



QUOTATIONS FOR SMALL PURCHASES (QSP)

QSP NO. 2018-001

Date: 04/23/2018

Project Description: Heat Pump Unit Replacement Project at Corregidor Manor

Locations: 34-355 Corregidor Drive, Cathedral City, CA 92234

QSP INFORMATION AT A GLANCE

CONTACT PERSON FOR QUESTIONS/INTERPRETATIONS:	Robert Lane, Contracting Coordinator Riverside Community Housing Corp. - Procurement 5555 Arlington Ave. Riverside, CA 92504 Phone: (951) 343-5439 / Fax: (951) 688-6873 Email: rlane@rivco.org
HOW TO OBTAIN THE QSP DOCUMENTS:	1. Access www.harivco.org 2. Scroll down and select: QSP 2018-001: Heat Pump Unit Replacement Project at Corregidor Manor 3. Download the QSP
HOW TO FULLY RESPOND TO THIS QSP BY SUBMITTING A QUOTE:	Quoter's must submit proposed pricing where provided on the last page of this form (Form of Quote form) only. RCHC will accept the executed Form of Quote form in person, by fax, email (preferred – scanned as a .pdf file) or by US Mail ONLY. RCHC will NOT accept proposed pricing verbally or by telephone.
NON-MANDATORY JOB WALK:	May 08, 2018 at 11:00 AM
PROJECT LOCATION:	Corregidor Manor 34-355 Corregidor Drive APT I, J, K, & L Cathedral City, CA 92234
QSP DEADLINE (DUE DATE):	May 16, 2018 at 4:00 PM
NOTE: RCHC reserves the right to deviate from this timeline and/or modify the Scope of Work at any time!	Notices of any such decisions or modifications will be located at: www.harivco.org

INTRODUCTION: RCHC is seeking quotes from qualified, licensed and bonded entities to furnish and install four (4) new heat pump package units at Corregidor Manor.

- 1.0 **RCHC CONTACT:** All questions pertaining to this QSP shall be addressed to Robert Lane (hereinafter, the Contracting Coordinator or CC), 5555 Arlington Avenue, Riverside, CA 92504, Telephone: (951) 343-5439; Email: rlane@rivco.org
- 2.0 **APPLICABILITY:** By submitting a quote to RCHC, the firm or individual doing so (hereinafter, "the Quoter") is automatically agreeing to abide by all terms and conditions listed herein, including those terms and conditions within the HUD document, *form HUD-5370-EZ (1/2014)*,



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General Contract Conditions for Small Construction/Development Contracts, which is incorporated herein by this reference.

3.0 RCHC RESERVATION OF RIGHTS:

- 3.1 Reject any or all quotes, to waive any informalities in the QSP process, or to terminate the QSP process at any time, if deemed by the RCHC to be in the best interest of the RCHC, in its sole and absolute discretion;
- 3.2 Terminate a contract awarded pursuant to this QSP at any time for its convenience upon delivery of a written notice within ten (10) calendar days to the apparent or successful Quoter;
- 3.3 Determine the days, hours and locations that the successful Quoter shall provide the items or services called for in this QSP;
- 3.4 Reject and not consider any quote that does not, in the opinion of the CC, meet the requirements of this QSP, including, but not necessarily limited to: incomplete quotes, offering of alternate items or services (not including "or equivalent" items), or non-requested items or services.

4.0 **QUOTER'S RESPONSIBILITY:** Each Quoter must carefully review and comply with all instructions provided herein, and those provided within any named attachments or addenda.

5.0 **PERFORMANCE PERIOD:** All work as described in the plans, specifications, and/or scope of work must be completed within **twenty (20) calendar days** after issuance of the Notice to Proceed (NTP). Successful Quoter shall only perform services Monday through Friday, 8:00AM to 5:00PM unless Quoter has obtained written authorization from the CO to deviate from this schedule.

6.0 **DEADLINE:** Each Quoter shall submit his/her proposed costs, prior to the posted deadline, as provided for herein. Whereas this is an informal solicitation process, RCHC reserves the right to extend the posted deadline at any time prior to the deadline, if, in the opinion of the CC, it is in the best interests of RCHC to do so, in his sole and absolute discretion.

7.0 **QUANTITIES (if applicable):** All quantities entered within the preceding table (if applicable) and within the corresponding pricing items are for calculating purposes only. As may be further detailed herein, RCHC does not guarantee any minimum or maximum amount of work as a result of any award ensuing from this QSP. RCHC shall retain one contractor only and shall retain the right to order from that contractor (successful Quoter), on a task order basis, any amount of services or items that RCHC requires during the ensuing contract period. This means that if RCHC decides that it is in its best interests to delete from the ensuing contract



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any quantities or work from the preceding table, then RCHC has the right, in its sole and absolute discretion, to do so at any time during the contract period.

- 8.0 **HOLD PRICES/NON-ESCALATION:** By submitting a quote, and whereas the quote sum submitted is a firm-fixed quote, each Quoter thereby agrees to "hold" and not increase the proposed quote during the term of this solicitation and for ninety (90) days thereafter.
- 9.0 **CONTRACT AND AWARD CONDITIONS:**
- 9.1 **PURCHASE ORDER (PO):** RCHC will procure the applicable goods or services by issuance of a PO (which shall have the same meaning as a "contract"). PO's will be issued on an as-needed basis only. By submitting a quote, the successful Quoter thereby agrees to confirm receipt of the PO in the manner directed by RCHC.
- 9.2 **AWARD CRITERIA:** If an award is completed pursuant to this QSP, and unless otherwise instructed in writing by the CC, the award shall be made to the responsive and responsible Quoter that submits the lowest cost. The results of the solicitation will not be released until the contract is executed between RCHC and the lowest responsive and responsible Quoter.
- 9.3 **CONTRACT FORM:** By completing, executing and submitting the Form of Quote form, (last page), the proposer is thereby agreeing to "abide by all terms and conditions pertaining to this QSP as issued by RCHC, in hard copy, including an agreement to execute the Sample Contract form or any other form substantially approved as to form and substance by RCHC." A copy of the Sample Contract form will be made available to any Quoter upon written request.
- 9.4 **SCOPE OF WORK:** All Technical Specifications or Scope of Work listed within the subject RCHC contract will generally be the same as listed within this QSP's Technical Specifications or Scope of Work section (19.0). Any Quoter that believes the listed Technical Specifications or Scope of Work (Section 19.0) are unreasonable or incomplete shall address such issues with RCHC CC or designee, in writing during the solicitation period, prior to the posted quote/bid deadline. Once the quote/bid deadline has passed, revision of the specifications set forth will not occur (no negotiations after the quote/bid submittal deadline!).
- 9.5 **PROFESSIONAL SERVICES EXCLUSION:** Contracts for certain professional services are excluded from coverage by HUD-determined or HUD-adopted prevailing wage rates. Hourly rates charged by the Quoter must be reasonable and reflect fees that are normally charged within the Quoter's community.
- 10.0 **INVALID OR ALTERNATE QUOTES:** Failure to complete and submit all required information, or to add any additional requirements not acceptable to RCHC, may invalidate the quote submitted. Furthermore, RCHC shall reserve the right to reject, without consideration,



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alternate quotes, meaning those that do not meet the requirements of this QSP.

- 11.0 **QUOTE COSTS:** There shall be no obligation for RCHC to compensate any Quoter or prospective Quoter for any costs that he/she may incur in responding to this QSP.
- 12.0 **ALL INCLUSIVE:** Each quoted sum submitted shall include all costs, including but not limited to: sales tax, shipping, delivery, recordation, reprographic, mailings, inspections, and/or completion or assembly of the specified product or services at RCHC site or location, as specified within this QSP or on the PO issued. RCHC will not pay any additional costs above those quoted on the Form of Quote form.
- 13.0 **ASSIGNMENT OF PERSONNEL:** RCHC shall retain the right to demand and receive a change in personnel assigned by the successful Quoter to provide services to RCHC if RCHC believes that such change is in the best interest of RCHC and the completion of the work or provision of the items.
- 14.0 **UNAUTHORIZED SUB-CONTRACTING PROHIBITED:** The Successful Quoter shall not assign any right, nor delegate any duty for the work proposed pursuant to this QSP (including, but not limited to, selling or transferring the ensuing PO or contract) without the prior written consent of the CC. Any purported assignment of interest or delegation of duty, without the prior written consent of the CC shall be void and may result in the cancellation of the PO or the contract with RCHC.
- 15.0 **BIDDER'S SECURITY:** Quotes in excess of twenty-five thousand dollars (\$25,000.00) shall be accompanied by a bid guarantee of not less than ten percent (10%) of the amount of the quote, including the aggregate of all separate quote items and schedules covered by the quote, which may be: bid bond, money order, certified check or bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. A Bid Bond must be fully completed, executed and notarized and submitted as a part of the quote submittal for any quote in excess of twenty five thousand dollars (\$25,000.00). Said check or bond shall be made payable to Riverside Community Housing Corp. and shall be given as a guarantee that the Quoter, if awarded the work, will enter into an agreement with RCHC and will furnish the necessary insurance certificates, Payment Bond (for any quote in excess of twenty five thousand dollars (\$25,000.00), and Performance Bond (for any quote in excess of twenty five thousand dollars (\$25,000.00). Each of said bonds and insurance certificates shall be in the amounts of stated in the Standard Specifications or Special Provisions. In case of refusal or failure of the successful bidder to enter into said Agreement, the check or Bid Bond, as the case may be, shall be forfeited to RCHC. If the Quoter elects to furnish a Bid Bond as his/her security, the Quoter shall use the **Form of Bid Bond** provided herein.
- 16.0 **PUBLIC WORKS REGISTRATION PROGRAM:** SB 854 was signed into law on June 20, 2014, and became effective immediately, made several significant changes to laws pertaining to the administration and enforcement of prevailing wage requirements by the Department of



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Industrial Relations (DIR). The fees collected through this new program will be used to fund all of DIR's public works activities, including compliance monitoring and enforcement, the determination of prevailing wage rates, public works coverage determinations, and hearing enforcement appeals. Contractors will be subject to a registration and annual renewal fee that has been set initially at \$300. The fee is non-refundable and applies to all contractors and subcontractors who intend to bid or perform work on public works projects (as defined under the Labor Code). Contractors will apply and pay the fee online and must meet minimum qualifications to be registered as eligible to bid and work on public works projects. **Under the new program, contractors and subcontractors will be required to register before bidding and entering into public works contracts on state and local public works projects.** To implement the program, the DIR has established an online registration system (www.dir.ca.gov/Public-Works/PublicWorks.html) which went live on **July 1, 2014**. Only contractors who have registered through the program may bid on public works projects beginning **March 1, 2015** and may enter into public works contracts beginning **April 1, 2015**.

17.0 **LICENSING AND INSURANCE REQUIREMENTS:** Prior to award (but **not** as a part of the quote submission) the *Successful Quoter* will be required to provide the following proofs of insurance, **if applicable** to the Project and Quoter's profession and the Scope of Work to complete the Project:

17.1 **WORKERS' COMPENSATION:**

If the Quoter has employees as defined by the State of California, the Quoter shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

17.2 **COMMERCIAL GENERAL LIABILITY:**

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Quoter's performance of its obligations hereunder. Policy shall name RCHC as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

17.3 **VEHICLE LIABILITY:**

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Quoter shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name RCHC as Additional Insured.



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17.4 PROFESSIONAL LIABILITY:

If Quoter is providing services or expertise that falls under a quasi-professional role, Quoter shall maintain Professional Liability Insurance providing coverage for the Quoter's performance of work, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Quoter's Professional Liability insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of the performance period and Quoter shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Contract; or 3) demonstrate through Certificates of Insurance that Quoter has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

17.5 The Quoter shall possess all of the required state and local licenses, and certifications required to perform work of the type required by this QSP in the **State of California, County of Riverside.**

17.6 A copy of the Quoter's business license or certificate of qualification, allowing that entity to provide such services within the State of California.

17.7 LICENSE:

A copy of the bidder's license issued by the California Contractors State License Board (CSLB) allowing the bidder to provide the services detailed herein. To be considered, a potential bidder must have a "**C-20**" – **Warm-Air Heating, Ventilating and Air-Conditioning Contractor** license, as required under provisions of Public Contract Code Section 3300, and the California Business and Professions Code Sections 7058 and 7059, for work covered in its bid when a bid is submitted. Contractor shall be licensed as required by the jurisdiction in which the service is to be performed and the license shall be current and in good standing.

18.0 DOCUMENTS THAT APPLY TO THIS QSP:

18.1 Form of Quote form (last page);

18.2 Form HUD 5370-EZ (1/2014), *General Contract Conditions for Small Construction/Development Contracts* (included by reference – a copy will be delivered by RCHC to any firm upon submission to the CC of a written request for such), incorporated herein by this reference.

18.3 Davis-Bacon Prevailing Wage Decision: Please be advised that this contract is subject to Davis-Bacon Wages and Certified Payroll, meaning that the referenced General Decision Number: **CA180028 03/16/2018 MOD 6** is to be used by the successful Quoter in determining the mandatory wages that must be paid to employees. Be



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advised, employees are subject to weekly interviews by RCHC in reference to their wage rates.

18.4 24 CFR 135, commonly known as Section 3, (included by reference – a copy will be delivered by RCHC to any firm upon submission to the CC of a written request for such). The successful Quoter hereby agrees to comply with all requirements of the HUD Section 3 Program as detailed therein. If Quoter chooses to certify as a Section 3 Quoter, he/she shall receive the preference noted therein. In any case, the successful Quoter shall be required to, as detailed therein, "to the greatest extent feasible... provide economic opportunities to low and very-low income persons," meaning, if the successful Quoter must hire anyone to help with the work, he/she must submit a work plan showing how he/she will give first preference to such jobs to Section 3 persons.

18.5 RCHC reserves the right to require the successful Quoter/contractor to utilize any form required by HUD to complete the required work and by submitting his/her quote each Quoter/contractor agrees to do so at no additional charge.

18.6 Completed Certified Payroll forms shall be submitted to RCHC on a weekly basis and/or with final invoice.

19.0 **TECHNICAL SPECIFICATIONS OR SCOPE OF WORK (TS/SOW):** RCHC is seeking bids from qualified, licensed and bonded entities to provide construction services at the public housing sites listed herein:

19.1 The work under this contract shall be performed at Corregidor Manor located in the City of Cathedral City, State of California and shall include furnishing all labor, material, equipment, tools, supplies, and services and incidentals, and performing all work necessary for the installation and construction of four new (4) heat pump package units and associated improvements in strict conformance with all of the Contract documents.

19.2 Contractor will confer with RCHC's designee before purchasing equipment to determine if utility rebates or incentives are available for the heat pump package unit retrofit. In the event the Contractor does receive any rebates or incentives for the purchase of the equipment or for the retrofit, any and all rebates or incentives will be passed on to RCHC. In no case shall the Contractor receive any monetary gain from this work, other than what is contractually agreed to with RCHC.

19.3 Contractor to remove four (4) existing heat pump package units from the roof, along with all associated roof curbs, supports, and associated hardware. Contractor will place the removed four (4) existing heat pump package units in an area designated by RCHC on the property for storage.

19.4 Contractor to remove all existing ducts and install appropriately sized R8 insulated ducts in their place.



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- 19.5 Contractor to furnish and install **four (4) new – 2 ½ ton roof mounted heat pump package units, 14 SEER (“Energy Star” rated using R-410A refrigerant; electric; 220 volt, etc.)** and new sheet metal factory roof curbs. Heat pump package unit weight shall not exceed 400 lbs per unit. New heat pump package units must be manufactured by York International or an equivalent manufacturer.
- 19.6 Contractor to furnish and install appropriately rated new breakers and appropriately sized new wire in sub-panels that feed the new heat pump package units.
- 19.7 Contractor to remove all existing room air registers and replace with new appropriate-sized adjustable curved type registers.
- 19.8 Contractor to secure new heat pump package units with correct size and weight seismic fasteners.
- 19.9 Contractor to remove existing return air register/filter combinations and install new return air register/filter combinations.
- 19.10 Contractor to furnish and install new fused disconnects with all necessary hardware/materials at the new heat pump package units.
- 19.11 Contractor to run condensate lines per code to roof edges (combine two into one where possible) and discharge over the edges in a manner so water will not hit any of the buildings. Contractor to supply new sleepers as needed.
- 19.12 Contractor to remove existing thermostats and install new programmable thermostats in the same locations and provide thermostat instructions for residents in both English and Spanish.
- 19.13 RCHC will be responsible for all HERS testing required to complete this project.
- 19.14 RCHC will give contractor access to each unit based on contractor’s proposed work schedule. Forty-eight (48) hours’ notice is required before entering each unit.
- 19.15 All tools, materials, and equipment shall be provided by the contractor and must meet all local applicable safety requirements. A parking space will be made available for contractor’s container if needed for materials and equipment. RCHC assumes no responsibility for the loss or damage to the contractor’s equipment, tools or materials stored at the job site.
- 19.16 Contractor shall furnish sufficient personnel with the technical knowledge and experience necessary to complete the work in the time allotted for completion.
- 19.17 All work shall be performed in accordance with local safety standards and recognized safe practices.



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- 19.18 Contractor to ensure proper removal of all debris and all other components from the site and shall provide a cleared site free of all debris, contractor equipment, etc. RCHC refuse containers will not be allowed to be used for disposal of contractors waste.
- 19.19 Field Verification: Contractor is responsible to field verify existing conditions and promptly notify RCHC if discrepancies in and omissions from the plans, specifications or other contract documents are found in the field, including unforeseen conditions that may affect the successful completion of the project and/or work.
- 19.20 Contractor will perform a final walk-through inspection with a RCHC representative before the project will be considered complete and finished.
- 19.21 Contractor will be responsible for any and all permits, testing or inspections necessary to complete the project.

20.0 **RECAP OF ATTACHMENTS:** It is the responsibility of each Quoter to verify that he/she has downloaded the following attachments pertaining to this QSP, which are hereby reference included as a part of this QSP:

Attachment	Attachment Description
A	Form of Quote (page 10)
B	Form of Bid Bond (if required per Section 15.0)
C	HUD-5370-EZ (1/2014), General Contract Conditions for Small Construction/Development Contracts

~~~~~**ACTION REQUIRED ON PAGE 10**~~~~~



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***FORM OF QUOTE***

Each Quoter shall submit his/her quote on this form only, which shall be completed, executed and returned to RCHC as detailed herein. All fields below are **required**.

\*Contract will be awarded to the lowest responsive and responsible Quoter, and the most advantageous to RCHC, in its sole and absolute discretion.

The undersigned Quoter hereby quotes the above amounts to complete the required work (print clearly and legibly!). Further, by submitting this quote, the undersigned Quoter agrees to abide by all terms and conditions pertaining to this QSP as issued by RCHC, in hard copy, including an agreement to execute the Sample Contract form or any other form substantially approved as to form and substance by RCHC.

**COMPLETED BY:** (NOTE: The penalty for making false statements in bids/offers is prescribed in 18 U.S.C. 1001.)

|                            |                                                       |                          |
|----------------------------|-------------------------------------------------------|--------------------------|
| _____                      | _____                                                 | _____                    |
| Print Name                 | Title                                                 | Email                    |
| _____                      | _____                                                 | _____                    |
| Signature                  | Date                                                  | Telephone Number         |
| _____                      | _____                                                 |                          |
| Company Name               | Address (Street; City; State; Zip)                    |                          |
| _____                      | _____                                                 | _____                    |
| CSLB License Number        | Expiration Date                                       | CSLB License Designation |
| _____                      | _____                                                 |                          |
| D.I.R. Registration Number | Quote Amount                                          |                          |
|                            | <b>*Quotes \$25,000.00 or more require a bid bond</b> |                          |



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**ATTACHMENT B**

**“Form of Bid Bond”**

**(behind this page)**

**ATTACHMENT C**

**FORM OF BID BOND**

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

\_\_\_\_\_, as PRINCIPAL,

AND \_\_\_\_\_, as SURETY,

are held and firmly bound unto Riverside Community Housing Corp., hereinafter called the "RCHC", in the penal sum of \_\_\_\_\_

\_\_\_\_\_ Dollars, lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid, dated \_\_\_\_\_, for \_\_\_\_\_

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

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after said opening, and shall within the period specified therefore enter into a written contract with the RCHC in accordance with the bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract; or in the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bond within the time specified, if the Principal shall pay the RCHC the difference between the amount specified in said bid and the amount for which the RCHC may procure the required work or supplies or both, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In presence of:

\_\_\_\_\_  
(Individual Principal) (seal)

\_\_\_\_\_  
(Address) (Business Address)

\_\_\_\_\_  
(Individual Principal) (seal)

\_\_\_\_\_  
(Business Address)

ATTEST:

\_\_\_\_\_  
(Corporate Principal)

\_\_\_\_\_  
(Business Address)

By: \_\_\_\_\_  
(Affix Corporate Seal)

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

ATTEST:

\_\_\_\_\_  
(Corporate-Surety)

\_\_\_\_\_  
(Business Address)

By: \_\_\_\_\_  
(Affix Corporate Seal)

\_\_\_\_\_  
(Print or type the names underneath all signatures.)

Power -of-attorney for person signing for Surety Company must be attached to bond.)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_  
Secretary of the corporation named as Principal in the within bond; that \_\_\_\_\_  
who signed the said on behalf of the Principal was then \_\_\_\_\_  
of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond  
was duly signed, sealed, and attested to for and in behalf of said corporation by authority of its  
governing body.

\_\_\_\_\_  
(Corporate Seal)



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**ATTACHMENT C**

**“HUD-5370-EZ (1/2014), General Contract Conditions for Small  
Construction/Development Contracts,”**

**(behind this page)**

# General Contract Conditions for Small Construction/Development Contracts

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

**Applicability.** The following contract clauses are applicable and must be inserted into small construction/development contracts, greater than \$2,000 but not more than \$150,000.

## 1. Definitions

Terms used in this form are the same as defined in form HUD-5370

## 2. 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. The only liens on the PHA's property shall be the Declaration of Trust or other liens approved by HUD.

## 3. Disputes

- (a) Except for disputes arising under the **Labor Standards** clauses, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (c) The Contracting Officer shall, within 30 days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (d) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within 30 days after receipt of the Contracting Officer's decision.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

## 4. Default

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. In the event, the PHA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if –
  - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor; and
  - (2) The Contractor, within 10 days from the beginning of such delay notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of Fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the **Disputes** clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligation of the parties will be the same as if the termination had been for convenience of the PHA.

## 5. Termination for Convenience

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

## 6. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.

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

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

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

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

## 7. Contract Modifications

(a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which

do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

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

## 8. Changes

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:

(1) In the specifications (including drawings and designs);

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

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

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

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

(1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor



breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs - when size of change warrants revision.

- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

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

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

#### 10. Rights in Data and Patent Rights (Ownership and Proprietary Interest)

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

#### 11. Energy Efficiency

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

#### 12. Procurement of Recovered Materials

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

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

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

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

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

##### (a) Minimum Wages.

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

a prominent and accessible place where it can be easily seen by the workers.

- (2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

- (a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (b) The classification is utilized in the area by the construction industry; and
- (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

- (iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part

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

(b) **Withholding of Funds.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) **Payrolls and Basic Records.**

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of

the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c)(1) of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

- (e) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate

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

- (f) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (g) 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.
- (h) Contract Termination; Debarment. A breach of the labor standards clauses in this contract may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (i) Compliance with Davis-Bacon and related Act Requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (j) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (k) Certification of Eligibility.
- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government

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contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

(l) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

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

- (i) 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;
- (ii) 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
- (iii) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program.