes additional work outside the submit to the Contracting Officer for approval three copies

scope of the contract; (2) constitutes a change as defined of a practicable schedule showing the order in which the

in the Changes clause herein; (3) causes an increase or Contractor proposes to perform the work, and the dates

decrease in the cost of the contract; (4) alters the on which the Contractor contemplates starting and

Construction Progress Schedule; or (5) changes any of completing the several salient features of the work

the other express terms or conditions of the contract. (including acquiring labor, materials, and equipment). The

1. The Architect’s duties and responsibilities may include but schedule shall be in the form of a progress chart of

shall not be limited to: suitable scale to indicate appropriately the percentage of

1. Making periodic visits to the work site, and on the work scheduled for completion by any given date during

basis of his/her on-site inspections, issuing written the period. If the Contractor fails to submit a schedule

reports to the PHA which shall include all observed within the time prescribed, the Contracting Officer may

deficiencies. The Architect shall file a copy of the withhold approval of progress payments or take other

report with the Contractor’s designated representative remedies under the contract until the Contractor submits

at the site; the required schedule.

1. Making modifications in drawings and technical (b) The Contractor shall enter the actual progress on the

specifications and assisting the Contracting Officer in chart as required by the Contracting Officer, and

the preparation of change orders and other contract immediately deliver three copies of the annotated

modifications for issuance by the Contracting Officer; schedule to the Contracting Officer. If the Contracting

1. Reviewing and making recommendations with respect Officer determines, upon the basis of inspection

to - (i) the Contractor’s construction progress conducted pursuant to the clause entitled Inspection and

schedules; (ii) the Contractor’s shop and detailed Acceptance of Construction, herein that the Contractor is

drawings; (iii) the machinery, mechanical and other not meeting the approved schedule, the Contractor shall

equipment and materials or other articles proposed take steps necessary to improve its progress, including

for use by the Contractor; and, (iv) the Contractor’s those that may be required by the Contracting Officer,

price breakdown and progress payment estimates; without additional cost to the PHA. In this circumstance,

and, the Contracting Officer may require the Contractor to

1. Assisting in inspections, signing Certificates of increase the number of shifts, overtime operations, days

Completion, and making recommendations with of work, and/or the amount of construction plant, and to

respect to acceptance of work completed under the submit for approval any supplementary schedule or

contract. schedules in chart form as the Contracting Officer deems

necessary to demonstrate how the approved rate of

1. **Other Contracts** progress will be regained.

(c) Failure of the Contractor to comply with the requirements

The PHA may undertake or award other contracts for of the Contracting Officer under this clause shall be

additional work at or near the site of the work under this grounds for a determination by the Contracting Officer that

contract. The Contractor shall fully cooperate with the the Contractor is not prosecuting the work with sufficient

other contractors and with PHA employees and shall diligence to ensure completion within the time

carefully adapt scheduling and performing the work under specified in the Contract. Upon making this

this contract to accommodate the additional work, heeding determination, the Contracting Officer may terminate the

any direction that may be provided by the Contracting Contractor’s right to proceed with the work, or any

Officer. The Contractor shall not commit or permit any act separable part of it, in accordance with the Default clause

that will interfere with the performance of work by any of this contract.   
other contractor or by PHA employees

|  |  |
| --- | --- |
|  | **7. Site Investigation and Conditions Affecting the Work** |
| **Construction Requirements** |

(a) The Contractor acknowledges that it has taken steps

1. **Pre-construction Conference and Notice to Proceed** reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself
2. Within ten calendar days of contract execution, and prior as to the general and local conditions which can affect the

to the commencement of work, the Contractor shall work or its cost, including but not limited to, (1) conditions

attend a preconstruction conference with representatives bearing upon transportation, disposal, handling, and

of the PHA, its Architect, and other interested parties storage of materials; (2) the availability of labor, water,

convened by the PHA. The conference will serve to electric power, and roads;(3) uncertainties of weather,

acquaint the participants with the general plan of the river stages, tides, or similar physical conditions at the

construction operation and all other requirements of the site; (4) the conformation and conditions of the ground;

contract. The PHA will provide the Contractor with the and (5) the character of equipment and facilities needed

date, time, and place of the conference. preliminary to and during work performance. The

1. The contractor shall begin work upon receipt of a written Contractor also acknowledges that it has satisfied itself as

Notice to Proceed from the Contracting Officer or to the character, quality, and quantity of surface and

designee. The Contractor shall not begin work prior to subsurface materials or obstacles to be encountered

receiving such notice. insofar as this information is

Previous editions are obsolete Page 3 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

reasonably ascertainable from an inspection of the site, promptly submitted to the Contracting Officer, who shall

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**

1. 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.
2. 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.

1. 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.
2. 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 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.

1. 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.
2. 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”.

1. “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.
2. 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.
3. 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.
4. 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

Previous editions are obsolete Page 4 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

required in the planning and production of the work. Such machinery and mechanical and other equipment.

requests may be submitted as the need arises, but each When required by this contract or by the Contracting

such request shall be filed in ample time to permit Officer, the Contractor shall also obtain the

appropriate action to be taken by all parties involved so Contracting Officer’s approval of the material or

as to avoid delay. articles which the Contractor contemplates

1. The Contractor shall submit to the Contracting Officer for incorporating into the work. When requesting

approval four copies (unless otherwise indicated) of all approval, the Contractor shall provide full information

shop drawings as called for under the various headings concerning the material or articles. Machinery,

of these specifications. Three sets (unless otherwise equipment, material, and articles that do not have the

indicated) of all shop drawings, will be retained by the required approval shall be installed or used at the risk

PHA and one set will be returned to the Contractor. As of subsequent rejection.

required by the Contracting Officer, the Contractor, upon (2) When required by the specifications or the

completing the work under this contract, shall furnish a Contracting Officer, the Contractor shall submit

complete set of all shop drawings as finally approved. appropriately marked samples (and certificates

These drawings shall show all changes and revisions related to them) for approval at the Contractor’s

made up to the time the work is completed and accepted. expense, with all shipping charges prepaid. The

1. This clause shall be included in all subcontracts at any tier. Contractor shall label, or otherwise properly mark on

It shall be the responsibility of the Contractor to ensure the container, the material or product represented, its

that all shop drawings prepared by subcontractors are place of origin, the name of the producer, the

submitted to the Contracting Officer. Contractor’s name, and the identification of the

construction project for which the material or product

10. As-Built Drawings is intended to be used.

(3) Certificates shall be submitted in triplicate, describing

1. “As-built drawings,” as used in this clause, means each sample submitted for approval and certifying

drawings submitted by the Contractor or subcontractor at that the material, equipment or accessory complies

any tier to show the construction of a particular structure with contract requirements. The certificates shall

or work as actually completed under the contract. “As-built include the name and brand of the product, name of

drawings” shall be synonymous with “Record manufacturer, and the location where produced.

drawings.” (4) Approval of a sample shall not constitute a waiver of

1. As required by the Contracting Officer, the Contractor the PHA right to demand full compliance with contract

shall provide the Contracting Officer accurate information requirements. Materials, equipment and accessories

to be used in the preparation of permanent as-built may be rejected for cause even though samples have

drawings. For this purpose, the Contractor shall record on been approved.

one set of contract drawings all changes from the (5) Wherever materials are required to comply with

installations originally indicated, and record final locations recognized standards or specifications, such

of underground lines by depth from finish grade and by specifications shall be accepted as establishing the

accurate horizontal offset distances to permanent surface technical qualities and testing methods, but shall not

improvements such as buildings, curbs, or edges of govern the number of tests required to be made nor

walks. modify other contract requirements. The Contracting

1. This clause shall be included in all subcontracts at any Officer may require laboratory test reports on items

tier. It shall be the responsibility of the Contractor to submitted for approval or may approve materials on

ensure that all as-built drawings prepared by the basis of data submitted in certificates with

subcontractors are submitted to the Contracting Officer. samples. Check tests will be made on materials

delivered for use only as frequently as the Contracting

11. Material and Workmanship Officer determines necessary to insure compliance of

materials with the specifications. The Contractor will

1. All equipment, material, and articles furnished under this assume all costs of retesting materials which fail to

contract shall be new and of the most suitable grade for meet contract requirements and/or testing materials

the purpose intended, unless otherwise specifically offered in substitution for those found deficient.

provided in this contract. References in the contract to (6) After approval, samples will be kept in the Project

equipment, material, articles, or patented processes by office until completion of work. They may be built into

trade name, make, or catalog number, shall be regarded the work after a substantial quantity of the materials

as establishing a standard of quality and shall not be they represent has been built in and accepted.

construed as limiting competition. The Contractor may, at (c) Requirements concerning lead-based paint. The

its option, use any equipment, material, article, or Contractor shall comply with the requirements concerning

process that, in the judgment of, and as approved by the lead-based paint contained in the Lead-Based Paint

Contracting Officer, is equal to that named in the Poisoning Prevention Act (42 U.S.C. 4821-4846) as

specifications, unless otherwise specifically provided in implemented by 24 CFR Part 35. this contract.

1. Approval of equipment and materials. 12. Permits and Codes   
   (1) The Contractor shall obtain the Contracting Officer’s

approval of the machinery and mechanical and other (a) The Contractor shall give all notices and comply with all

equipment to be incorporated into the work. When applicable laws, ordinances, codes, rules and regulations.

requesting approval, the Contractor shall furnish to the Notwithstanding the requirement of the Contractor to

Contracting Officer the name of the manufacturer, the comply with the drawings and specifications in the

model number, and other information concerning the contract, all work installed shall comply with all applicable

performance, capacity, nature, and rating of the codes and regulations as amended by any

Previous editions are obsolete Page 5 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

waivers. Before installing the work, the Contractor shall

examine the drawings and the specifications for 14. Temporary Heating   
compliance with applicable codes and regulations

bearing on the work and shall immediately report any The Contractor shall provide and pay for temporary

discrepancy it may discover to the Contracting Officer. heating, covering, and enclosures necessary to properly

Where the requirements of the drawings and protect all work and materials against damage by

specifications fail to comply with the applicable code or dampness and cold, to dry out the work, and to facilitate

regulation, the Contracting Officer shall modify the the completion of the work. Any permanent heating

contract by change order pursuant to the clause entitled equipment used shall be turned over to the PHA in the

Changes herein to conform to the code or regulation. condition and at the time required by the specifications. (b) The Contractor shall secure and pay for all permits, fees,

and licenses necessary for the proper execution and 15. Availability and Use of Utility Services completion of the work. Where the PHA can arrange for

the issuance of all or part of these permits, fees and (a) The PHA shall make all reasonably required amounts of

licenses, without cost to the Contractor, the contract utilities available to the Contractor from existing outlets

amount shall be reduced accordingly. and supplies, as specified in the contract. Unless

otherwise provided in the contract, the amount of each

13. Health, Safety, and Accident Prevention utility service consumed shall be charged to or paid for by

the Contractor at prevailing rates charged to the PHA or,

(a) In performing this contract, the Contractor shall: where the utility is produced by the PHA, at reasonable

1. Ensure that no laborer or mechanic shall be required rates determined by the Contracting Officer. The

to work in surroundings or under working conditions Contractor shall carefully conserve any utilities furnished

which are unsanitary, hazardous, or dangerous to without charge.

his/her health and/or safety as determined under (b) The Contractor, at its expense and in a manner

construction safety and health standards promulgated satisfactory to the Contracting Officer, shall install and

by the Secretary of Labor by regulation; maintain all necessary temporary connections and

1. Protect the lives, health, and safety of other persons; distribution lines, and all meters required to measure the
2. Prevent damage to property, materials, supplies, and amount of each utility used for the purpose of

equipment; and, determining charges. Before final acceptance of the work

1. Avoid work interruptions. by the PHA, the Contractor shall remove all the

(b) For these purposes, the Contractor shall: temporary connections, distribution lines, meters, and

1. Comply with regulations and standards issued by the associated paraphernalia.

Secretary of Labor at 29 CFR Part 1926. Failure to

comply may result in imposition of sanctions pursuant 16. Protection of Existing Vegetation, Structures,

to the Contract Work Hours and Safety Standards Act Equipment, Utilities, and Improvements (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et

seq.; and (a) The Contractor shall preserve and protect all structures,

1. Include the terms of this clause in every subcontract equipment, and vegetation (such as trees, shrubs, and

so that such terms will be binding on each grass) on or adjacent to the work site, which are not to be

subcontractor. removed under this contract, and which do not

(c) The Contractor shall maintain an accurate record of unreasonably interfere with the work required under this

exposure data on all accidents incident to work performed contract.

under this contract resulting in death, traumatic injury, (b) The Contractor shall only remove trees when specifically

occupational disease, or damage to property, materials, authorized to do so, and shall avoid damaging vegetation

supplies, or equipment, and shall report this data in the that will remain in place. If any limbs or branches of trees

manner prescribed by 29 CFR Part are broken during performance of this contract, or by the

1904. careless operation of equipment, or by workmen, the

(d) The Contracting Officer shall notify the Contractor of any Contractor shall trim those limbs or branches with a clean

noncompliance with these requirements and of the cut and paint the cut with a tree-pruning compound as

corrective action required. This notice, when delivered to directed by the Contracting Officer.

the Contractor or the Contractor’s representative at the (c) The Contractor shall protect from damage all existing

site of the work, shall be deemed sufficient notice of the improvements and utilities (1) at or near the work site and

noncompliance and corrective action required. After (2) on adjacent property of a third party, the locations of

receiving the notice, the Contractor shall immediately which are made known to or should be known by the

take corrective action. If the Contractor fails or refuses to Contractor. Prior to disturbing the ground at the

take corrective action promptly, the Contracting Officer construction site, the Contractor shall ensure that all

may issue an order stopping all or part of the work until underground utility lines are clearly marked.

satisfactory corrective action has been taken. The (d) The Contractor shall shore up, brace, underpin, secure,

Contractor shall not base any claim or request for and protect as necessary all foundations and other parts

equitable adjustment for additional time or money on any of existing structures adjacent to, adjoining, and in the

stop order issued under these circumstances. vicinity of the site, which may be affected by the

(e) The Contractor shall be responsible for its subcontractors’ excavations or other operations connected with the

compliance with the provisions of this clause. The construction of the project.

Contractor shall take such action with respect to any (e) Any equipment temporarily removed as a result of work

subcontract as the PHA, the Secretary of Housing and under this contract shall be protected, cleaned, and

Urban Development, or the Secretary of Labor shall replaced in the same condition as at the time of award of

direct as a means of enforcing such provisions. this contract.

Previous editions are obsolete Page 6 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

1. New work which connects to existing work shall The contactor shall comply with the Clean Air Act, as

correspond in all respects with that to which it connects amended, 42 USC 7401 et seq., the Federal Water

and/or be similar to existing work unless otherwise Pollution Control Water Act, as amended, 33 U.S.C. 1251

required by the specifications. et seq., and standards issued pursuant thereto in the

1. No structural members shall be altered or in any way facilities in which this contract is to be performed. weakened without the written authorization of the

Contracting Officer, unless such work is clearly specified **19. Energy Efficiency**in the plans or specifications.

1. If the removal of the existing work exposes discolored or The Contractor shall comply with mandatory standards

unfinished surfaces, or work out of alignment, such and policies relating to energy efficiency which are

surfaces shall be refinished, or the material replaced as contained in the energy conservation plan issued in

necessary to make the continuous work uniform and compliance with the Energy Policy and Conservation Act

harmonious. This, however, shall not be construed to (Pub.L. 94-163) for the State in which the work under the

require the refinishing or reconstruction of dissimilar contract is performed.   
finishes previously exposed, or finished surfaces in good

condition, but in different planes or on different levels **20. Inspection and Acceptance of Construction** when brought together by the removal of intervening

work, unless such refinishing or reconstruction is (a) Definitions. As used in this clause -

specified in the plans or specifications. (1) “Acceptance” means the act of an authorized

1. The Contractor shall give all required notices to any representative of the PHA by which the PHA approves

adjoining or adjacent property owner or other party before and assumes ownership of the work performed under this

the commencement of any work. contract. Acceptance may be partial or complete.

1. The Contractor shall indemnify and save harmless the (2) “Inspection” means examining and testing the work

PHA from any damages on account of settlement or the performed under the contract (including, when

loss of lateral support of adjoining property, any damages appropriate, raw materials, equipment, components, and

from changes in topography affecting drainage, and from intermediate assemblies) to determine whether it

all loss or expense and all damages for which the PHA conforms to contract requirements.

may become liable in consequence of such injury or (3) “Testing” means that element of inspection that

damage to adjoining and adjacent structures and their determines the properties or elements, including

premises. functional operation of materials, equipment, or their

1. The Contractor shall repair any damage to vegetation, components, by the application of established scientific

structures, equipment, utilities, or improvements, principles and procedures.

including those that are the property of a third party, (b) The Contractor shall maintain an adequate inspection

resulting from failure to comply with the requirements of system and perform such inspections as will ensure that

this contract or failure to exercise reasonable care in the work performed under the contract conforms to

performing the work. If the Contractor fails or refuses to contract requirements. All work is subject to PHA

repair the damage promptly, the Contracting Officer may inspection and test at all places and at all reasonable

have the necessary work performed and charge the cost times before acceptance to ensure strict compliance with

to the Contractor. the terms of the contract.

(c) PHA inspections and tests are for the sole benefit of the

**17. Temporary Buildings and Transportation of Materials** PHA and do not: (1) relieve the Contractor of

responsibility for providing adequate quality control

1. Temporary buildings (e.g., storage sheds, shops, offices, measures; (2) relieve the Contractor of responsibility for

sanitary facilities) and utilities may be erected by the loss or damage of the material before acceptance; (3)

Contractor only with the approval of the Contracting constitute or imply acceptance; or, (4) affect the

Officer and shall be built with labor and materials continuing rights of the PHA after acceptance of the

furnished by the Contractor without expense to the PHA. completed work under paragraph (j) below.

The temporary buildings and utilities shall remain the (d) The presence or absence of the PHA inspector does not

property of the Contractor and shall be removed by the relieve the Contractor from any contract requirement, nor

Contractor at its expense upon completion of the work. is the inspector authorized to change any term or

With the written consent of the Contracting Officer, the condition of the specifications without the Contracting

buildings and utilities may be abandoned and need not Officer’s written authorization. All instructions and

be removed. approvals with respect to the work shall be given to the

1. The Contractor shall, as directed by the Contracting Contractor by the Contracting Officer.

Officer, use only established roadways, or use temporary (e) The Contractor shall promptly furnish, without additional

roadways constructed by the Contractor when and as charge, all facilities, labor, and material reasonably

authorized by the Contracting Officer. When materials are needed for performing such safe and convenient

transported in prosecuting the work, vehicles shall not be inspections and tests as may be required by the

loaded beyond the loading capacity recommended by the Contracting Officer. The PHA may charge to the

manufacturer of the vehicle or prescribed by any federal, Contractor any additional cost of inspection or test when

state, or local law or regulation. When it is necessary to work is not ready at the time specified by the Contractor

cross curbs or sidewalks, the Contractor shall protect them for inspection or test, or when prior rejection makes

from damage. The Contractor shall repair or pay for the reinspection or retest necessary. The PHA shall perform

repair of any damaged curbs, sidewalks, or roads. all inspections and tests in a manner that will not

unnecessarily delay the work. Special, full size, and

**18. Clean Air and Water** performance tests shall be performed as described in the

contract.

Previous editions are obsolete Page 7 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

1. The PHA may conduct routine inspections of the occupied without proper remuneration therefore. If prior

construction site on a daily basis. possession or use by the PHA delays the progress of the

1. The Contractor shall, without charge, replace or correct work or causes additional expense to the Contractor, an

work found by the PHA not to conform to contract equitable adjustment shall be made in the contract price

requirements, unless the PHA decides that it is in its or the time of completion, and the contract shall be

interest to accept the work with an appropriate modified in writing accordingly. adjustment in contract price. The Contractor shall

promptly segregate and remove rejected material from **22. Warranty of Title**the premises.

1. If the Contractor does not promptly replace or correct The Contractor warrants good title to all materials,

rejected work, the PHA may (1) by contract or otherwise, supplies, and equipment incorporated in the work and

replace or correct the work and charge the cost to the agrees to deliver the premises together with all

Contractor, or (2) terminate for default the Contractor’s improvements thereon free from any claims, liens or

right to proceed. charges, and agrees further that neither it nor any other

1. If any work requiring inspection is covered up without ap- person, firm or corporation shall have any right to a lien

proval of the PHA, it must, if requested by the Contracting upon the premises or anything appurtenant thereto. Officer, be uncovered at the expense of the Contractor. If

at any time before final acceptance of the entire work, the **23. Warranty of Construction** PHA considers it necessary or advisable, to examine

work already completed by removing or tearing it out, the (a) In addition to any other warranties in this contract, the

Contractor, shall on request, promptly furnish all Contractor warrants, except as provided in paragraph (j)

necessary facilities, labor, and material. If such work is of this clause, that work performed under this contract

found to be defective or nonconforming in any material conforms to the contract requirements and is free of any

respect due to the fault of the Contractor or its defect in equipment, material, or workmanship performed

subcontractors, the Contractor shall defray all the by the Contractor or any subcontractor or supplier at any

expenses of the examination and of satisfactory tier. This warranty shall continue for a period of

reconstruction. If, however, such work is found to meet (one year unless otherwise indicated) from the date of final

the requirements of the contract, the Contracting Officer acceptance of the work. If the PHA takes possession of

shall make an equitable adjustment to cover the cost of any part of the work before final acceptance, this warranty

the examination and reconstruction, including, if shall continue for a period of (one year unless otherwise

completion of the work was thereby delayed, an indicated) from the date that the PHA takes

extension of time. possession.

1. The Contractor shall notify the Contracting Officer, in (b) The Contractor shall remedy, at the Contractor’s

writing, as to the date when in its opinion all or a expense, any failure to conform, or any defect. In

designated portion of the work will be substantially addition, the Contractor shall remedy, at the Contractor’s

completed and ready for inspection. If the Architect expense, any damage to PHA-owned or controlled real or

determines that the state of preparedness is as personal property when the damage is the result of—

represented, the PHA will promptly arrange for the (1) The Contractor’s failure to conform to contract require-

inspection. Unless otherwise specified in the contract, the merits; or

PHA shall accept, as soon as practicable after completion (2) Any defects of equipment, material, workmanship or

and inspection, all work required by the contract or that design furnished by the Contractor.

portion of the work the Contracting Officer determines and (c) The Contractor shall restore any work damaged in

designates can be accepted separately. Acceptance shall fulfilling the terms and conditions of this clause. The

be final and conclusive except for latent defects, fraud, Contractor’s warranty with respect to work repaired or

gross mistakes amounting to fraud, or the PHA’s right replaced will run for (one year unless otherwise indicated)

under any warranty or guarantee. from the date of repair or replacement.

(d) The Contracting Officer shall notify the Contractor, in

**21. Use and Possession Prior to Completion** writing, within a reasonable time after the discovery of

any failure, defect or damage.

1. The PHA shall have the right to take possession of or use (e) If the Contractor fails to remedy any failure, defect, or

any completed or partially completed part of the work. damage within a reasonable time after receipt of notice,

Before taking possession of or using any work, the the PHA shall have the right to replace, repair or

Contracting Officer shall furnish the Contractor a list of otherwise remedy the failure, defect, or damage at the

items of work remaining to be performed or corrected on Contractor’s expense.

those portions of the work that the PHA intends to take (f) With respect to all warranties, express or implied, from

possession of or use. However, failure of the Contracting subcontractors, manufacturers, or suppliers for work

Officer to list any item of work shall not relieve the performed and materials furnished under this contract,

Contractor of responsibility for complying with the terms of the Contractor shall:

the contract. The PHA’s possession or use shall not be (1) Obtain all warranties that would be given in normal

deemed an acceptance of any work under the contract. commercial practice;

1. While the PHA has such possession or use, the (2) Require all warranties to be executed in writing, for the

Contractor shall be relieved of the responsibility for (1) the benefit of the PHA; and,

loss of or damage to the work resulting from the PHA’s (3) Enforce all warranties for the benefit of the PHA.

possession or use, notwithstanding the terms of the (g) In the event the Contractor’s warranty under paragraph

clause entitled Permits and Codes herein; (2) all (a) of this clause has expired, the PHA may bring suit at

maintenance costs on the areas occupied; and, (3) its own expense to enforce a subcontractor’s,

furnishing heat, light, power, and water used in the areas manufacturer’s or supplier’s warranty.

Previous editions are obsolete Page 8 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

1. Unless a defect is caused by the negligence of the basis for determining progress payments. The breakdown

Contractor or subcontractor or supplier at any tier, the shall be approved by the Contracting Officer and must be

Contractor shall not be liable for the repair of any defect of acceptable to HUD. If the contract covers more than one

material or design furnished by the PHA nor for the repair project, the Contractor shall furnish a separate

of any damage that results from any defect in PHA breakdown for each. The values and quantities employed

furnished material or design. in making up this breakdown are for determining the

1. Notwithstanding any provisions herein to the contrary, the amount of progress payments and shall not be construed

establishment of the time periods in paragraphs (a) and as a basis for additions to or deductions from the contract

(c) above relate only to the specific obligation of the price. The Contractor shall prorate its overhead and profit

Contractor to correct the work, and have no relationship over the construction period of the contract.

to the time within which its obligation to comply with the (d) The Contractor shall submit, on forms provided by the

contract may be sought to be enforced, nor to the time PHA, periodic estimates showing the value of the work

within which proceedings may be commenced to performed during each period based upon the approved establish the Contractor’s liability with respect to its

obligation other than specifically to correct the work. submitted not later than days in advance of

1. This warranty shall not limit the PHA’s rights under the the date set for payment and are subject to correction and

Inspection and Acceptance of Construction clause of this revision as required. The estimates must be approved by

contract with respect to latent defects, gross mistakes or the Contracting Officer with the concurrence of the

fraud. Architect prior to payment. If the contract covers more

than one project, the Contractor shall furnish a

24. Prohibition Against Liens separate progress payment estimate for each.

(e) Along with each request for progress payments and the

The Contractor is prohibited from placing a lien on the required estimates, the Contractor shall furnish the

PHA’s property. This prohibition shall apply to all following certification, or payment shall not be made: I

subcontractors at any tier and all materials suppliers. 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

Administrative Requirements

25. Contract Period conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the

this contract within calendar days of the contract, and timely payments will be made from the

effective date of the contract, or within the time schedule proceeds of the payment covered by this certification,

established in the notice to proceed issued by the in accordance with subcontract agreements; and,

Contracting Officer. (3) This request for progress payments does not include

any amounts which the prime contractor intends to

1. Order of Provisions withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the

In the event of a conflict between these General subcontract.

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 **Name:**

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 Title:

federal law, regulation, or Executive Order. In the event of

such a conflict, applicable federal law, regulation, and

Executive Order shall prevail. Date:

1. Payments (f) Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress
2. The PHA shall pay the Contractor the price as provided in payments until completion and acceptance of all work

this contract. under the contract; except, that if upon completion of 50

1. The PHA shall make progress payments approximately percent of the work, the Contracting Officer, after

every 30 days as the work proceeds, on estimates of consulting with the Architect, determines that the

work accomplished which meets the standards of quality Contractor’s performance and progress are satisfactory,

established under the contract, as approved by the the PHA may make the remaining payments in full for the

Contracting Officer. The PHA may, subject to written work subsequently completed. If the Contracting Officer

determination and approval of the Contracting Officer, subsequently determines that the Contractor’s

make more frequent payments to contractors which are performance and progress are unsatisfactory, the PHA

qualified small businesses. shall reinstate the ten (10) percent (or other percentage

1. Before the first progress payment under this contract, the as provided in State law) retainage until such time as the

Contractor shall furnish, in such detail as requested by Contracting Officer determines that performance and

the Contracting Officer, a breakdown of the total contract progress are satisfactory.

price showing the amount included therein for each (g) The Contracting Officer may authorize material delivered

principal category of the work, which shall substantiate on the site and preparatory work done to be taken into

the payment amount requested in order to provide a consideration when computing progress payments.

Previous editions are obsolete Page 9 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

Material delivered to the Contractor at locations other than responsibilities of the parties (e.g., change in the PHA

the site may also be taken into consideration if the address). All other contract modifications shall be in the

Contractor furnishes satisfactory evidence that (1) it has form of supplemental agreements signed by the

acquired title to such material; (2) the material is properly Contractor and the Contracting Officer.

stored in a bonded warehouse, storage yard, or similar (c) When a proposed modification requires the approval of

suitable place as may be approved by the Contracting HUD prior to its issuance (e.g., a change order that

Officer; (3) the material is insured to cover its full value; exceeds the PHA’s approved threshold), such

and (4) the material will be used to perform this contract. modification shall not be effective until the required

Before any progress payment which includes delivered approval is received by the PHA. material is made, the Contractor shall furnish such

documentation as the Contracting Officer may require to **29. Changes**assure the protection of the PHA’s interest in such

materials. The Contractor shall remain responsible for (a) The Contracting Officer may, at any time, without notice

such stored material notwithstanding the transfer of title to the sureties, by written order designated or indicated

to the PHA. to be a change order, make changes in the work within

1. All material and work covered by progress payments the general scope of the contract including changes:

made shall, at the time of payment become the sole (1) In the specifications (including drawings and designs);

property of the PHA, but this shall not be construed as (1) (2) In the method or manner of performance of the work;

relieving the Contractor from the sole responsibility for all (3) PHA-furnished facilities, equipment, materials,

material and work upon which payments have been made services, or site; or,

or the restoration of any damaged work; or, (2) waiving the (4) Directing the acceleration in the performance of the

right of the PHA to require the fulfillment of all of the terms work.

of the contract. In the event the work of the Contractor has (b) Any other written order or oral order (which, as used in

been damaged by other contractors or persons other than this paragraph (b), includes direction, instruction,

employees of the PHA in the course of their employment, interpretation, or determination) from the Contracting

the Contractor shall restore such damaged work without Officer that causes a change shall be treated as a

cost to the PHA and to seek redress for its damage only change order under this clause; provided, that the

from those who directly Contractor gives the Contracting Officer written notice

caused it. stating (1) the date, circumstances and source of the

1. The PHA shall make the final payment due the Contractor order and (2) that the Contractor regards the order as a

under this contract after (1) completion and final change order.

acceptance of all work; and (2) presentation of release of (c) Except as provided in this clause, no order, statement or

all claims against the PHA arising by virtue of this contract, conduct of the Contracting Officer shall be treated as a

other than claims, in stated amounts, that the Contractor change under this clause or entitle the Contractor to an

has specifically excepted from the operation of the release. equitable adjustment.

Each such exception shall embrace no more than one (d) If any change under this clause causes an increase or

claim, the basis and scope of which shall be clearly decrease in the Contractor’s cost of, or the time required

defined. The amounts for such excepted claims shall not for the performance of any part of the work under this

be included in the request for final payment. A release may contract, whether or not changed by any such order, the

also be required of the assignee if the Contractor’s claim to Contracting Officer shall make an equitable adjustment

amounts payable under this contract and modify the contract in writing. However, except for a

has been assigned. adjustment based on defective specifications, no proposal

1. Prior to making any payment, the Contracting Officer may for any change under paragraph (b) above shall be

require the Contractor to furnish receipts or other allowed for any costs incurred more than 20 days (5 days

evidence of payment from all persons performing work for oral orders) before the Contractor gives written notice

and supplying material to the Contractor, if the as required. In the case of defective specifications for

Contracting Officer determines such evidence is which the PHA is responsible, the equitable adjustment

necessary to substantiate claimed costs. shall include any increased cost reasonably incurred by

1. The PHA shall not; (1) determine or adjust any claims for the Contractor in attempting to comply with

payment or disputes arising there under between the the defective specifications.

Contractor and its subcontractors or material suppliers; (e) The Contractor must assert its right to an adjustment

or, (2) withhold any moneys for the protection of the under this clause within 30 days after (1) receipt of a

subcontractors or material suppliers. The failure or written change order under paragraph (a) of this clause,

refusal of the PHA to withhold moneys from the or (2) the furnishing of a written notice under paragraph

Contractor shall in nowise impair the obligations of any (b) of this clause, by submitting a written statement

surety or sureties under any bonds furnished under this describing the general nature and the amount of the

contract. proposal. If the facts justify it, the Contracting Officer may

extend the period for submission. The proposal may be

**28. Contract Modifications** included in the notice required under paragraph (b)

above. No proposal by the Contractor for an equitable

1. Only the Contracting Officer has authority to modify any adjustment shall be allowed if asserted after final

term or condition of this contract. Any contract payment under this contract.

modification shall be authorized in writing. (f) The Contractor’s written proposal for equitable

1. The Contracting Officer may modify the contract adjustment shall be submitted in the form of a lump sum

unilaterally (1) pursuant to a specific authorization stated proposal supported with an itemized breakdown of all

in a contract clause (e.g., Changes); or (2) for increases and decreases in the contract in at least the

administrative matters which do not change the rights or following details:

Previous editions are obsolete Page 10 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

1. Direct Costs. Materials (list individual items, the been so suspended, delayed, or interrupted by any other

quantity and unit cost of each, and the aggregate cause, including the fault or negligence of the Contractor

cost); Transportation and delivery costs associated or for which any equitable adjustment is provided for or

with materials; Labor breakdowns by hours or unit excluded under any other provision of this contract.

costs (identified with specific work to be performed); (c) A claim under this clause shall not be allowed (1) for any

Construction equipment exclusively necessary for the costs incurred more than 20 days before the Contractor

change; Costs of preparation and/ or revision to shop shall have notified the Contracting Officer in writing of

drawings resulting from the change; Worker’s the act or failure to act involved (but this requirement

Compensation and Public Liability Insurance; shall not apply as to a claim resulting from a suspension

Employment taxes under FICA and FUTA; and, Bond order); and, (2) unless the claim, in an amount stated, is

Costs when size of change warrants revision. asserted in writing as soon as practicable after the

1. Indirect Costs. Indirect costs may include overhead, termination of the suspension, delay, or interruption, but

general and administrative expenses, and fringe not later than the date of final payment under the

benefits not normally treated as direct costs. contract.

1. Profit. The amount of profit shall be negotiated and

may vary according to the nature, extent, and **31. Disputes**complexity of the work required by the change. The

allowability of the direct and indirect costs shall be (a) “Claim,” as used in this clause, means a written demand

determined in accordance with the Contract Cost or written assertion by one of the contracting parties

Principles and Procedures for Commercial Firms in Part seeking, as a matter of right, the payment of money in a

31 of the Federal Acquisition Regulation (48 CFR 1-31), sum certain, the adjustment or interpretation of contract

as implemented by HUD Handbook 2210.18, in effect on terms, or other relief arising under or relating to the

the date of this contract. The Contractor shall not be contract. A claim arising under the contract, unlike a

allowed a profit on the profit received by any claim relating to the contract, is a claim that can be

subcontractor. Equitable adjustments for deleted work resolved under a contract clause that provides for the

shall include a credit for profit and may include a credit for relief sought by the claimant. A voucher, invoice, or other

indirect costs. On proposals covering both increases and routine request for payment that is not in dispute when

decreases in the amount of the contract, the application of submitted is not a claim. The submission may be

indirect costs and profit shall be on the net-change in converted to a claim by complying with the requirements

direct costs for the Contractor or subcontractor of this clause, if it is disputed either as to liability or

performing the work. amount or is not acted upon in a reasonable time.

1. The Contractor shall include in the proposal its request (b) Except for disputes arising under the clauses entitled

for time extension (if any), and shall include sufficient Labor Standards - Davis Bacon and Related Acts, herein,

information and dates to demonstrate whether and to all disputes arising under or relating to this contract,

what extent the change will delay the completion of the including any claims for damages for the alleged breach

contract in its entirety. thereof which are not disposed of by agreement, shall be

1. The Contracting Officer shall act on proposals within 30 resolved under this clause.

days after their receipt, or notify the Contractor of the (c) All claims by the Contractor shall be made in writing and

date when such action will be taken. submitted to the Contracting Officer for a written decision.

1. Failure to reach an agreement on any proposal shall be a A claim by the PHA against the Contractor shall be

dispute under the clause entitled Disputes herein. subject to a written decision by the Contracting Officer.

Nothing in this clause, however, shall excuse the (d) The Contracting Officer shall, within 60 (unless otherwise

Contractor from proceeding with the contract as changed. indicated) days after receipt of the request, decide the

1. Except in an emergency endangering life or property, no claim or notify the Contractor of the date by which the

change shall be made by the Contractor without a prior decision will be made.

order from the Contracting Officer. (e) The Contracting Officer’s decision shall be final unless

the Contractor (1) appeals in writing to a higher level in

**30. Suspension of Work** the PHA in accordance with the PHA’s policy and

procedures, (2) refers the appeal to an independent

1. The Contracting Officer may order the Contractor in mediator or arbitrator, or (3) files suit in a court of

writing to suspend, delay, or interrupt all or any part of the competent jurisdiction. Such appeal must be made within

work of this contract for the period of time that the (30 unless otherwise indicated) days after receipt of the

Contracting Officer determines appropriate for the Contracting Officer’s decision.

convenience of the PHA. (f) The Contractor shall proceed diligently with performance

1. If the performance of all or any part of the work is, for an of this contract, pending final resolution of any request for

unreasonable period of time, suspended, delayed, or relief, claim, appeal, or action arising under or relating to

interrupted (1) by an act of the Contracting Officer in the the contract, and comply with any decision of the

administration of this contract, or (2) by the Contracting Contracting Officer.   
Officer’s failure to act within the time specified (or within a

reasonable time if not specified) in this contract an **32. Default**adjustment shall be made for any increase in the cost of

performance of the contract (excluding profit) necessarily (a) If the Contractor refuses or fails to prosecute the work, or

caused by such unreasonable suspension, delay, or any separable part thereof, with the diligence that will

interruption and the contract modified in writing insure its completion within the time specified in this

accordingly. However, no adjustment shall be made contract, or any extension thereof, or fails to complete

under this clause for any suspension, delay, or said work within this time, the Contracting Officer may, by

interruption to the extent that performance would have written notice to the Contractor, terminate the right to

Previous editions are obsolete Page 11 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

proceed with the work (or separable part of the work) that completion of the work together with any increased costs

has been delayed. In this event, the PHA may take over occasioned the PHA in completing the work.

the work and complete it, by contract or otherwise, and (c) If the PHA does not terminate the Contractor’s right to

may take possession of and use any materials, proceed, the resulting damage will consist of liquidated

equipment, and plant on the work site necessary for damages until the work is completed or accepted. completing the work. The Contractor and its sureties shall

be liable for any damage to the PHA resulting from the **34. Termination for Convenience** Contractor’s refusal or failure to complete the work within

the specified time, whether or not the Contractor’s right to (a) The Contracting Officer may terminate this contract in

proceed with the work is terminated. This liability includes whole, or in part, whenever the Contracting Officer

any increased costs incurred by the PHA in completing determines that such termination is in the best interest of

the work. the PHA. Any such termination shall be effected by

(b) The Contractor’s right to proceed shall not be terminated delivery to the Contractor of a Notice of Termination

or the Contractor charged with damages under this specifying the extent to which the performance of the

clause if— work under the contract is terminated, and the date upon

1. The delay in completing the work arises from which such termination becomes effective.

unforeseeable causes beyond the control and without (b) If the performance of the work is terminated, either in

the fault or negligence of the Contractor. Examples of whole or in part, the PHA shall be liable to the Contractor

such causes include (i) acts of God, or of the public for reasonable and proper costs resulting from such

enemy, (ii) acts of the PHA or other governmental termination upon the receipt by the PHA of a properly

entity in either its sovereign or contractual capacity, presented claim setting out in detail: (1) the total cost of

(iii) acts of another contractor in the performance of a the work performed to date of termination less the total

contract with the PHA, (iv) fires, (v) floods, (vi) amount of contract payments made to the Contractor; (2)

epidemics, (vii) quarantine restrictions, (viii) strikes, the cost (including reasonable profit) of settling and

(ix) freight embargoes, (x) unusually severe weather, paying claims under subcontracts and material orders for

or (xi) delays of subcontractors or suppliers at any tier work performed and materials and supplies delivered to

arising from unforeseeable causes beyond the control the site, payment for which has not been made by the

and without the fault or negligence of both the PHA to the Contractor or by the Contractor to the

Contractor and the subcontractors or suppliers; and subcontractor or supplier; (3) the cost of preserving and

1. The Contractor, within days (10 days unless otherwise protecting the work already performed until the PHA or

indicated) from the beginning of such delay (unless assignee takes possession thereof or assumes

extended by the Contracting Officer) notifies the responsibility therefore; (4) the actual or estimated cost of

Contracting Officer in writing of the causes of delay. legal and accounting services reasonably necessary to

The Contracting Officer shall ascertain the facts and prepare and present the termination claim to the PHA;

the extent of the delay. If, in the judgment of the and (5) an amount constituting a reasonable profit on the

Contracting Officer, the findings of fact warrant such value of the work performed by the Contractor.

action, time for completing the work shall be extended (c) The Contracting Officer will act on the Contractor’s claim

by written modification to the contract. The findings of within days (60 days unless otherwise indicated) of

the Contracting Officer shall be reduced to a written receipt of the Contractor’s claim.

decision which shall be subject to the provisions of (d) Any disputes with regard to this clause are expressly

the Disputes clause of this contract. made subject to the provisions of the Disputes clause of

(c) If, after termination of the Contractor’s right to proceed, it this contract.   
is determined that the Contractor was not in default, or

that the delay was excusable, the rights and obligations **35. Assignment of Contract**of the parties will be the same as if the termination had

been for convenience of the PHA. The Contractor shall not assign or transfer any interest in

this contract; except that claims for monies due or to

**33. Liquidated Damages** become due from the PHA under the contract may be

assigned to a bank, trust company, or other financial

1. If the Contractor fails to complete the work within the time institution. Such assignments of claims shall only be

specified in the contract, or any extension, as specified in made with the written concurrence of the Contracting

the clause entitled Default of this contract, the Contractor Officer. If the Contractor is a partnership, this contract

shall pay to the PHA as liquidated damages, the sum of shall inure to the benefit of the surviving or remaining

$ Contracting Officer insert amount] for member(s) of such partnership as approved by the

each day of delay. If different completion dates are Contracting Officer.   
specified in the contract for separate parts or stages of the

work, the amount of liquidated damages shall be **36. Insurance**assessed on those parts or stages which are delayed. To

the extent that the Contractor’s delay or nonperformance (a) Before commencing work, the Contractor and each

is excused under another clause in this contract, subcontractor shall furnish the PHA with certificates of

liquidated damages shall not be due the PHA. The insurance showing the following insurance is in force and

Contractor remains liable for damages caused other than will insure all operations under the Contract:

by delay. (1) Workers’ Compensation, in accordance with state or

1. If the PHA terminates the Contractor’s right to proceed, Territorial Workers’ Compensation laws.

the resulting damage will consist of liquidated damages (2) Commercial General Liability with a combined single

until such reasonable time as may be required for final limit for bodily injury and property damage of not less

than $ [Contracting Officer insert amount]

Previous editions are obsolete Page 12 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

per occurrence to protect the Contractor and each (2) “Subcontractor” means any supplier, vendor, or firm

subcontractor against claims for bodily injury or death that furnishes supplies, materials, equipment, or

and damage to the property of others. This shall cover services to or for the Contractor or another

the use of all equipment, hoists, and vehicles subcontractor.

on the site(s) not covered by Automobile Liability (b) The Contractor shall not enter into any subcontract with

under (3) below. If the Contractor has a "claims made” any subcontractor who has been temporarily denied

policy, then the following additional requirements participation in a HUD program or who has been

apply: the policy must provide a “retroactive date” suspended or debarred from participating in contracting

which must be on or before the programs by any agency of the United States

execution date of the Contract; and the extended Government or of the state in which the work under this

reporting period may not be less than five years contract is to be performed.

following the completion date of the Contract. (c) The Contractor shall be as fully responsible for the acts or

(3) Automobile Liability on owned and non -owned motor omissions of its subcontractors, and of persons either

vehicles used on the site(s) or in connection therewith directly or indirectly employed by them as for the acts or

for a combined single limit for bodily injury and omissions of persons directly employed by the

property damage of not less than $ Contractor.

[Contracting Officer insert amount] per occurrence. (d) The Contractor shall insert appropriate clauses in all

(b) Before commencing work, the Contractor shall furnish the subcontracts to bind subcontractors to the terms and

PHA with a certificate of insurance evidencing that conditions of this contract insofar as they are applicable

Builder’s Risk (fire and extended coverage) Insurance on to the work of subcontractors.

all work in place and/or materials stored at the building (e) Nothing contained in this contract shall create any

site(s), including foundations and building equipment, is contractual relationship between any subcontractor and

in force. The Builder’s Risk Insurance shall be for the the PHA or between the subcontractor and HUD. benefit of the Contractor and the PHA as their interests

may appear and each shall be named in the policy or **38. Subcontracting with Small and Minority Firms,**

policies as an insured. The Contractor in installing **Women’s Business Enterprise, and Labor Surplus**

equipment supplied by the PHA shall carry insurance on **Area Firms**such equipment from the time the Contractor takes

possession thereof until the Contract work is accepted by The Contractor shall take the following steps to ensure

the PHA. The Builder’s Risk Insurance need not be that, whenever possible, subcontracts are awarded to

carried on excavations, piers, footings, or foundations small business firms, minority firms, women’s business

until such time as work on the superstructure is started. It enterprises, and labor surplus area firms:

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.

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

**39. Equal Employment Opportunity**

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

1. The Contractor/Seller shall not discriminate against any employee or applicant for employment because of of race color, religion, sex, sexual orientation, gender identity, disability, or national origin.
2. The Contractor/Seller shall take affirmative action to

ensure that applicants are employed, and that employees

are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall

include, but not be limited to, (1) employment, (2) upgrading demotion, (4) transfer, (5) recruitment or

recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training,including apprenticeship

Previous editions are obsolete Page 13 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

1. The Contractor/Seller agrees to post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
2. The Contractor/Seller shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor/Seller shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers’ representative of the Contractor’s commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor/Seller shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
5. The Contractor/Seller shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor/Seller shall permit

access to its books, records, and accounts by the

Secretary of Labor for purposes of investigation to

ascertain compliance with such rules, regulations, and

orders.

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

(i)The contractor/seller will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions in cluding 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.**

1. 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.

1. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
2. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 prioritization requirements and shall state the minimum perof labor hour requirements established in the Benchmark Notice centages (). FR-6085-N-04
3. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.
4. Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
5. Contracts, subcontracts, grants, or subgrants subject to

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

Previous editions are obsolete Page 14 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

**41. Interest of Members of Congress** (a) The PHA, HUD, or Comptroller General of the United

States, or any of their duly authorized representatives

No member of or delegate to the Congress of the United shall, until 3 years after final payment under this contract,

States of America shall be admitted to any share or part of have access to and the right to examine any of the

this contract or to any benefit that may arise therefrom. Contractor’s directly pertinent books, documents, papers,

or other records involving transactions related to this

**42. Interest of Members, Officers, or Employees and** contract for the purpose of making audit, examination,

**Former Members, Officers, or Employees** excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts

No member, officer, or employee of the PHA, no member under this contract a clause substantially the same as

of the governing body of the locality in which the project paragraph (a) above. “Subcontract,” as used in this

is situated, no member of the governing body of the clause, excludes purchase orders not exceeding

locality in which the PHA was activated, and no other $10,000.

public official of such locality or localities who exercises (c) The periods of access and examination in paragraphs (a)

any functions or responsibilities with respect to the and (b) above for records relating to (1) appeals under the

project, shall, during his or her tenure, or for one year Disputes clause of this contract, (2) litigation or settlement

thereafter, have any interest, direct or indirect, in this of claims arising from the performance of this contract, or

contract or the proceeds thereof. (3) costs and expenses of this contract to which the PHA,

HUD, or Comptroller General or any of their duly

**43. Limitations on Payments made to Influence Certain** authorized representatives has taken exception shall

**Federal Financial Transactions** continue until disposition of such appeals, litigation,

claims, or exceptions.

1. The Contractor agrees to comply with Section 1352 of

Title 31, United States Code which prohibits the use of **46. Labor Standards - Davis-Bacon and Related Acts** Federal appropriated funds to pay any person for

influencing or attempting to influence an officer or If the total amount of this contract exceeds $2,000, the

employee of any agency, a Member of Congress, and Federal labor standards set forth in the clause below shall

officer or employee of Congress, or an employee of a apply to the development or construction work to be

Member of Congress in connection with any of the performed under the contract.

following covered Federal actions: the awarding of any (a) Minimum Wages.

Federal contract; the making of any Federal grant; the (1) All laborers and mechanics employed under this

making of any Federal loan; the entering into of any contract in the development or construction of the

cooperative agreement; or the modification of any project(s) involved will be paid unconditionally and not

Federal contract, grant, loan, or cooperative agreement. less often than once a week, and without subsequent

1. The Contractor further agrees to comply with the deduction or rebate on any account (except such payroll

requirement of the Act to furnish a disclosure (OMB deductions as are permitted by regulations issued by the

Standard Form LLL, Disclosure of Lobbying Activities) if Secretary of Labor under the Copeland Act (29 CFR Part

any funds other than Federal appropriated funds 3)), the full amount of wages and bona fide fringe benefits

(including profit or fee received under a covered Federal (or cash equivalents thereof) due at time of payment

transaction) have been paid, or will be paid, to any person computed at rates not less than those contained in the

for influencing or attempting to influence an officer or wage determination of the Secretary of Labor which is

employee of any agency, a Member of Congress, an attached hereto and made a part hereof, regardless of

officer or employee of Congress, or an employee of a any contractual relationship which may be alleged to exist

Member of Congress in connection with a Federal between the Contractor and such laborers and

contract, grant, loan, or cooperative agreement. mechanics. Contributions made or costs reasonably

anticipated for bona fide fringe benefits under Section

**44. Royalties and Patents** 1(b)(2) of the Davis-Bacon Act on behalf of laborers or

mechanics are considered wages paid to such laborers or

The Contractor shall pay all royalties and license fees. It mechanics, subject to the provisions of 29 CFR

shall defend all suits or claims for infringement of any 5.5(a)(1)(iv); also, regular contributions made or costs

patent rights and shall save the PHA harmless from loss incurred for more than a weekly period (but not less often

on account thereof; except that the PHA shall be than quarterly) under plans, funds, or programs which

responsible for all such loss when a particular design, cover the regular weekly period, are deemed to be

process or the product of a particular manufacturer or constructively made or incurred during such weekly

manufacturers is specified and the Contractor has no period. Such laborers and mechanics shall be paid the

reason to believe that the specified design, process, or appropriate wage rate and fringe benefits in the wage

product is an infringement. If, however, the Contractor determination for the classification of work actually

has reason to believe that any design, process or product performed, without regard to skill, except as provided in

specified is an infringement of a patent, the Contractor 29 CFR 5.5(a)(4). Laborers or mechanics performing

shall promptly notify the Contracting Officer. Failure to work in more than one classification may be

give such notice shall make the Contractor responsible compensated at the rate specified for each classification

for resultant loss. for the time actually worked therein; provided, that the

employer’s payroll records accurately set forth the time

**45. Examination and Retention of Contractor’s Records** 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

Previous editions are obsolete Page 15 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

be posted at all times by the Contractor and its amount of any costs reasonably anticipated in

subcontractors at the site of the work in a prominent and providing bona fide fringe benefits under a plan or

accessible place where it can be easily seen by the program; provided, that the Secretary of Labor has

workers. found, upon the written request of the Contractor, that

(2) (i) Any class of laborers or mechanics, including the applicable standards of the Davis-Bacon Act have

helpers, which is not listed in the wage been met. The Secretary of Labor may require the

determination and which is to be employed under Contractor to set aside in a separate account assets

the contract shall be classified in conformance with for the meeting of obligations under the plan or

the wage determination. HUD shall approve an program.

additional classification and wage rate and fringe (b) Withholding of funds. HUD or its designee shall, upon its

benefits therefor only when all the following criteria own action or upon written request of an authorized

have been met: (A) The work to be performed by representative of the Department of Labor, withhold or

the classification requested is not performed by a cause to be withheld from the Contractor under this

classification in the wage determination; and (B) contract or any other Federal contract with the same

The classification is utilized in the area by the prime Contractor, or any other Federally-assisted

construction industry; and (C) The proposed wage contract subject to Davis-Bacon prevailing wage

rate, including any bona fide fringe benefits, bears requirements, which is held by the same prime

a reasonable relationship to the wage rates Contractor, so much of the accrued payments or

contained in the wage advances as may be considered necessary to pay

determination. laborers and mechanics, including apprentices, trainees,

1. If the Contractor and the laborers and mechanics and helpers, employed by the Contractor or any

to be employed in the classification (if known), or subcontractor the full amount of wages required by the

their representatives, and HUD or its designee contract. In the event of failure to pay any laborer or

agree on the classification and wage rate mechanic, including any apprentice, trainee, or helper,

(including the amount designated for fringe employed or working in the construction or development

benefits where appropriate), a report of the action of the project, all or part of the wages required by the

taken shall be sent by HUD or its designee to the contract, HUD or its designee may, after written notice to

Administrator of the Wage and Hour Division, the Contractor, take such action as may be necessary to

Employee Standards Administration, U.S. cause the suspension of any further payment, advance,

Department of Labor, Washington, DC 20210. or guarantee of funds until such violations have ceased.

The Administrator, or an authorized HUD or its designee may, after written notice to the

representative, will approve, modify, or disapprove Contractor, disburse such amounts withheld for and on

every additional classification action within 30 days account of the Contractor or subcontractor to the

of receipt and so advise HUD or its designee or will respective employees to whom they are due.

notify HUD or its designee within the 30-day period (c) Payrolls and basic records.

that additional time is necessary. (1) Payrolls and basic records relating thereto shall be

1. In the event the Contractor, the laborers or maintained by the Contractor during the course of the

mechanics to be employed in the classification or work and preserved for a period of three years

their representatives, and HUD or its designee do thereafter for all laborers and mechanics working in

not agree on the proposed classification and wage the construction or development of the project. Such

rate (including the amount designated for fringe records shall contain the name, address, and social

benefits, where appropriate), HUD or its designee security number of each such worker, his or her

shall refer the questions, including the views of all correct classification, hourly rates of wages paid

interested parties and the recommendation of HUD (including rates of contributions or costs anticipated

or its designee, to the Administrator of the Wage for bona fide fringe benefits or cash equivalents

and Hour Division for determination. The thereof of the types described in section 1(b)(2)(B) of

Administrator, or an authorized representative, will the Davis-Bacon Act), daily and weekly number of

issue a determination within 30 days of receipt and hours worked, deductions made, and actual wages

so advise HUD or its designee or will notify HUD or paid. Whenever the Secretary of Labor has found,

its designee within the 30-day period that under 29 CFR 5.5(a)(1)(iv), that the wages of any

additional time is necessary. laborer or mechanic include the amount of costs

1. The wage rate (including fringe benefits where reasonably anticipated in providing benefits under a

appropriate) determined pursuant to plan or program described in section 1(b)(2)(B) of the

subparagraphs (a)(2)(ii) or (iii) of this clause shall Davis-Bacon Act, the Contractor shall maintain

be paid to all workers performing work in the records which show that the commitment to provide

classification under this contract from the first day such benefits is enforceable, that the plan or program

on which work is performed in classification. is financially responsible, and that the plan or

(3) Whenever the minimum wage rate prescribed in the program has been communicated in writing to the

contract for a class of laborers or mechanics includes laborers or mechanics affected, and records which

a fringe benefit which is not expressed as an hourly show the costs anticipated or the actual cost incurred

rate, the Contractor shall either pay the benefit as in providing such benefits. Contractors employing

stated in the wage determination or shall pay another apprentices or trainees under approved programs

bona fide fringe benefit or an hourly cash equivalent shall maintain written evidence of the registration of

thereof. apprenticeship programs and certification of trainee

(4) If the Contractor does not make payments to a trustee programs, the registration of the apprentices and

or other third person, the Contractor may consider as trainees, and the ratios and wage rates prescribed in

part of the wages of any laborer or mechanic the the applicable programs.

Previous editions are obsolete Page 16 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

(2) (i) The Contractor shall submit weekly for each week make such records available may be grounds for

in which any contract work is performed a copy of debarment action pursuant to 29 CFR 5.12.

all payrolls to the Contracting Officer for (d) (1) Apprentices. Apprentices will be permitted to work at

transmission to HUD or its designee. The payrolls less than the predetermined rate for the work they

submitted shall set out accurately and completely performed when they are employed pursuant to and

all of the information required to be maintained individually registered in a bona fide apprenticeship

under subparagraph (c)(1) of this clause. This program registered with the U.S. Department of

information may be submitted in any form desired. Labor, Employment and Training Administration,

Optional Form WH-347 (Federal Stock Number Office of Apprenticeship and Training, Employer and

029-005-00014-1) is available for this purpose and Labor Services (OATELS), or with a State

may be purchased from the Superintendent of Apprenticeship Agency recognized by OATELS, or if a

Documents, U.S. Government Printing Office, person is employed in his or her first 90 days of

Washington, D.C. 20402. The Contractor is probationary employment as an apprentice in such an

responsible for the submission of copies of apprenticeship program, who is not individually

payrolls by all subcontractors. (Approved by the registered in the program, but who has been certified

Office of Management and Budget under OMB by OATELS or a State Apprenticeship Agency (where

Control Number 1214-0149.) appropriate) to be eligible for probationary

(ii) Each payroll submitted shall be accompanied by a employment as an apprentice. The allowable ratio of

“Statement of Compliance,” signed by the apprentices to journeymen on the job site in any craft

Contractor or subcontractor or his or her agent classification shall not be greater than the ratio

who pays or supervises the payment of the permitted to the Contractor as to the entire work force

persons employed under the contract and shall under the registered program. Any worker listed on a

certify the following: payroll at an apprentice wage rate, who is not

1. That the payroll for the payroll period contains registered or otherwise employed as stated in this

the information required to be maintained paragraph, shall be paid not less than the applicable

under paragraph (c) (1) of this clause and that wage rate on the wage determination for the

such information is correct and complete; classification of work actually performed. In addition,

1. That each laborer or mechanic (including each any apprentice performing work on the job site in

helper, apprentice, and trainee) employed on excess of the ratio permitted under the registered

the contract during the payroll period has been program shall be paid not less than the applicable

paid the full weekly wages earned, without wage rate on the wage determination for the work

rebate, either directly or indirectly, and that no actually performed. Where a contractor is performing

deductions have been made either directly or construction on a project in a locality other than that in

indirectly from the full wages earned, other which its program is registered, the ratios and wage

than permissible deductions as set forth in 29 rates (expressed in percentages of the journeyman’s

CFR Part 3; and hourly rate) specified in the Contractor’s or

1. That each laborer or mechanic has been paid subcontractor’s registered program shall be observed.

not less than the applicable wage rates and Every apprentice must be paid at not less than the rate

fringe benefits or cash equivalents for the specified in the registered program for the apprentice’s

classification of work performed, as specified level of progress, expressed as a percentage of the

in the applicable wage determination journeyman hourly rate specified in the applicable

incorporated into the contract. wage determination. Apprentices shall be paid fringe

(iii) The weekly submission of a properly executed benefits in accordance with the provisions of the

certification set forth on the reverse side of apprenticeship program. If the apprenticeship program

Optional Form WH-347 shall satisfy the does not specify fringe benefits, apprentices must be

requirements for submission of the “Statement of paid the full amount of fringe benefits listed on the

Compliance” required by subparagraph (c)(2)(ii) of wage determination for the applicable classification. If

this clause. the Administrator of the Wage and Hour Division

(iv) The falsification of any of the above certifications determines that a different practice prevails for the

may subject the Contractor or subcontractor to civil applicable apprentice classification, fringes shall be

or criminal prosecution under Section 1001 of Title paid in accordance with that determination. In the

18 and Section 3729 of Title 31 of the United event OATELS, or a State Apprenticeship Agency

States Code. recognized by OATELS, withdraws approval of an

(3) The Contractor or subcontractor shall make the apprenticeship program, the Contractor will no longer

records required under subparagraph (c)(1) available be permitted to utilize apprentices at less than the

for inspection, copying, or transcription by authorized applicable predetermined rate for the work performed

representatives of HUD or its designee, the until an acceptable

Contracting Officer, or the Department of Labor and program is approved.

shall permit such representatives to interview (2) Trainees. Except as provided in 29 CFR 5.16,

employees during working hours on the job. If the trainees will not be permitted to work at less than the

Contractor or subcontractor fails to submit the predetermined rate for the work performed unless they

required records or to make them available, HUD or are employed pursuant to and individually registered in

its designee may, after written notice to the a program which has received prior approval,

Contractor, take such action as may be necessary to evidenced by formal certification by the U.S.

cause the suspension of any further payment, Department of Labor, Employment and Training

advance, or guarantee of funds. Furthermore, failure Administration. The ratio of trainees to journeymen on

to submit the required records upon request or to the job site shall not be greater than permitted under

Previous editions are obsolete Page 17 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

the plan approved by the Employment and Training (2) No part of this contract shall be subcontracted to any

Administration. Every trainee must be paid at not less person or firm ineligible for award of a United States

than the rate specified in the approved program for the Government contract by virtue of section 3(a) of the

trainee’s level of progress, expressed as a percentage Davis-Bacon Act or 29 CFR 5.12(a)(1).

of the journeyman hourly rate specified in the (3) The penalty for making false statements is prescribed

applicable wage determination. Trainees shall be paid in the U. S. Criminal Code, 18 U.S.C. 1001.

fringe benefits in accordance with the provisions of the (j) Contract Work Hours and Safety Standards Act. As used

trainee program. If the trainee program does not in this paragraph, the terms “laborers” and “mechanics”

mention fringe benefits, trainees shall be paid the full include watchmen and guards.

amount of fringe benefits listed in the wage (1) Overtime requirements. No contractor or

determination unless the Administrator of the Wage subcontractor contracting for any part of the contract

and Hour Division determines that there is an work which may require or involve the employment of

apprenticeship program associated with the laborers or mechanics, including watchmen and

corresponding journeyman wage rate in the wage guards, shall require or permit any such laborer or

determination which provides for less than full fringe mechanic in any workweek in which the individual is

benefits for apprentices. Any employee listed on the employed on such work to work in excess of 40 hours

payroll at a trainee rate who is not registered and in such workweek unless such laborer or mechanic

participating in a training plan approved by the receives compensation at a rate not less than one and

Employment and Training Administration shall be paid one-half times the basic rate of pay for all hours

not less than the applicable wage rate in the wage worked in excess of 40 hours in such workweek.

determination for the classification of work actually (2) Violation; liability for unpaid wages; liquidated

performed. In addition, any trainee performing work on damages. In the event of any violation of the

the job site in excess of the ratio permitted under the provisions set forth in subparagraph (j)(1) of this

registered program shall be paid not less than the clause, the Contractor and any subcontractor

applicable wage rate in the wage determination for the responsible therefor shall be liable for the unpaid

work actually performed. In the event the Employment wages. In addition, such Contractor and

and Training Administration withdraws approval of a subcontractor shall be liable to the United States (in

training program, the Contractor will no longer be the case of work done under contract for the District

permitted to utilize trainees at less than the applicable of Columbia or a territory, to such District or to such

predetermined rate for the work performed territory), for liquidated damages. Such liquidated

until an acceptable program is approved. damages shall be computed with respect to each

(3) Equal employment opportunity. The utilization of individual laborer or mechanic (including watchmen

apprentices, trainees, and journeymen under this and guards) employed in violation of the provisions

clause shall be in conformity with the equal set forth in subparagraph (j)(1) of this clause, in the

employment opportunity requirements of Executive sum of $27 for each calendar day on which such

Order 11246, as amended, and 29 CFR Part 30. individual was required or permitted to work in excess

1. Compliance with Copeland Act requirements. The of the standard workweek of 40 hours without

Contractor shall comply with the requirements of 29 CFR payment of the overtime wages required by

Part 3, which are hereby incorporated by reference in this provisions set forth in subparagraph (j)(1) of this

contract. clause. DOL posts current fines at: https://www.dol.gov/whd/ govcontracts/cwhssa.htm#cmp

1. Contract termination; debarment. A breach of this contract (3) Withholding for unpaid wages and liquidated

clause may be grounds for termination of the contract and damages. HUD or its designee shall upon its own

for debarment as a Contractor and a subcontractor as action or upon written request of an authorized

provided in 29 CFR 5.12. representative of the Department of Labor withhold or

1. Compliance with Davis-Bacon and related Act cause to be withheld, from any moneys payable on

requirements. All rulings and interpretations of the Davis- account of work performed by the Contractor or

Bacon and related Acts contained in 29 CFR Parts 1, 3, subcontractor under any such contract or any Federal

and 5 are herein incorporated by reference in this contract with the same prime Contractor, or any other

contract. Federally-assisted contract subject to the Contract

1. Disputes concerning labor standards. Disputes arising out Work Hours and Safety Standards Act, which is held

of the labor standards provisions of this clause shall not by the same prime Contractor, such sums as may be

be subject to the general disputes clause of this contract. determined to be necessary to satisfy any liabilities of

Such disputes shall be resolved in accordance with the such Contractor or subcontractor for unpaid wages

procedures of the Department of Labor set forth in 29 and liquidated damages as provided in the provisions

CFR Parts 5, 6, and 7. Disputes within the meaning of set forth in subparagraph (j)(2) of this clause.

this clause include disputes between the Contractor (or (k) Subcontracts. The Contractor or subcontractor shall insert

any of its subcontractors) and the PHA, HUD, the U.S. in any subcontracts all the provisions contained in this

Department of Labor, or the employees or their clause, and such other clauses as HUD or its designee

representatives. may by appropriate instructions require, and also a

1. Certification of eligibility. clause requiring the subcontractors to include these

(1) By entering into this contract, the Contractor certifies provisions in any lower tier subcontracts. The prime

that neither it (nor he or she) nor any person or firm Contractor shall be responsible for the compliance by any

who has an interest in the Contractor’s firm is a subcontractor or lower tier subcontractor with all these

person or firm ineligible to be awarded contracts by provisions.

the United States Government by virtue of section

3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

Previous editions are obsolete Page 18 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A

47. Non-Federal Prevailing Wage Rates

1. 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;

1. 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
2. An applicable trainee wage rate based thereon specified   
   in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

1. 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.

1. 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.

Previous editions are obsolete Page 19 of 19 form HUD-5370 (1/2014)

Replaces form HUD-5370-A