

General Conditions for Construction

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		Page	Page
Clause			Clause
1. Definitions	2		Administrative Requirements
2. Contractor's Responsibility for Work	2	25.	Contract Period
3. Architect's Duties, Responsibilities and Authority	2	26.	Order of Precedence
4. Other Contracts	3	27.	Payments
Construction Requirements		28.	Contract Modifications
5. Preconstruction Conference and Notice to Proceed	3	29.	Changes
6. Construction Progress Schedule	3	30.	Suspension of Work
7. Site Investigation and Conditions Affecting the Work	3	31.	Disputes
8. Differing Site Conditions	4	32.	Default
9. Specifications and Drawings for Construction	4	33.	Liquidated
10. As-Built Drawings	5	34.	Termination of Convenience
11. Material and Workmanship	5	35.	Assignment of Contract
12. Permits and Codes	5	36.	Insurance
13. Health, Safety, and Accident Prevention	6	37.	Subcontracts
14. Temporary Buildings and Transportation Materials	6	38.	Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus
15. Availability and Use of Utility Services	6	39.	Equal Employment Opportunity
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
17. Temporary Buildings and Transportation Materials	7	41.	Interest of Members of Congress
18. Clean Air and Water	7	42.	Interest of Members, Officers, or Employees and Former Members, Officers, or Employees
19. Energy Efficiency	7	43.	Limitations on Payments Made to Influence
20. Inspection and Acceptance of Construction	7	44.	Royalties and Patents
21. Use and Possession Prior to	8	45.	Examination and Retention of Contractor's Records
22. Warranty of Title	8	46.	Labor Standards-Davis-Bacon and Related Acts
23. Warranty of	8	47.	Non-Federal Prevailing Wage Rates
24. Prohibition Against Liens	9	48.	Procurement of Recovered Materials

1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
- (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate shall determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the satisfactory specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
- (d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
- (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
- (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of Annual Contributions Terms and Conditions (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination before
- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility herein.
- (b) The Contractor shall perform on the site, and with its organization, work equivalent to at least [] (12 percent unless otherwise indicated) of the total amount of be performed under the order. This percentage may be reduced by a supplemental agreement to this order during performing the work, the Contractor requests reduction and the Contracting Officer determines that reduction would be to the advantage of the PHA.
- (c) At all times during performance of this contract and the work is completed and accepted, the Contractor directly superintend the work or assign and have on work site a competent superintendent who is to the Contracting Officer and has authority to act for Contractor.
- (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any unit of work which may have been accepted under contract.
- (e) The Contractor shall lay out the work from base lines bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of work executed under the contract. The Contractor verify the figures before laying out the work and will be held responsible for any error resulting from its do so.
- (f) The Contractor shall confine all operations storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
- (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and

of HUD may be required to authorize changes in the work the
or for release of funds to the PHA for payment to the materials
Contractor. Notwithstanding HUD's role, nothing in this property of
contract shall be construed to create any contractual the
relationship between the Contractor and HUD.

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

(h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this and contract.

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

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

2. Contractor's Responsibility for Work

Previous editions are obsolete
Replaces form HUD-5370-A

final inspection, the Contractor shall (1) remove from premises all scaffolding, equipment, tools, and (including rejected materials) that are not the

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

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

3. Architect's Duties, Responsibilities, and

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

(b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, **Schedule** engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the copies

scope of the contract; (2) constitutes a change as defined the in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.

The

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

(1) Making periodic visits to the work site, and on the during

basis of his/her on-site inspections, issuing written schedule

reports to the PHA which shall include all observed may deficiencies. The Architect shall file a copy of the other

report with the Contractor's designated representative submits at the site;

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

(3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress and schedules; (ii) the Contractor's shop and detailed Contractor is drawings; (iii) the machinery, mechanical and other shall equipment and materials or other articles proposed including for use by the Contractor; and, (iv) the Contractor's Officer, price breakdown and progress payment estimates; circumstance, and, to

(4) Assisting in inspections, signing Certificates of days

Completion, and making recommendations with and to respect to acceptance of work completed under the contract. deems

4. Other Contracts

The PHA may undertake or award other contracts for additional work at or near the site of the work under this that

contract. The Contractor shall fully cooperate with the sufficient other contractors and with PHA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding terminate the any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act clause

6. Construction Progress

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three

of a practicable schedule showing the order in which

Contractor proposes to perform the work, and the

on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment).

schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the

work scheduled for completion by any given date

the period. If the Contractor fails to submit a

within the time prescribed, the Contracting Officer

withhold approval of progress payments or take

remedies under the contract until the Contractor

the required schedule.

(b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection

Acceptance of Construction, herein that the

not meeting the approved schedule, the Contractor

take steps necessary to improve its progress,

those that may be required by the Contracting

without additional cost to the PHA. In this

the Contracting Officer may require the Contractor

increase the number of shifts, overtime operations,

of work, and/or the amount of construction plant,

submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer

necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer

the Contractor is not prosecuting the work with

diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may

Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default

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

of this contract.

Construction

7. Site Investigation and Conditions Affecting the Work

5. Pre-construction Conference and Notice to Proceed

location of the work, and that it has investigated and satisfied itself

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

(b) The contractor shall begin work upon receipt of a written

Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and

as to the general and local conditions which can affect

work or its cost, including but not limited to, (1)

bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor,

electric power, and roads;(3) uncertainties of

river stages, tides, or similar physical conditions at

site; (4) the conformation and conditions of the

and (5) the character of equipment and facilities

preliminary to and during work performance. The Contractor also acknowledges that it has satisfied

to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is

reasonably ascertainable from an inspection of the site, 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

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

9. Specifications and Drawings for Construction

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be

promptly submitted to the Contracting Officer, who

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.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown" "as indicated", "as detailed", or words

of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate,

use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

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

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

It shall be the responsibility of the Contractor to ensure represented, its that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

- (a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at complies any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built of drawings" shall be synonymous with "Record drawings." of
- (b) As required by the Contracting Officer, the Contractor contract shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built have drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface not improvements such as buildings, curbs, or edges of nor walks. Contracting
- (c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to on ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship compliance of

- (a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for materials the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by into trade name, make, or catalog number, shall be regarded materials as establishing a standard of quality and shall not be

machinery and mechanical and other equipment. When required by this contract or by the

Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full

concerning the material or articles. Machinery, equipment, material, and articles that do not have required approval shall be installed or used at the

of subsequent rejection.

- (2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark

the container, the material or product

place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.

- (3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory

with contract requirements. The certificates shall include the name and brand of the product, name

manufacturer, and the location where produced.

- (4) Approval of a sample shall not constitute a waiver

the PHA right to demand full compliance with

requirements. Materials, equipment and accessories may be rejected for cause even though samples

been approved.

- (5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall

govern the number of tests required to be made

modify other contract requirements. The

Officer may require laboratory test reports on items submitted for approval or may approve materials

the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure

materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing

offered in substitution for those found deficient.

- (6) After approval, samples will be kept in the Project office until completion of work. They may be built

the work after a substantial quantity of the

they represent has been built in and accepted.

construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or concerning

process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in 35. this contract.

(b) Approval of equipment and materials.

(1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other all equipment to be incorporated into the work. When regulations. requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the applicable performance, capacity, nature, and rating of the

(c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements

lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part

12. Permits and Codes

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



waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer properly

Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

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

13. Health, Safety, and Accident Prevention for by

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

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

(b) For these purposes, the Contractor shall: and

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

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

(d) The Contracting Officer shall notify the Contractor of any clean noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the

14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to

protect all work and materials against damage by dampness and cold, to dry out the work, and to

the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the

15. Availability and Use of Utility

(a) The PHA shall make all reasonably required amounts utilities available to the Contractor from existing and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid

the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at

rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities

without charge.

(b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure

amount of each utility used for the purpose of determining charges. Before final acceptance of the by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters,

associated paraphernalia.

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

(a) The Contractor shall preserve and protect all equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not removed under this contract, and which do not unreasonably interfere with the work required under contract.

(b) The Contractor shall only remove trees when authorized to do so, and shall avoid damaging that will remain in place. If any limbs or branches of are broken during performance of this contract, or by careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(c) The Contractor shall protect from damage all existing

site of the work, shall be deemed sufficient notice of the and noncompliance and corrective action required. After of

receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The secure, Contractor shall not base any claim or request for parts equitable adjustment for additional time or money on any the stop order issued under these circumstances.

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

improvements and utilities (1) at or near the work site

(2) on adjacent property of a third party, the locations

which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

- (d) The Contractor shall shore up, brace, underpin,

and protect as necessary all foundations and other

of existing structures adjacent to, adjoining, and in

vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

- (e) Any equipment temporarily removed as a result of

under this contract shall be protected, cleaned, and replaced in the same condition as at the time of

this contract.



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

17. Temporary Buildings and Transportation of Materials

- (a) Temporary buildings (e.g., storage sheds, shops, offices, for sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the not property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- (b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary additional roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are

The contractor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C.

et seq., and standards issued pursuant thereto in the facilities in which this contract is to be

19. Energy Efficiency

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

20. Inspection and Acceptance of

- (a) Definitions. As used in this clause -
- (1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under contract. Acceptance may be partial or complete.
- (2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, intermediate assemblies) to determine whether it conforms to contract requirements.
- (3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established principles and procedures.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance the terms of the contract.
- (c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.
- (d) The presence or absence of the PHA inspector does relieve the Contractor from any contract requirement, is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to Contractor by the Contracting Officer.
- (e) The Contractor shall promptly furnish, without charge, all facilities, labor, and material reasonably needed for performing such safe and convenient

transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, when

state, or local law or regulation. When it is necessary to Contractor

cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the perform

repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water

the

inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test

work is not ready at the time specified by the

for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall

all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in

contract.

Previous editions are obsolete
Replaces form HUD-5370-A

Page 7 of 19

form HUD-5370 (1/2014)



(f) The PHA may conduct routine inspections of the prior construction site on a daily basis. the

(g) correct an work found by the PHA not to conform to contract price requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate accordingly. adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(h) The Contractor warrants good title to all materials, rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed. other

(i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the **Construction** PHA considers it necessary or advisable, to examine

work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all

(j) necessary facilities, labor, and material. If such work is contract found to be defective or nonconforming in any material any respect due to the fault of the Contractor or its performed subcontractors, the Contractor shall defray all the any

expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet final the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of warranty the examination and reconstruction, including, if otherwise completion of the work was thereby delayed, an extension of time.

(j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially Contractor's completed and ready for inspection. If the Architect real or determines that the state of preparedness is as represented, the PHA will promptly arrange for the require- inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion or and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right indicated) under any warranty or guarantee.

21. Use and Possession Prior to Completion of

(a) (e) If the Contractor fails to remedy any failure, defect, or

occupied without proper remuneration therefore. If possession or use by the PHA delays the progress of

The Contractor shall, without charge, replace or work or causes additional expense to the Contractor,

equitable adjustment shall be made in the contract or the time of completion, and the contract shall be modified in writing

22. Warranty of Title

If the Contractor does not promptly replace or correct supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any person, firm or corporation shall have any right to a upon the premises or anything appurtenant

23. Warranty of

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph of this clause, that work performed under this conforms to the contract requirements and is free of defect in equipment, material, or workmanship by the Contractor or any subcontractor or supplier at tier. This warranty shall continue for a period of ____ (one year unless otherwise indicated) from the date of acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this shall continue for a period of (one year unless

indicated) from the date that the PHA takes possession.

(b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the expense, any damage to PHA-owned or controlled personal property when the damage is the result of—

(1) The Contractor's failure to conform to contract

merits; or

(2) Any defects of equipment, material, workmanship design furnished by the Contractor.

(c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise from the date of repair or replacement.

(d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery any failure, defect or damage. The PHA shall have the right to take possession of or use

any completed or partially completed part of the work.
notice,

Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of the

items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the contract,

Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be normal

deemed an acceptance of any work under the contract.

- (b) (2) Require all warranties to be executed in writing, for the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the paragraph clause entitled Permits and Codes herein; (2) all at maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas

damage within a reasonable time after receipt of

the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at

Contractor's expense.

- (f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this

the Contractor shall:

- (1) Obtain all warranties that would be given in

commercial practice;
While the PHA has such possession or use, the

benefit of the PHA; and,

- (3) Enforce all warranties for the benefit of the PHA.

- (g) In the event the Contractor's warranty under

(a) of this clause has expired, the PHA may bring suit

its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of one material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA employed furnished material or design.

(i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to approved establish the Contractor's liability with respect to its obligation other than specifically to correct the work.

Administrative

Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud. more

24. Prohibition Against Liens

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

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

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

26. Order of Provisions

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

27. Payments

shall retain ten (10) percent of the amount of progress (a) The PHA shall pay the Contractor the price as provided in

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

(d) The Contractor shall submit, on forms provided by PHA, periodic estimates showing the value of the performed during each period based upon the submitted not later than _____ days in advance of (j) This warranty shall not limit the PHA's rights under the the date set for payment and are subject to correction and revision as required. The estimates must be

the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers than one project, the Contractor shall furnish a separate progress payment estimate for each.

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

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from proceeds of the payment covered by this

in accordance with subcontract agreements; and, (3) This request for progress payments does not any amounts which the prime contractor intends to withhold or retain from a subcontractor or subcontract.

Name:

Title:

Date:

(f) Except as otherwise provided in State law, the PHA payments until completion and acceptance of all work

this contract.

of 50

(b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality satisfactory, established under the contract, as approved by the the Contracting Officer. The PHA may, subject to written Officer determination and approval of the Contracting Officer, make more frequent payments to contractors which are PHA qualified small businesses.

(c) Before the first progress payment under this contract, the the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each delivered principal category of the work, which shall substantiate into the payment amount requested in order to provide a

under the contract; except, that if upon completion percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are the PHA may make the remaining payments in full for work subsequently completed. If the Contracting subsequently determines that the Contractor's performance and progress are unsatisfactory, the shall reinstate the ten (10) percent (or other as provided in State law) retainage until such time as Contracting Officer determines that performance and progress are satisfactory.

(g) The Contracting Officer may authorize material on the site and preparatory work done to be taken consideration when computing progress payments.



Material delivered to the Contractor at locations other than the site may also be taken into consideration if the

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

(h)

the general scope of the contract including changes: made shall, at the time of payment become the sole designs);

property of the PHA, but this shall not be construed as (1) work;

relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the the

right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has in

been damaged by other contractors or persons other than employees of the PHA in the course of their employment, Contracting

the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly

notice caused it.

(i) The PHA shall make the final payment due the Contractor a

under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of or all claims against the PHA arising by virtue of this contract, a

other than claims, in stated amounts, that the Contractor an has specifically excepted from the operation of the release.

Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly required

defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may the

also be required of the assignee if the Contractor's claim to adjustment amounts payable under this contract for a

has been assigned.

proposal

(j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other days

evidence of payment from all persons performing work notice

and supplying material to the Contractor, if the Contracting Officer determines such evidence is adjustment

responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in

form of supplemental agreements signed by the Contractor and the Contracting Officer.

(c) When a proposed modification requires the approval

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

29. Changes

(a) The Contracting Officer may, at any time, without

to the sureties, by written order designated or

to be a change order, make changes in the work

All material and work covered by progress payments

(1) In the specifications (including drawings and

(2) In the method or manner of performance of the

(3) PHA-furnished facilities, equipment, materials, services, or site; or,

(4) Directing the acceleration in the performance of work.

(b) Any other written order or oral order (which, as used

this paragraph (b), includes direction, instruction, interpretation, or determination) from the

Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written

stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as

change order.

(c) Except as provided in this clause, no order, statement

conduct of the Contracting Officer shall be treated as

change under this clause or entitle the Contractor to

equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time

for the performance of any part of the work under this contract, whether or not changed by any such order,

Contracting Officer shall make an equitable

and modify the contract in writing. However, except

adjustment based on defective specifications, no

for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5

for oral orders) before the Contractor gives written

as required. In the case of defective specifications for which the PHA is responsible, the equitable

necessary to substantiate claimed costs.

by

(k)
for

payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or

clause, refusal of the PHA to withhold moneys from the paragraph

Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

may

28. Contract Modifications

(a)
any

term or condition of this contract. Any contract modification shall be authorized in writing.

(b)

adjustment shall be submitted in the form of a lump sum unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or

shall include any increased cost reasonably incurred

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

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this

or (2) the furnishing of a written notice under

(b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer

extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable

Only the Contracting Officer has authority to modify adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable The Contracting Officer may modify the contract

proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

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

been so suspended, delayed, or interrupted by any cause, including the fault or negligence of the or for which any equitable adjustment is provided for excluded under any other provision of this contract. (c) A claim under this clause shall not be allowed (1) for costs incurred more than 20 days before the shall have notified the Contracting Officer in writing the act or failure to act involved (but this shall not apply as to a claim resulting from a order); and, (2) unless the claim, in an amount asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, not later than the date of final payment under the contract.

31. Disputes

- (a) "Claim," as used in this clause, means a written or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money sum certain, the adjustment or interpretation of terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for relief sought by the claimant. A voucher, invoice, or routine request for payment that is not in dispute submitted is not a claim. The submission may be converted to a claim by complying with the of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time. The Contractor shall include in the proposal its request Labor Standards - Davis Bacon and Related Acts, all disputes arising under or relating to this contract, including any claims for damages for the alleged thereof which are not disposed of by agreement, The Contracting Officer shall act on proposals within
- (c) All claims by the Contractor shall be made in writing submitted to the Contracting Officer for a written A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting
- (d) The Contracting Officer shall, within 60 (unless indicated) days after receipt of the request, decide claim or notify the Contractor of the date by which the decision will be made.
- (e) The Contracting Officer's decision shall be final unless

30. Suspension of Work

- (a) mediator or arbitrator, or (3) files suit in a court of writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA. performance
- (b) an of this contract, pending final resolution of any request for unreasonable period of time, suspended, delayed, or relating to interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily work, or caused by such unreasonable suspension, delay, or will interruption and the contract modified in writing accordingly. However, no adjustment shall be made complete under this clause for any suspension, delay, or may, by interruption to the extent that performance would have to

the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent The Contracting Officer may order the Contractor in competent jurisdiction. Such appeal must be made (30 unless otherwise indicated) days after receipt of Contracting Officer's decision.

- (f) The Contractor shall proceed diligently with

If the performance of all or any part of the work is, for relief, claim, appeal, or action arising under or the contract, and comply with any decision of the Contracting Officer.

32. Default

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

proceed with the work (or separable part of the work) that costs

has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and to

may take possession of and use any materials, liquidated

equipment, and plant on the work site necessary for accepted. completing the work. The Contractor and its sureties shall

be liable for any damage to the PHA resulting from the **Convenience** Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to

proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing interest of

the work.

- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if— upon

- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of Contractor such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, cost of (iii) acts of another contractor in the performance of a total contract with the PHA, (iv) fires, (v) floods, (vi) Contractor; (2) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, orders for or (xi) delays of subcontractors or suppliers at any tier to arising from unforeseeable causes beyond the control the and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and and

- (2) The Contractor, within days (10 days unless otherwise or

indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the cost of

Contracting Officer in writing of the causes of delay. to

The Contracting Officer shall ascertain the facts and PHA; the extent of the delay. If, in the judgment of the on the

Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended claim

by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract. clause of

- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA. interest in

33. Liquidated Damages

be

completion of the work together with any increased

occasioned the PHA in completing the work.

- (c) If the PHA does not terminate the Contractor's right

proceed, the resulting damage will consist of

damages until the work is completed or

34. Termination for

work within

- (a) The Contracting Officer may terminate this contract

whole, or in part, whenever the Contracting Officer determines that such termination is in the best

the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date

which such termination becomes effective.

- (b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the

for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total

the work performed to date of termination less the

amount of contract payments made to the

the cost (including reasonable profit) of settling and paying claims under subcontracts and material

work performed and materials and supplies delivered

the site, payment for which has not been made by

PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving

protecting the work already performed until the PHA

assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated

legal and accounting services reasonably necessary

prepare and present the termination claim to the

and (5) an amount constituting a reasonable profit

value of the work performed by the Contractor.

- (c) The Contracting Officer will act on the Contractor's

within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.

- (d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes

this contract.

35. Assignment of Contract

The Contractor shall not assign or transfer any

this contract; except that claims for monies due or to

become due from the PHA under the contract may

assigned to a bank, trust company, or other financial

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

institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this

shall inure to the benefit of the surviving or

member(s) of such partnership as approved by the Contracting Officer.

36. Insurance

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

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

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

- (b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that applicable Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is and in force. The Builder's Risk Insurance shall be for the HUD, benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or **Firms, Surplus** policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by ensure the PHA. The Builder's Risk Insurance need not be to carried on excavations, piers, footings, or foundations business until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

- (c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

37. Subcontracts

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

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

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

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

Previous editions are obsolete
(1/2014)
Replaces form HUD-5370-A

39. Equal Employment Opportunity

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

- (a) The Contractor/Seller shall not discriminate against any employee or applicant for employment because of race color, religion, sex, sexual orientation, gender identity, disability, or national origin.
- (b) 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

(c) 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.

(d) 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.

(e) 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.

(f) The Contractor/Seller shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) 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.

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

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

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

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

housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 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.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 prioritization requirements and shall state the minimum perof labor hour requirements established in the Benchmark Notice centages (. FR-6085-N-04

(d)

(e) 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.

(f)

(g) 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.

(h) 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**

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

Previous editions are obsolete
(1/2014)
Replaces form HUD-5370-A



41. Interest of Members of Congress

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

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

No member, officer, or employee of the PHA, no member as of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises

(a) any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract, or contract or the proceeds thereof. PHA,

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

(a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of **Related Acts** Federal appropriated funds to pay any person for influencing or attempting to influence an officer or the employee of any agency, a Member of Congress, and shall officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any not Federal contract, grant, loan, or cooperative agreement.

(b) The Contractor further agrees to comply with the payroll requirement of the Act to furnish a disclosure (OMB the Standard Form LLL, Disclosure of Lobbying Activities) if Part any funds other than Federal appropriated funds benefits (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person the for influencing or attempting to influence an officer or is employee of any agency, a Member of Congress, an of officer or employee of Congress, or an employee of a exist Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44. Royalties and Patents

(a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this

have access to and the right to examine any of the Contractor's directly pertinent books, documents,

or other records involving transactions related to this contract for the purpose of making audit,

excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

(c) The periods of access and examination in paragraphs

and (b) above for records relating to (1) appeals

Disputes clause of this contract, (2) litigation or of claims arising from the performance of this

(3) costs and expenses of this contract to which the

HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

46. Labor Standards - Davis-Bacon and

If the total amount of this contract exceeds \$2,000,

Federal labor standards set forth in the clause below apply to the development or construction work to be performed under the contract.

(a) Minimum Wages.

(1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and

less often than once a week, and without subsequent deduction or rebate on any account (except such

deductions as are permitted by regulations issued by Secretary of Labor under the Copeland Act (29 CFR

3)), the full amount of wages and bona fide fringe

(or cash equivalents thereof) due at time of payment computed at rates not less than those contained in

wage determination of the Secretary of Labor which attached hereto and made a part hereof, regardless

any contractual relationship which may be alleged to

between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under

Section

1(b)(2) of the Davis-Bacon Act on behalf of laborers

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

45. Examination and Retention of Contractor's Records

mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or incurred for more than a weekly period (but not less than quarterly) under plans, funds, or programs cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid appropriate wage rate and fringe benefits in the determination for the classification of work actually performed, without regard to skill, except as provided 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each for the time actually worked therein; provided, that employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall



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

that
(2) (i) Any class of laborers or mechanics, including have

helpers, which is not listed in the wage determination and which is to be employed under assets

the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe its

benefits therefor only when all the following criteria have been met: (A) The work to be performed by or

the classification requested is not performed by a classification in the wage determination; and (B)

The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

trainees,

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or the

their representatives, and HUD or its designee agree on the classification and wage rate helper,

(including the amount designated for fringe development

benefits where appropriate), a report of the action the

taken shall be sent by HUD or its designee to the notice to

Administrator of the Wage and Hour Division, necessary to

Employee Standards Administration, U.S. advance,

Department of Labor, Washington, DC 20210.

ceased.

The Administrator, or an authorized representative, will approve, modify, or disapprove on

every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

be

(iii) In the event the Contractor, the laborers or the

mechanics to be employed in the classification or their representatives, and HUD or its designee do in

not agree on the proposed classification and wage Such

rate (including the amount designated for fringe social

benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD anticipated

or its designee, to the Administrator of the Wage and Hour Division for determination. The (B) of

Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor,

the applicable standards of the Davis-Bacon Act

been met. The Secretary of Labor may require the Contractor to set aside in a separate account

for the meeting of obligations under the plan or program.

(b) Withholding of funds. HUD or its designee shall, upon

own action or upon written request of an authorized representative of the Department of Labor, withhold

cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices,

and helpers, employed by the Contractor or any subcontractor the full amount of wages required by

contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or

employed or working in the construction or

of the project, all or part of the wages required by

contract, HUD or its designee may, after written

the Contractor, take such action as may be

cause the suspension of any further payment,

or guarantee of funds until such violations have

HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and

account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) Payrolls and basic records.

(1) Payrolls and basic records relating thereto shall

maintained by the Contractor during the course of

work and preserved for a period of three years thereafter for all laborers and mechanics working

the construction or development of the project.

records shall contain the name, address, and

security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs

for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)

the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs

- (iv) The wage rate (including fringe benefits where
a appropriate) determined pursuant to the subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the provide classification under this contract from the first day program on which work is performed in classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly incurred rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent of thereof. trainee
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as in part of the wages of any laborer or mechanic the

reasonably anticipated in providing benefits under plan or program described in section 1(b)(2)(B) of Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to such benefits is enforceable, that the plan or is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration apprenticeship programs and certification of programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for work at transmission to HUD or its designee. The payrolls they submitted shall set out accurately and completely and all of the information required to be maintained apprenticeship under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number and 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of a Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is such an responsible for the submission of copies of payrolls by all subcontractors. (Approved by the certified Office of Management and Budget under OMB (where Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a of "Statement of Compliance," signed by the craft Contractor or subcontractor or his or her agent who pays or supervises the payment of the force persons employed under the contract and shall on a certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained applicable under paragraph (c) (1) of this clause and that such information is correct and complete; addition,
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no performing deductions have been made either directly or that in indirectly from the full wages earned, other wage than permissible deductions as set forth in 29 journeyman's CFR Part 3; and
- (C) That each laborer or mechanic has been paid observed. not less than the applicable wage rates and rate fringe benefits or cash equivalents for the apprentice's classification of work performed, as specified the in the applicable wage determination incorporated into the contract. fringe
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of program Optional Form WH-347 shall satisfy the be
- make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (d) (1) Apprentices. Apprentices will be permitted to less than the predetermined rate for the work performed when they are employed pursuant to individually registered in a bona fide program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if person is employed in his or her first 90 days of probationary employment as an apprentice in apprenticeship program, who is not individually registered in the program, but who has been by OATELS or a State Apprenticeship Agency appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio apprentices to journeymen on the job site in any classification shall not be greater than the ratio permitted to the Contractor as to the entire work under the registered program. Any worker listed payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the wage rate on the wage determination for the classification of work actually performed. In any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is construction on a project in a locality other than which its program is registered, the ratios and rates (expressed in percentages of the hourly rate) specified in the Contractor's or subcontractor's registered program shall be Every apprentice must be paid at not less than the specified in the registered program for the level of progress, expressed as a percentage of journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship does not specify fringe benefits, apprentices must

requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of classification. If

this clause.

(iv) The falsification of any of the above certifications the

may subject the Contractor or subcontractor to civil be

or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United

States Code.

(3) The Contractor or subcontractor shall make the longer

records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized performed

representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and

shall permit such representatives to interview employees during working hours on the job. If the the

Contractor or subcontractor fails to submit the they

required records or to make them available, HUD or registered in

its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure on

to submit the required records upon request or to under

paid the full amount of fringe benefits listed on the wage determination for the applicable

the Administrator of the Wage and Hour Division determines that a different practice prevails for

applicable apprentice classification, fringes shall

paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no

be permitted to utilize apprentices at less than the applicable predetermined rate for the work

until an acceptable program is approved.

(2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than

predetermined rate for the work performed unless

are employed pursuant to and individually

a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen

the job site shall not be greater than permitted

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

(3) Equal employment opportunity. The utilization of watchmen apprentices, trainees, and journeymen under this provisions clause shall be in conformity with the equal the employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30. excess

(e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
<https://www.dol.gov/whd/>

(f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12. withhold or

(g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, Federal

(2) No part of this contract shall be subcontracted to person or firm ineligible for award of a United Government contract by virtue of section 3(a) of Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

(j) Contract Work Hours and Safety Standards Act. As in this paragraph, the terms "laborers" and include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the

work which may require or involve the

laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual

employed on such work to work in excess of 40

in such workweek unless such laborer or mechanic receives compensation at a rate not less than one

one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States

the case of work done under contract for the

of Columbia or a territory, to such District or to

territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including

and guards) employed in violation of the

set forth in subparagraph (j)(1) of this clause, in

sum of \$27 for each calendar day on which such individual was required or permitted to work in

of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause. DOL posts current fines at:
[govcontracts/cwhssa.htm#cmp](https://www.dol.gov/whd/cwhssa.htm#cmp)

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor

cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any

and 5 are herein incorporated by reference in this other contract.

Contract

- (h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. liabilities of

Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29

CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or insert

any of its subcontractors) and the PHA, HUD, the U.S.

this Department of Labor, or the employees or their designee

representatives.

- (i) Certification of eligibility.

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

contract with the same prime Contractor, or any

Federally-assisted contract subject to the

Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may

determined to be necessary to satisfy any

such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the

set forth in subparagraph (j)(2) of this clause.

- (k) Subcontracts. The Contractor or subcontractor shall

in any subcontracts all the provisions contained in

clause, and such other clauses as HUD or its

may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime

Contractor shall be responsible for the compliance by

subcontractor or lower tier subcontractor with all

provisions.

47. Non-Federal Prevailing Wage Rates

(a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;

(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or

(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

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

(0) 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.

Replaces form HUD-5370-A