

**INVITATION FOR BID
FOR
Turner Tower Repairs**

**STARK METROPOLITAN
HOUSING AUTHORITY**

IFB #12012020CF-19

Prepared by:
Procurement & Contracting Department

The Stark Metropolitan Housing Authority
400 East Tuscarawas Street
Canton, Ohio 44702

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INTRODUCTION

The Agency

Stark Metropolitan Housing Authority (SMHA), a political subdivision of the State of Ohio is governed by the Ohio Revised Code and the U.S. Department of Housing and Urban Development (HUD). SMHA is a public entity that was formed to provide federally subsidized housing and housing assistance to low-income families. SMHA is headed by an Executive Director and is governed by a five-person Board of Commissioners. SMHA has 2,546 public housing rental units and 15 additional non-public housing units consisting of family sites, high rises, and scattered sites located throughout Stark County.

As a part of our social mission and federal mandate, SMHA is committed to providing eligible residents of Stark County with quality, affordable housing in decent, safe and nourishing neighborhoods. By working in partnership with the public and private sectors SMHA provides families with housing choices and opportunities.

The Invitation for Bids (IFB)

The Stark Metropolitan Housing Authority and its affiliated entities are seeking sealed bids from qualified service providers with demonstrated competence and experience to provide all labor and material required to perform

Turner Tower Repairs located at 700 McKinley Ave. NW Canton, OH

Estimated budget for this project is \$ 85,000 to \$115,000

The Invitation for Bids can be obtained online at www.starkmha.org; or by contacting the SMHA Procurement & Contracting Department at bids@starkmha.org.

This Invitation for Bids contains submission requirements, scope of services, period of services, terms and conditions and other pertinent information for submitting a proper and responsive bid. **Prospective Bidders desiring any explanation or interpretation of the solicitation must request it, in writing, by the deadline identified in this IFB (see pg. 4 IFB INFORMATION AT A GLANCE).** The request must be addressed to the Procurement & Contracting Department, and sent either via email to bids@starkmha.org or by mail. Any information given to a prospective Bidder about this solicitation will be furnished to all other prospective Bidders as a written amendment to the solicitation.

All responses to the IFB must be enclosed in a sealed envelope and labeled as follows:

**Stark Metropolitan Housing Authority
Attn: Procurement & Contracting Department
400 East Tuscarawas Street
Canton, Ohio 44702**

IFB# 12012020CF-19

Due Date and Time: January 21, 2021 2:00 PM (EST)

Late submissions will not be accepted. Submissions received prior to the opening will be held in confidence until the opening. After evaluation of the responses, the Contract will be awarded to the most responsible/responsive Bidder(s) representing the "Best Value" to SMHA. The resulting Contract may be funded through Section 3 covered assistance and as such will be subject to Section 3, 24 CFR Part 135. SMHA and its affiliated entities reserve the right to reject any and all submissions.

Notice: Contact with members of SMHA Board of Commissioners, or SMHA officers and employees other than the contact person shown above, by any prospective Bidder, after publication of the IFB and prior to the execution of a contract with the successful Bidder(s) could result in disqualification of your bid. In fairness to all prospective Bidder(s) during the IFB process, if SMHA meets in person with anyone representing a potential provider of these services to discuss this IFB other than at the pre-submittal meeting, an addendum will be issued to address all questions so as to ensure no Bidder has a competitive advantage over another. This does not exclude meetings red to conduct business not related to the IFB, or possible personal presentations after written qualifications have been received and evaluated.

IFB INFORMATION AT A GLANCE

SMHA CONTACT PERSON	Procurement & Contracting Specialist bids@starkmha.org
HOW TO OBTAIN THE IFB DOCUMENTS	1. Access: www.starkmha.org 2. Email Request to: Procurement & Contracting Department bids@starkmha.org 3. In Person at: 400 E. Tuscarawas St. Canton, OH 44702
HOW TO FULLY RESPOND TO THIS IFB	Submit 1 unbound original ("hard copy") and 1 electronic copy of your bid to SMHA Procurement & Contracting Department in the format as described under Section 5.0, Bid Format. Use the submittal checklist (Form of Bid- Attachment B) on page 28.
DATE ISSUED	December 22, 2020
Pre-Bid Meeting	January 5, 2021 at 10:00 AM (EST) 400 E. Tuscarawas St. Canton, OH 44702 RSVP's are requested for space reservation
Q&A DEADLINE	January 12, 2021 by 12:00 PM (EST)
BONDING REQUIREMENTS	Bid Bond: 5% of the Bid Price (included with the Bid Submittal) Payment & Performance Bond: 100% of the contract price, <u>upon contract execution.</u>
BID SUBMITTAL RETURN & DEADLINE	January 21, 2021 by 2:00 PM (EST) SMHA Procurement & Contracting Department 400 E. Tuscarawas St. Canton, OH 44702
ANTICIPATED AWARD DATE	February 2021

INVITATION FOR BIDS

1.0 GENERAL INFORMATION:

- 1.1 Statement of Purpose:** The Stark Metropolitan Housing Authority and its affiliated entities (SMHA) are seeking sealed bids from qualified, licensed Contractors with demonstrated competence and experience to provide all labor and materials for Turner Tower Repairs as detailed in **Attachment A**.
- 1.2** Prospective Bidders acknowledge by downloading and receiving the IFB documents and/or by submitting a bid to SMHA is not a right by which to be awarded a contract, but merely is an offer by the prospective Bidder to perform the requirements of the IFB documents in the event SMHA decides to consider to award a contract to that Bidder.
- 1.3 Bidder's Responsibilities- Contact with SMHA:** It is the responsibility of the Bidder to address all communication and correspondences pertaining to this IFB process to SMHA contact person listed herein only. Bidders must not make inquiry or communicate with any other SMHA staff member or official (including members of the Board of Commissioners) pertaining to this IFB. Failure to abide by this requirement may be cause for SMHA to not consider a bid submittal received from any Bidder who has not followed this directive during the IFB solicitation process. The SMHA will not conduct any ex parte conversations which may give one perspective Bidder and advantage over other prospective Bidders.
- 1.4 Type of Contract resulting from this IFB:** Firm Fixed-Price Contract.

2.0 SMHA'S RESERVATION OF RIGHTS:

- 2.1** SMHA reserves the right to reject any or all bids, to waive any informality in the IFB process, or to terminate the IFB process at any time, if deemed by SMHA to be in its best interest.
- 2.2** SMHA reserves the right not to award a contract pursuant to this IFB.
- 2.3** SMHA reserves the right to terminate a contract awarded pursuant to this IFB, at any time for its convenience upon 14 days written notice to the successful Bidder(s).
- 2.4** SMHA reserves the right to determine the days, hours and locations that the successful Bidder(s) shall provide the services called for in this IFB.
- 2.5** SMHA reserve the right to retain all bids submitted and not permit withdrawal for a period of 90 days subsequent to the deadline for receiving bids without written consent from SMHA.
- 2.6** SMHA reserves the right to reject and not consider any bid that does not meet the requirements of this IFB, including but not necessarily limited to incomplete bids and/or bids that offering alternate or non-requested services.
- 2.7** SMHA shall have no obligation to compensate any Bidder for any costs incurred in responding to this IFB.
- 2.8** SMHA reserves the right to, at any time during the IFB or contract process, prohibit any further participation by a Bidder or reject any bid submitted that does not conform to any of the requirements detailed herein. Each prospective Bidder further agrees that he/she will inform SMHA in writing within five (5) days of the discovery of any item that is issued thereafter by SMHA that he/she feels needs to be addressed. Failure to abide by this timeframe shall relieve SMHA, but not prospective Bidders, of any responsibility pertaining to such issue.
- 2.9** SMHA reserves the right, prior to award, to revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the IFB documents issued, within any

attachment or drawing, or within any addenda issued. All addenda will be posted on SMHA's website (www.starkmha.org) and such changes that are issued before the bid submission deadline shall be binding upon all prospective Bidders.

- 2.10 In the case of rejection of all bids, SMHA reserves the right to advertise for new bids or to proceed to do the work otherwise, if in the judgement of SMHA, the best interest of SMHA will be promoted.
- 2.11 SMHA reserves the right to, without liability; cancel the award of any bid(s) at any time before execution of the contract documents by all parties.
- 2.12 SMHA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to SMHA, if:
 - 2.12.1 Funding is not available
 - 2.12.2 Legal restrictions are placed upon the expenditure of monies for this category of services or supplies; or
 - 2.12.3 SMHA's requirements in good faith change after award of the contract, documents issued, within any attachment or drawing, or within any addenda issued. All addenda will be posted on SMHA's website (www.starkmha.org) and such changes that are issued before the bid submission deadline shall be binding upon all prospective Bidders.
- 2.13 SMHA reserves the right to make an award to more than one proposer, if in the judgement of SMHA, the best interest of SMHA will be promoted.
- 2.14 SMHA reserves the right to require additional information from all proposers to determine level of responsibility. Such information shall be submitted in the form required by SMHA within two (2) days or written request.
- 2.15 SMHA reserves the right to amend the contract any time prior to contract execution.
- 2.16 SMHA reserves the right to require the Contractor to keep accurate timesheets for all employees assigned to perform any project, task, or assignment resulting from this IFB and any resulting contract.
- 2.17 SMHA reserves the right to contact any individuals, entities, or organizations that have had business relationships with the proposer regardless of their inclusion in the reference section of the proposal submitted.
- 2.18 In the event any resulting contract is prematurely terminated due to non-performance and/or withdrawal by the Contractor, SMHA reserves the right to seek monetary restitution (to include but not limited to withholding of monies owed) from the Contractor to cover costs for interim service and/or cover the difference of a higher cost (difference between terminated Contractor's rate and the new company's rate) beginning the date of Contractor's termination through the contract expiration date.
- 2.19 SMHA reserves the right to award all, part, or none of the materials and/or services specified in this IFB as determined to be in the best interest of SMHA.
- 2.20 SMHA reserves the right, according to 24 CFR Part 135 Appendix III, to utilize Section 3 Preferences (as detailed in **Attachment H**) when making an award under this IFB.

3.0 **GENERAL CONDITIONS:**

- 3.1 The Contractor(s) shall provide labor and materials to replace **Windows at Linwood** per the enclosed specifications/statement of work (**see Attachment A**).
- 3.2 **Regulatory:** Contractor(s) shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances and codes and obtain any licenses or permits required to provide the services under this IFB. This would include any Americans with Disabilities Act (ADA) and Uniform Federal Accessibility Standard (UFAS) standards.
- 3.3 **Misclassification of Employees as Independent Contractors:** Per the United States Department of Labor Requirements, as detailed in *Administrator's Interpretation No. 2015-1*, when using Federal Funds, it is necessary to assure all employees are classified correctly and paid accordingly. Misclassification creates an unfair advantage in favor of those employers who are not properly classifying their workers and results in lower tax revenue for the government. To ensure correct classifications, wages and tax revenues are paid and reported any documentation submitted to SMHA indicating or suspected to indicate an Independent Contractor or Contractor using an IRS1099 Form shall be further investigated by SMHA. It shall be the burden of the Contractor to provide any documentation requested by SMHA. For more information on the Misclassification of Employees as Independent Contractors please visit: www.dol.gov/whd/workers/misclassification/.
- 3.4 **Licensing:** Contractor(s) 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.
- 3.5 **Bid Prices:** Bidders are advised that the Fees shall be all inclusive and fully burdened to accomplish the work as specified in this IFB and any resulting contract.
- 3.6 **Contractor(s) will be required to prepare and submit monthly reports on Section 3.** Contractor(s) shall utilize Section 3 residents and businesses as defined to perform the requirements under this bid to the greatest extent feasible and shall document such efforts monthly (when applicable).
- 3.7 **Contractor(s) shall provide at Contractor's own expense all equipment, labor, materials, supplies, and tools to perform all the services required under this IFB and any resulting contract.**
- 3.8 **Contractor(s) shall perform criminal history checks and drug screening tests on all employees performing work under this IFB and any resulting contract and if requested provide summaries of the results to SMHA. Prospective employees whose criminal history checks discloses a misdemeanor or felony conviction involving crimes of moral turpitude or harm to persons or property shall not be used to perform work under this IFB or any resulting contract. Contractor(s) is required to perform drug screening of all employees and to ensure acceptable test results. Criminal history and drug screening checks will be completed at the sole expense of the Contractor(s).**
- 3.8.1 **ALL SMHA PROPERTIES ARE SMOKE FREE. CONTRACTOR(S) ARE RESPONSIBLE FOR AUSSURING THEIR EMPLOYEES ABIDE BY THIS.**
- 3.9 **Liquidated Damages:** For each day that performance under a contract resulting from this IFB is delayed beyond the time specified for completion, the successful Bidder(s) shall be liable for liquidated damages in the amount of \$100.00 per day. However, the timeframe for performance may be adjusted at SMHA's discretion in writing and received by the successful Bidder(s) prior to default under any resulting contract.

- 3.10 If any employee of the Contractor(s) is deemed unacceptable by SMHA, Contractor(s) shall immediately replace such personnel with a substitute acceptable to SMHA.
- 3.11 Contractor(s) shall provide uniforms and ID badges for all employees working on SMHA's properties. No employee will be allowed on SMHA's properties out of uniform and without an ID badge.

4.0 **CONDITIONS TO BID:**

- 4.1 **Pre-Qualification of Bidders:** Prospective Bidders will not be required to pre-qualify in order to submit a bid. However, all Bidders will be required to submit adequate information showing the Bidder is qualified to perform the required work (i.e. Vendor Registration Form [**Attachment M**]). Failure by the prospective Bidder to provide the requested information may, at SMHA's discretion, eliminate that Bidder from consideration, provided that all Bidders were required to submit the same information.

4.2 **IFB Forms, Documents, Specifications, and Drawings**

- 4.2.1 Prior to submitting a bid in response to this IFB, it shall be each prospective Bidder's responsibility to examine carefully and, as may be required, properly completed all documents issued pursuant to this IFB.
- 4.2.2 Unless otherwise instructed, specifications and drawings (if provided) do not purport to show all of the exact details of the work. They are intended to illustrate the character and extent of the performance desired under the proposed contract and may be supplemented or revised from time to time.
- 4.2.3 Catalogs, brand names or manufacturer's references are provided for descriptive purposes only and indicates the type and quality desired. Bids on brands of like nature and quality will be considered unless specified otherwise. If bidding other than references, bid submittal shall show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of products offered must be included in the bid submittal. Failure to take exception to specifications will require Contractor(s) to furnish specified brand names, numbers, etc.

4.3 **Submission and Receipts by SMHA:**

- 4.3.1 **Time for Receiving Bids:** Bids received prior to the bid submittal deadline shall be securely kept, unopened, by SMHA. The Procurement & Contracting Manager. Whose duty it is to open such bids, will decide when the specified time has arrived. No bid received after the designated deadline shall be considered.

4.3.1.1 **Bidders** are cautioned that any bid submittal that is time stamped as being received by SMHA after the exact time set as the deadline for receiving of bids shall not be considered. Any such bids inadvertently opened shall be ruled to be invalid. No responsibility will attach to SMHA or any official or employee thereof, for the pre-opening of, or failure to open a bid not properly addressed and identified.

4.3.1.2 A total of one (1) original unbound signature copy ("hard copy") **and** one (1) electronic (CD) copy **shall** be placed unfolded in a sealed package with the Bidder's name and return address and addressed as follows:

**Stark Metropolitan Housing Authority
Attn: Procurement & Contracting Department
400 East Tuscarawas Street
Canton, Ohio 44702**

IFB# 12012020CF-19

Due Date and Time: January 21, 2021, 2:00 PM (EST)

4.3.2 Withdrawal of Bids: Bids may be withdrawn as detailed within Form HUD-5369, *Late Submissions, Modifications and Withdrawal of Bids*. Negligence on the part of the Bidder preparing his/her bid confers no right of withdrawal or modification of his./her bid after such bid has been received and opened.

4.3.2.1 Procedure to withdraw Bid submittal: A request for withdrawal of a bid due to a purported error need not be considered by SMHA unless filed in writing by the Bidder within 48 hours after the bid deadline. Any such request shall contain a full explanation of purported error and shall, if requested by SMA, be supported by the original calculations on which the bid was computed, a certification and notarization thereon that such computation is the original and was prepared by the Bidder or his/her agent, who must be identified on the notarized form. The foregoing shall not be construed that such withdrawal will be permitted, as SMHA retains the right to accept or reject any proposed withdrawal for a mistake.

4.4 Exceptions to Specifications:

4.4.1 A prospective Bidder may take exception to any of the bid documents or any part of the information contained therein, by submitting, in writing to SMHA, at least seven (7) days prior to the bid submission deadline, a complete and specific explanation as to what he/she is taking exception. Proposed alternate documents or information must be included. SMHA reserves the right to agree with prospective Bidder and issue a revision to the applicable requirements, or may reject the prospective Bidder's request.

4.4.2 When taking exception, prospective Bidders must propose services that meet the requirements of the IFB documents. Exceptions to the specifications and/or approved "equal" requests may be discussed at the scheduled pre-bid conference (if scheduled). All verbal instructions issued by SMHA officers not already listed within the IFB documents shall only become official when issued as addenda or as a written answer issued pursuant to receipt of a written question.

5.0 BID FORMAT:

5.1 THE BID (TAB 1 TO TAB 13) SHALL BE SUBMITTED IN ONE (1) SEALED ENVELOPE. SUBMIT ONE (1) UNBOUND ORIGINAL ("HARD COPY") AND ONE (1) ELECTRONIC COPY (CD) OF YOUR BID. Bid sealed envelopes must be addressed as detailed in 4.3.1.2 and include the Bidder's Company name in the upper left corner. Failure to submit the bid in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that bid, and may, at the discretion of SMHA, eliminate that Bidder from consideration or award.

5.2 Required Forms: All required forms furnished by SMHA as a part of this IFB shall, as instructed, be fully completed and submitted by the Bidder. Such forms may be completed in a legible hand-written fashion, by use of a typewriter, or may be downloaded and completed on a computer. If, during the download, a form becomes changed in any fashion, the Bidder must "edit" the form

back to its original form (for example, signature lines must appear on the page which the line was originally intended).

- 5.3 Tabbed Bid Submittal:** SMHA intends to retain the successful Bidder pursuant to a "Best Value" basis, not a "Low Bid" basis. Therefore, so that SMHA can properly evaluate the bids received, all bids submitted in response to this IFB shall be formatted in accordance with the sequence noted below (Tab 1 to Tab 13). Do not omit any tabs, if the information requested does not apply please put "Not Applicable" under the accompanying tab in the submittal. **FAILURE TO SUBMIT ALL REQUIRED INFORMATION MAY RESULT IN DISQUALIFICATION OF THE BID SUBMITTAL FROM CONSIDERATION FOR AWARD.**

Each category shall be separated by numbered index dividers and the number on the index divider must extend so that each tab can be located without opening the bid and labeled with the corresponding tab reference noted below. None of the proposed services may conflict with a requirement SMHA has published herein or has issued by addendum.

5.3.1 TAB 1 FORM OF BID: This Form is attached hereto as **Attachment B** to this IFB document. This one-page Form shall be fully completed, executed where provided, and submitted under this tab as part of the bid submittal.

5.3.2 TAB 2 BID FEE SHEET: This Form is attached hereto as **Attachment C** to this IFB document. This Form shall be fully completed, including acknowledgement of addendum/HUD Forms/Section 3 Preference, and submitted under this tab as a part of the bid submittal.

5.3.3 TAB 3 BID BOND: For construction contracts exceeding \$50,000.00 Bidders shall be required to submit a bid guarantee equivalent to 5% of the bid price. SMHA's Bid Bond Form (**Attachment D**) shall be fully completed, executed where provided there on and submitted under this tab as a part of the bid submittal.

5.3.4 TAB 4 BIDDER'S CERTIFICATION FORM: This Form is attached hereto as **Attachment E** to this IFB document and must be fully completed, executed where provided thereon and submitted under this tab as a part of the bid submittal.

5.3.5 TAB 5 SECTION 3 DOCUMENTATION:

5.3.5.1 Section 3 Clause: All Bidders are required to review and fully execute the Section 3 Clause (**Attachment F**).

5.3.5.2 Section 3 Business Self-Certification (Optional): This Form attached hereto as **Attachment G** is optional and only should be filled out by those businesses wanting to register as a Section 3 Business. Additional documentation may be requested by SMHA to verify information submitted on the Section 3 Business Self-Certification Form.

5.3.5.3 Priorities & Preference for Section 3 Business Concerns Contracting Opportunities (Reference): This Document is attached hereto as **Attachment H** and details the different types of Section 3 priorities Bidders may claim and explains how award may be made based on Section 3 preference. Claiming a Section 3 priority is optional.

5.3.6 TAB 6 SMALL BUSINESS (SWMBE) UTILIZATION PLAN: This Form is attached hereto as **Attachment I** to this IFB document and must be fully completed, executed where provided thereon, if applicable, and submitted under this tab as a part of the bid submittal.

The Bidder shall include hereunder a plan to assist SMHA in its goal to establish participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in SMHA prime contracts and subcontracting opportunities. Contractors must make a good faith effort to subcontract with said companies. Opportunities to subcontract with said companies should be listed here. If compliance cannot be obtained, the Bidder is required to provide written documentation with the bid as to why he/she could not obtain such participation. **If the Bidder's company is one of the aforementioned business types, that should be listed on the Form.**

- 5.3.7 TAB 7 LIST OF PAST PERFORMANCE/EXPERIENCE/CLIENT INFORMATION:** This Form is attached hereto as **Attachment J** to this IFB document and must be fully completed, executed where provided thereon, if applicable, and submitted under this tab as a part of the bid submittal. The Bidder must submit under this tab a concise description of past performance, experience and client information in performing similar contract work substantially similar to that required by this solicitation. The Bidders shall submit three (3) former or current clients, preferably other than SMHA, for whom the Bidder has performed similar or like services to those being proposed herein.
- 5.3.8 TAB 8 LIST OF SUB-CONTRACTORS/JOINT VENTURE INFORMATION:** The Bidder shall identify, on the Form attached hereto as **Attachment K** to this IFB document, whether or not he/she intends to use any sub-contractors for this job, if awarded, and/or if the bid is a joint venture with another firm. A Contractor Profile Form (**Attachment L**) shall be provided for each sub-contractor and/or joint venture firm. **Attachment M** and any accompanying sub-contractor/joint venture Contractor Profile Forms shall be completed and submitted under this tab as part of the bid submittal.
- 5.3.9 TAB 9 COPY OF BUSINESS LICENSE:** The Bidder shall submit a copy of their current business license. At a minimum, this shall include documentation demonstrating eligibility to do business within the State of Ohio (i.e. Articles of Incorporation). Any additional licenses can also be provided under this tab (i.e. local business license, etc.).
- 5.3.10 TAB 10 COPY OF INSURANCE CERTIFICATE:** The Bidder shall submit a copy of their insurance certificate. If a Bidder receives an award and unless otherwise waived in the IFB documents, Contractor will be required to provide an original Certificate of Insurance confirming the minimum requirements of SMHA within 10 days of contract signature. The Insurance Certificate shall name SMHA as an additional insured.
- 5.3.11 TAB 11 COPY OF WORKMAN'S COMPENSATION CERTIFICATE:** The Bidder shall submit a copy of their Workman's Compensation Certificate.
- 5.3.12 TAB 12 CONTRACTOR PROFILE FORM:** This Form is attached hereto as **Attachment L** to this IFB document and must be fully completed, executed where provided thereon and submitted under this tab as a part of the bid submittal.
- 5.3.13 TAB 13 VENDOR REGISTRATION FORMS & W-9:** The Vendor Registration Forms are attached hereto as **Attachment M** to this IFB document. This Form must be fully completed, executed where provided, and submitted under this tab as a part of the bid.

6.0 BID OPENING:

- 6.1** It is understood by all Bidders/prospective Bidders that the bids are publically opened and the results will be a matter of public record.

- 6.2.1** All bid documents submitted by the Bidders are generally a matter of public record unless information is deemed to be proprietary.
- 6.2 Mistake in the Bid Submitted:** Unless otherwise prohibited within the IFB documents, a mistake in the unit cost pricing that does not affect the total cost sum submitted, may, at SMHA's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to SMHA, for his/her review. This mistake must be corrected before the issuance of any contract documents. Such correction shall not operate to give any Bidder an advantage over another.
- 6.3 Irregular Bid Submittal:** A bid shall be considered irregular for any one of the following reasons, any one or more of which may, at SMHA's discretion, be a reason for rejection:
- 6.3.1** If the forms furnished by SMHA are not used or are altered or if the proposed costs are not submitted as required and where provided.
- 6.3.2** If all requested completed attachments do not accompany the bid submittal.
- 6.3.3** If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind which may tend to make the bid incomplete, indefinite or ambiguous as to its meaning or give the Bidder a competitive advantage over other Bidders.
- 6.3.4** If the Bidder adds any provisions reserving the right to accept or reject any award or to enter into contract pursuant to an award.
- 6.3.5** If the individual cost bid items submitted by a specific Bidder are unbalanced in the sense that the listed price of any cost item departs by more than 25% from SMHA's cost estimate for that item.
- 6.4 Disqualification of Bidders:** Any one or more of the following shall be considered as sufficient for disqualification of a prospective Bidder and the rejection of his/her bid:
- 6.4.1** Evidence of collusion among prospective Bidders. Participants in such collusion will receive no recognition as Bidders or Bidders for any future work with SMHA until such participant shall have been reinstated as a qualified Bidder or Bidders. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.
- 6.4.2** More than one bid for the same work from an individual, firm, or corporation under the same or different name(s).
- 6.4.3** Lack of competency, lack of experience and/or lack of adequate machinery, plan and/or other resources.
- 6.4.4** Unsatisfactory performance record as shown by the past work for SMHA or with any other local, state or federal agency, judged from the standpoint of workmanship and progress.
- 6.4.5** Incomplete work, which in the judgement of SMHA, might hinder or prevent prompt completion of additional work, if awarded.
- 6.4.6** Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
- 6.4.7** Failure to comply with any qualification requirements of SMHA.

6.4.8 Failure to list, if required, all subcontractors (if subcontractors are allowed by SMHA) who will be employed by the successful Bidder(s) to complete the work of the proposed contract.

6.4.9 As required by the IFB documents, failure of the successful Bidder to be properly licensed by the City, County and/or State of Ohio and/or to be insured by a commercial general liability policy and/or workman's compensation policy and/or business automobile liability policy, if applicable.

6.4.10 Any reason to be determined in good faith, to be in the best interest of SMHA.

6.5 Award of Bid(s): The successful Bidder(s) shall be determined by the top-rated responsive and responsible Bidder as determined by "Best Value", provided his/her bid is reasonable and within budget, he/she is able to deliver the specified items in a timely manner and it is, in the opinion of SMHA, in the best interest of SMHA to accept the bid. SMHA reserves the right to award to multiple contractors if it is determined to be in the best interest of SMHA. SMHA reserves the right, according to 24 CFR Part 135 Appendix III, to utilize Section 3 Preferences (as detailed in **Attachment H**) when making an award under this IFB.

7.0 INSURANCE:

7.1 If a Bidder receives an award, the Contractor will be required to provide an original Certificate of Insurance confirming the following minimum requirements to SMHA within 10 days of contract signature:

Professional Liability	Required Limits
SMHA and its affiliates must be named as an Additional Insured and be a Certificate Holder. This is required for vendors who render observational services to SMHA such as appraisers, inspectors, attorneys, engineers or consultants.	\$ 1,000,000.00
Business Automobile Liability	Required Limits
SMHA and its affiliates must be named as an additional insured and as the certificate holder. This is required for any vendor that will be using their vehicle to do work on SMHA properties.	\$500,000.00 combined Single limit, per occurrence
Workers' Compensation and Employer's Liability	Required Limits
Workers' Compensation coverage is Statutory and has no pre-set limits. Employer's Liability limit is \$500,000. Workers' Compensation is required for any vendor made up of more than one person. A Waiver of Subrogation in favor of SAHD must be included in the Workers' Compensation policy. SMHA and its affiliates must be a Certificate Holder.	Statutory \$500,000.00
Commercial General Liability	Required Limits
This is required for any vendor who will be doing hands on work at SMHA properties. SMHA and its affiliates must be named as an Additional Insured and as the Certificate Holder.	\$1,000,000.00 per accident \$2,000,000 aggregate

8.0 RIGHT TO PROTEST:

8.1 Rights: Any prospective or actual Bidder, offeror, or contractor who is allegedly aggrieved in connection with the solicitation of a bid or award of a contract, shall have the right to protest. Such right only applies to deviations from laws, rules, regulations, or procedures.

- 8.1.1 Definition:** An alleged aggrieved "protestant" is a prospective Bidder or Bidders who feels that he/she has been treated inequitably by SMHA and wishes SMHA to correct the alleged inequitable condition or situation.
- 8.1.2 Eligibility:** To be eligible to file a protest with SMHA pertaining to an IFB or contract, the alleged aggrieved protestant must have been involved in the IFB process in some manner as a prospective Bidder (i.e. recipient of the IFB documents) when the alleged situation occurred. SMHA has no obligation to consider a protest filed by a party that does not meet these criteria.
- 8.1.3 Procedure:** Any actual or prospective Bidder may protest the solicitation or award of a contract for material violation of SMHA's Procurement Policy. Any protest against a SMHA solicitation must be received before the due date for receipt of bids and any protest against the award of a contract must be received within ten calendar days after contract award or the protest will not be considered.

All protests must be in writing and submitted to the Procurement & Contracting Manager for a written decision. The Procurement & Contracting Manager shall issue a written decision and findings to the Contractor within thirty (30) days from the receipt of the written protest. This decision is then appealable to the Board of Commissioners within thirty (30) days of receipt of the written decision. Appeals which are not timely filed will not be considered and the decision becomes final. All appeals shall be marked and sent to the address as listed in the example below:

APPEAL OF IFB NO. 12012020CF-19
Stark Metropolitan Housing Authority
Attn: Procurement & Contract Specialist
400 East Tuscarawas Street
Canton, Ohio 44702

9.0 DISPUTES UNDER THE CONTRACT:

- 9.1 Procedures:** In the event that any matter, claim, or dispute arises between the parties, whether or not related to this IFB or any resulting contract, both parties shall be subject to non-binding mediation if agreed to by both parties within thirty (30) days of either party making a request in writing. The parties further agree that if the matter, claim or dispute is not settled during mediation, it shall thereafter be submitted to binding arbitration. The parties shall make a good-faith attempt to mutually agree upon an arbitrator. If the parties cannot mutually agree upon an arbitrator after reasonable efforts have been exerted, then the matter, claim or dispute shall be submitted to the American Arbitration Association for final and binding arbitration. Unless extended by the arbitrator for good cause shown, the final arbitration hearing shall begin no later than two months after the selection of the arbitrator.

10.0 ADDITIONAL CONSIDERATIONS:

- 10.1 Required Permits and Licenses:** Unless otherwise stated in the IFB documents, all Federal, State or Local permits and licenses which may be required to provide the services ensuing from any award of this IFB, whether or not they are known to either SMHA or the Bidders at the time of the bid submittal deadline or the award, shall be the sole responsibility of the successful Bidder(s) and all offers submitted by the Bidder shall reflect all costs required by the successful Bidder(s) to procure and provide such necessary permits or licenses.

- 10.2 Taxes:** SMHA, a governmental entity, is exempt from Ohio State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.
- 10.3 Governmental Standards:** It is the responsibility of the prospective Bidder to ensure that all items and services proposed conform to all Local, State and Federal laws concerning safety (OSHA) and environmental control (EPA and Stark County Pollution Regulations) and any other enacted ordinance, code, law or regulation. The successful Bidder(s) shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the successful Bidder(s) for time or monies lost due to violations of any such ordinance, code, law or regulation that may occur.
- 10.4 Delivery:** All costs submitted by the successful Bidder(s) shall reflect the cost of delivering the proposed items and/or services to the locations specified within the IFB documents or within the Agreement. All costs in the bid submittal shall be quoted as Free on Board (FOB) Destination, Freight Prepaid and allowed unless otherwise stated in this IFB.
- 10.4.1** The successful Bidder(s) agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful Bidder. Upon default, the successful Bidder(s) agrees that SMHA may, at its option, rescind the finalized contract under the termination clause herein and seek liquidated damages as provided by law.
- 10.5 Work on SMHA Property:** If the successful Bidder's work under the contract involves operations on SMHA premises, the successful Bidder(s) shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and shall immediately return said property to a condition equal to or better than the existing condition prior to the commencement of work at the site at no cost to SMHA.
- 10.6 Estimate Quantities:** Unless otherwise indicated, the quantities shown are estimates only and are used to evaluate the responses and may or may not reflect anticipated purchases. SMHA does not guarantee any minimum purchase quantity.
- 10.7 Warranty:** All items installed/provided under any contract resulting from this IFB must include a minimum of a one (1) year warranty including labor and installation plus a minimum of a one (1) year warranty from the Contractor for labor, materials and installation except as specified otherwise herein. This period will begin on the date of "FINAL" acceptance by SMHA. This does not overrule the product guarantees.
- 10.7.1** The services provided under the contract shall conform to all information contained within the IFB documents as well as applicable Industry Published Technical Specifications, and if one of the above mentioned specifications contains more stringent requirements than the other, the more stringent requirements shall apply.
- 10.7.2** In addition to all other warranties, the warranty shall include the warranty for merchantability and the warranty of fitness for a particular purpose.
- 10.7.3 Assignment of Warranty:** Contractor(s) shall assign any warranties and guarantees to SMHA and provide the Contractor's Warranty for Labor and Installation to SMHA along with all Manufacturers' Warranty documents.
- 10.8 Official, Agent and Employees of SMHA Not Personally Liable:** It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of SMHA in any way be personally liable or responsible for any covenant or agreement herein contained whether

expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.

- 10.9 Subcontractors:** Unless otherwise stated within the IFB documents, the successful Bidder(s) may not use any subcontractors to accomplish any portion of the services described within the IFB documents or the contract **without the prior written permission of SMHA**. Also, any substitution of subcontractors must be approved in writing by SMHA prior to their engagement.
- 10.9.1** "Prime" Contractor(s) shall provide completed Contractor Profile Forms (**Attachment L**), for all subcontractors being proposed to work under this IFB or any resulting contract. SMHA must review and approve, in writing, the use of all subcontractors.
- 10.9.2** All requirements for the "Prime" Contractor(s) shall also apply to any and all subcontractors. Regardless of subcontracting, the Prime Contractor(s) remain liable to SMHA for the performance under this IFB or any resulting contract.
- 10.9.3** "Prime" Contractors will be required to submit copies of their contracts with any approved subcontractors to SMHA.
- 10.10 Salaries and Expenses Relating to the Successful Bidder's Employees:** Unless otherwise stated within the IFB documents, the successful Bidder(s) shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The successful Bidder(s) further agrees to comply with all Federal, State and Local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 10.11 Independent Contractor:** Unless otherwise stated within the IFB documents or in the contract, the successful Bidder(s) is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 10.12 Severability:** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held invalid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 10.13 Waiver of Breach:** A waiver of either party of any terms or conditions of this agreement in any instance shall not be deemed or construed as a waiver of such terms or conditions for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 10.14 Time of the Essence:** Time is of the essence as to each provision in which a timeframe for performance is provided in this IFB. Failure to meet these timeframes may be considered a material breach, and SMHA may pursue compensatory and/or liquidated damages under the contract.
- 10.15 Limitation of Liability:** In no event shall SMHA be liable to the successful Bidder(s) for an indirect, incidental, consequential or exemplary damages.
- 10.16 Indemnity:** The Contractor shall indemnify and hold harmless SMHA and its officers, agents, representatives and employees from and against all claims, losses, damages, actions, causes of action and/or expenses resulting from, brought for or on account of any bodily injury or death of an employee of the Contractor(s), its agents or its subcontractors of any tier received or sustained

by any persons or property growing out of, occurring or attributable to any work performed under or related to this agreement, resulting in whole or in part from the negligent acts or omissions of the Contractor(s), an subcontractors, or an employee, agent or representative of the Contractor(s) or any subcontractors, **AND REGARDLESS OF WHETHER CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF SMHA. CONTRACTOR(S) ACKNOWLEDGES AND AGREES THAT THIS INDEMNITY CONTROLS OVER ALL OTHER PROVISIONS OF THIS AGREEMENT, SURVIVES TERMINATION OF THIS AGREEMENT AND APPLIES TO CLAIMS AND LIABILITY ARISING OUT OF THE SOLE OR CONCURRENT NEGLIGENCE OF SMHA.**

Contractor(s) shall indemnify and hold harmless SMHA, their agents, consultants and employees from and against any and all property damage claims, losses, damages, costs and expenses relating to the performance of this Agreement, including any resulting loss of use, *but only to the extent caused by the negligent acts or omissions of Contractor(s)*, its employees, subcontractors, suppliers, manufacturers or other persons or entities for whose acts Contractor(s) may be liable.

10.17 Public/Contracting Statutes: SMHA is a governmental entity as that term is defined in the procurement statutes. SMHA and this IFB and all resulting contracts are subject to Federal, State and Local laws, rules, regulations and policies relating to procurement.

10.18 Termination: Any contract resulting from this IFB may be terminated under the following conditions:

10.18.1 By mutual consent if both parties, and

10.18.2 Termination for Cause: As detailed within the attached/referenced HUD Forms.

10.18.2.1 SMHA may terminate any and all contracts for default at any time in whole or in part, if the Contractor(s) fails to perform any of the provisions of any contract, fails to pursue the work as to endanger performance in accordance with the terms of the IFB or any resulting contracts, and after receipt of written notice from SMHA, fails to correct such failures within seven (7) days or such other period as SMHA may authorize or require.

10.18.2.1.1 Upon receipt of a notice of termination issued from SMHA, the Contractor(s) shall immediately cease all activities under any contract resulting from this IFB unless expressly directed otherwise by SMHA in the Notice of Termination.

10.18.2.1.2 SMHA may terminate any contract resulting from this IFB in whole or in part, if funding is reduced, or is not obtained and continued at levels sufficient to allow for the expenditure.

10.18.3 Termination for Convenience: SMHA may terminate for convenience on a unilateral basis when the product or services is no longer needed or when it is in the best interest of SMHA.

10.18.4 The rights and remedies of SMHA provided under this section are not exclusive and are in addition to any other rights and remedies provided by law or under any contract.

10.18.5 In the event the resulting contract from this IFB is terminated for any reason, or upon its expiration, SMHA shall retain ownership of all work products including deliverables, source and object code, microcode, software licenses, and documentation in whatever form that may exist. In addition to any other provision, the Contractor(s) shall transfer title and deliver to SMH any partially completed work products, deliverables, sourced and

object code, or document that the Contractor(s) has produced or acquired in the performance of any resulting contract.

10.19 Examination and Retention of Contractor's Records: SMHA, HUD, Comptroller General of the United States, or any of their duly authorized representatives shall, until three (3) years after final payment under all contracts executed as a result of this IFB, 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 audits, examinations, excerpts or transcriptions.

10.20 Invoicing (if applicable): Contractor(s) will only be allowed to invoice for the cost of services/goods in compliance with his/her bid.

10.20.1 Invoices must contain a complete description of the work or service that was performed, the contract price for service, the purchase order number, contract number (if applicable), and date of service and address of service location or delivery address.

10.20.2 Contractor(s) must submit a separate invoice for each purchase order issued by SMHA unless prior approval is obtained from SMHA. **Contractor(s) must submit invoice within thirty (30) days after delivery of goods and/or services. If Contractor(s) fails to invoice within thirty (30) days after delivery of goods and/or services, SMHA reserves the right to not pay the invoice.**

10.20.3 If applicable, SMHA may make progress payments approximately every thirty (30) days as the work proceeds if work meets owner's standards, as approved by the SMHA staff. SMHA may, subject to written determination and approval of the Procurement & Contracting Manager, make more frequent payments to Contractor(s) which are qualified small business in accordance with HUD documents.

10.20.4 If offered by Contractor(s), SMHA seeks a discount for early payment. SMHA shall only take such a discount if earned.

10.20.5 Payments made under the awarded contract will be made electronically by ACH, and will require additional documents to be set up for the ACH payments.

10.20.6 Unless utilizing a progress payment schedule invoices/requests for payments shall be sent to the following address:

**Stark Metropolitan Housing Authority
Attn: Finance
400 East Tuscarawas Street
Canton, Ohio 44702**

10.21 Inter-local Participation:

10.21.1 SMHA may from time to time enter into inter-local Cooperation Purchasing Agreements with other governmental entities or governmental cooperatives (hereafter collectively referred to as "Entity" or "Entities") to enhance SMHA's purchasing power. At SMHA's sole discretion and option, SMHA may inform other Entities that they may acquire items listed in this IFB. Such acquisition(s) shall be at the prices stated herein, and shall be subject to Contractor's acceptance.

10.21.2 In no event shall SMHA be considered a dealer, remarketer, agent or other representative of Contractor(s) or Entity. Further, SMHA shall not be considered and is

not an agent; partner or representative of the Entity making purchases hereunder, and shall not be obligated or liable for any such order.

10.21.3 Purchase orders shall be submitted to Contractor(s) by the individual entity.

10.21.4 SMHA shall not be liable or responsible for any obligation, including but not limited to, payment and for any item or service ordered by an Entity, other than SMHA.

10.22 Right to Data and Patent Rights: In addition to ownership and use rights SMHA shall have exclusive ownership of all, proprietary interest in, and the right to full and exclusive of all information, materials, documents, software, and all electronic data discovered or produced by Contractor(s) or sub-contractor(s) pursuant to the terms of any resulting contracting, including but not limited to, reports, memoranda or letters concerning the research and reporting tasks of any resulting contract. Both parties agree to comply with HUD Bulletin 909-23, which is the Notice of Assistance Regarding Patent and Copyright Infringement.

10.23 Lobbying Certification: By proposing to do business with SMHA or by doing business with SMHA, each Bidder certifies the following:

10.23.1 No Federally appropriated funds have been paid or will be paid, by or on behalf of the Bidder, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

10.23.2 If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of the agency, a Member of Congress, an officer or employee of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form "Disclosure Form to Report Lobbying" in accordance with its instructions.

10.23.3 The successful Bidder shall require that the language of this certification be included in the award documents for all sub-awards at all tiers, (including but not limited to subcontractors, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

10.24 Applicable Statutes, Regulations & Orders: Contractor(s) shall comply with all statutes, rules, regulations executive orders affecting procurements by Housing Authorities including but not limited to:

10.24.1 Executive Order 11246

10.24.2 Executive Order 11061

10.24.3 Copeland "Anti-Kickback" Act (18 USC 874)

10.24.4 Davis Bacon Act (40 USC 276a-276a-7)

10.24.5 Contract Work Hours & Safety Standards Act (40 USC 327-330)

10.24.6 Clean Air & Water Act (42 USC 1857(h); 33 USC 1368)

10.24.7 Energy Policy & Conservation Act (PL 94-163. 89 STAT 871)

- 10.24.8 Civil Rights Act of 1964, Title VI (PL 88-352)
- 10.24.9 Civil Rights Act of 1968, Title VII (PL 90-284 Fair Housing Act)
- 10.24.10 Age Discrimination Act of 1975
- 10.24.11 Anti-Drug Abuse Act of 1988 (42 USC 11901 et. Seq.)
- 10.24.12 HUD Information Bulletin 909-23
- 10.24.13 Immigration Reform & Control Act of 1986
- 10.24.14 Fair Labor Standards Act (29 USC 201 et. Seq.)

- 10.25 Additional Information:** Each provision of law and each clause, which is required by law to be inserted in this IFB or any contract, shall be deemed to have been inserted herein, and this IFB and any resulting contract shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party. The aforementioned statutes, regulations and executive orders are not intended as an indication that such statute, regulation or executive order is necessarily applicable nor is an omission of such statute, regulation or executive order intended to indicate that it is not applicable.
- 10.26 Conflicting Conditions:** In the event there is a conflict between the documents comprising this IFB and any resulting contracts, the following order of precedence shall govern: (1) the more restrictive terms of either: any and all attached/referenced HUD forms and the terms/conditions in the body of any resulting contract; (2) the IFB; and (3) Contractor's Response. In the event that a conflict exists between any state statute or federal law the most restrictive terms shall apply.
- 10.27 Contract Form:** SMHA will not execute a contract on the successful Bidder's form. Contracts will only be executed on SMHA's form. By submitting a bid, the successful Bidder agrees to this condition. However, SMHA will consider any contract clauses that the Bidder wishes to include therein, but the failure of SMHA to include such clauses does not give the successful Bidder the right to refuse to execute SMHA's contract form. It is the responsibility of each prospective Bidder to notify SMHA, in writing, with the bid submittal of any contract clauses that he/she is not willing to include in the final executed contract. SMHA will consider such clauses and determine whether or not to amend the contract.
- 10.28 Contract:** Once contract is issued to successful bidder it needs to be signed and returned to SMHA within 2 business days. If not SMHA reserves the right to move to the next bidder in line.
- 10.29 Force Majeure:** Neither SMHA nor Contractor(s) shall be held responsible for delays nor default caused by fire, flood, riots, acts of God or war where such cause was beyond, respectively, SMHA or Contractor's reasonable control. Contractor(s) shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this agreement.
- 10.30 Most Favored Customer:** The Contractor(s) agrees that if during the term of any resulting contract, the Contractor(s) enters into any agreement with any other governmental customer, or any non-affiliated commercial customer by which it agrees to provide equivalent services at lower prices, or additional services at comparable prices, the resulting contract at SMHA's option, will be amended to afford equivalent advantage to SMHA.

10.31 Lapse in Insurance Coverage: In the event Contractor(s) fails to maintain insurance as required by a resulting contract, the Contractor(s) shall immediately cure such lapse in insurance coverage at the Contractor's expense, and pay SMHA in full for all costs and expenses incurred by SMHA under this contract as a result of the Contractor's failure to maintain insurance as required, including costs and reasonable attorney's fees relating to SMHA's attempts to cure such lapse in insurance coverage. Such costs and attorney fees, not to exceed fifteen hundred and 00/100 dollars (\$1,500.00), shall be automatically deducted from monies or payments owed to Contractor(s). Moreover, SMHA shall retain from monies or payments owe to Contractor(s) by SMHA five percent (5%) of the value of the contract and place this retainage into an account to cover SMHA's potential exposure to liability during the period of such lapse. This retainage shall be held by SMHA until six (6) months after the term of the resulting contract has ended or has otherwise been terminated, cancelled or expired and shall be released if no claims are received or lawsuits filed against SMHA for any matter that should have been covered by the required insurance

11.0 WAGE RATE DETERMINATION

11.1 Davis-Bacon Prevailing Wage Rates: For all applicable projects costing \$2,000.00 or more, SMHA must ensure that Contractor(s) does not pay its employees that perform such work for SMHA at a rate less than the Davis-Bacon Act wage rates listed on Wage Determinations OnLine.gov (see below). Additionally, Contractor(s) is required to pay employees weekly and submit weekly certified payroll reports to SMHA (see below). Therefore, by submitting a bid, each Bidder is thereby agreeing to and verifying that he/she will not pay his/her employees at rates less than detailed within the following table below or with less frequency than detailed herein. The Contractor(s) will be required to submit certified payrolls; and must make its payroll records available to either SMHA or HUD on request, and failure on the part of the Contractor(s) to comply with this requirement will be the sole responsibility of the Contractor(s), including any ensuing penalties, court costs, or wages due to employees as a result of the Contractor's failure to comply.

11.1.1 Wage Decision Website Link: <http://www.wdol.gov/dba.aspx>

11.1.2 Wage Decision: Residential for Window Replacements Linwood

11.1.2.1 Applicability- Building –Not including single family homes and apartments up to and including 4 stories

11.1.2.2 General Decision Number: OH20190106 11/06/2020

11.1.2.3 Counties Covered: Carrol and Stark Counties in Ohio.

11.1.2.4 Wage Rates: See **Attachment O** for applicable wage decision. This is a courtesy copy and is subject to change. The official wage decision for the project will be 'locked in' on the day of the bid opening. The wage decision pulled the day of the bid opening will be applicable for the life of the project UNLESS more than 90 days pass between bid opening and contract signing, at which point an updated wage decision for the project will be pulled. If this occurs, the wage decision pulled at contract signing will be applicable for the life of the project.

11.1.2.5 Employee Rights Poster: The "Employee Rights" poster (**Attachment P**) shall be posted at the job site visible to all Contractor(s) employees.

11.1.2.6 Certified Payroll Reports: Certified payroll reports shall be submitted weekly to SMHA for projects subject to Davis-Bacon. The Form included herein as **Attachment Q** shall be used. Contractor(s) is permitted to use their own certified payroll report if, and only if, **the form contains ALL OF THE EXACT information detailed on the form provided by SMHA.** Payrolls submitted to SMHA shall be originals, fully completed and executed in blue ink. Weekly certified payroll reports shall also be completed by all sub-contractors. It is the responsibility of the primary Contractor(s) to collect, review and send the original certified payroll reports for all subcontractors to SMHA.

12.0 BONDING REQUIREMENTS

12.1 Bid Bond: The Bid Bond shall be for five percent (5%) of the bid sum plus all "add" alternates (if applicable). The Bid Bond shall be secured by a surety company authorized to do business in the state of Ohio and on the U.S. Treasury Circular Number 570. SMHA will also accept a Certified or Cashier's Check for five percent (5%) of the bid sum. The bid security, whether in the form of a Bid Bond, Certified Check or Cashier's Check, must be submitted with the bid. The Bid Bond shall be submitted on SMHA's Form (**Attachment D**).

12.1.1 Successful Bidder(s): Successful Bidder(s)' security will be retained until he/she has signed the contract and furnished the required Payment & Performance Bond.

12.1.2 Unsuccessful Bidders: Unsuccessful Bidders security will be returned upon contract execution with the successful Bidder(s).

12.2 Payment & Performance Bond: The Payment & Performance Bond shall be for one hundred percent (100%) of the contract price and extend through one year guarantee period. The Payment & Performance Bond shall be secured by a surety company authorized to do business in the state of Ohio and on the U.S. Treasury Circular Number 570. The Housing Authority will also accept Separate Payment & Performance Bonds (each for one hundred percent (100%) or more of the contract price), a twenty percent (20%) Cash Escrow, or a twenty five percent (25%) irrevocable letter of credit. The bid security, whether in the form of a Payment & Performance Bond for one hundred percent (100%) of the contract price, Separate Payment & Performance Bonds (each for one hundred percent (100%) or more of the contract price), a twenty percent (20%) Cash Escrow, or a twenty-five percent (25%) Irrevocable Letter of Credit, must be submitted at the time of contract award.

Attachment A
Scope of Work/Technical Specifications

SCOPE OF WORK/TECHNICAL SPECIFICATIONS

- A1.0** SMHA is seeking sealed bids from qualified, licensed, Contractors with demonstrated competence and experience to provide all labor and material required to perform **Turner Tower Repairs**

DETAILED SPECIFICATIONS ON FOLLOWING PAGES

PLEASE NOTE: If applicable, SMHA is providing any aforementioned brand names as a sample only so that Bidders have a better understanding as to the minimum product standards that SMHA desires. As required by HUD regulation, propose an "equal" or "same as" product, as long as such product is substantially equivalent to the products identified above. Also, all specifications are subject to normal manufacturing tolerances.

Attachment B
Form of Bid

FORM OF BID

B1.0 Submittal Checklist:

- B1.1. Instructions: THIS FORM IS MANDATORY AND SHALL BE FULLY COMPLETED AND SUBMITTED UNDER TAB 1 OF THE BID SUBMITTAL.** Unless otherwise specifically required, the items listed below shall be completed and included in the bid submittal. Descriptions of each requirement can be found in Section 5.0 Form of Bid. **Do not omit any tabs, if the information requested does not apply please put "Not Applicable" under the accompanying tab in the submittal. FAILURE TO SUBMIT ALL REQUIRED INFORMATION MAY RESULT IN DISQUALIFICATION OF THE BID SUBMITTAL FROM CONSIDERATION FOR AWARD.** Complete this form by marking an "X", where provided, to verify that the referenced completed form or information has been included within the "hard copy" bid submittal submitted by the Bidder. Submit one (1) unbound original (the "hard copy") and one (1) electronic copy (CD) of the following documents:

X	Tab #	Documents Required in Submittal	Attachments
	1	Form of Bid	B
	2	Bid Fee Sheet (including acknowledgement of Addenda & HUD Forms)	C
	3	Bid Bond Template	D
	4	Bidder's Certification Form	E
	5	Section 3 Documentation	F/G/H
	6	Small Business (SWMBE) Utilization Plan	I
	7	List of Past Performance/Experience/Client Information	J
	8	List of Sub-Contractors/Joint Venture Information	K
	9	Copy of Business License	-
	10	Copy of Insurance Certificate	-
	11	Copy of Workman's Compensation Certificate	-
	12	Contractor Profile Form	L
	13	Vendor Registration Forms & W-9	M

- B1.2** By signing below, the Bidder agrees that all of the aforementioned Tabs have been included in their bid submittal, and acknowledge that any of the required information, including this page, omitted from the bid submittal may result in their bid being disqualified from consideration for award.

Signature

Date

Attachment C
Bid Fee Sheet

BID FEE SHEET

C1.0 Costs to perform work (as detailed in the **Attachment A**). Costs shall be fully burdened.

Material _____

Labor _____

Total Cost _____

C2.0 Discount

C2.1 Discount offered for early payment: _____% if invoice paid within _____ days of properly submitted invoice as stated in the IFB.

C3.0 Section 3 Priority: Bidders shall identify below with an "x" any and all applicable Section 3 Priorities for their company, as defined in **Attachment H**. If no Priority applies, mark "NONE".

C3.1 _____ **Priority I**

C3.2 _____ **Priority II**

C3.3 _____ **Priority III**

C3.4 _____ **Priority IV**

C3.5 _____ **Priority V**

C3.6 _____ **Priority VI**

C3.7 _____ **Priority VII**

C3.8 _____ **NONE**

C4.0 HUD Form Acknowledgements: The HUD Forms referenced below shall be acknowledged with a signature and date. These Forms are included herein as **Attachment N**. It is the responsibility of the Bidder to read and acknowledge these Forms as they will be incorporated as part of any resulting contract.

HUD forms: Please note that the Authority has no legal right or ability to (and will not) at any time negotiate any clauses contained within ANY of the HUD forms included as part of this IFB

C4.1 HUD 5369 _____ **Date** _____

C4.2 HUD 5369-A _____ **Date** _____

C4.3 HUD 5370 _____ **Date** _____

C5.0 Addenda Acknowledgements: Any addenda issued by SMHA shall be acknowledged with a signature and date. All addenda will be posted on the SMHA website. It is the responsibility of the Bidder to find,

read, and acknowledge these addenda as they will be incorporated here as a part of this solicitation and any resulting contract.

C5.1 Addendum #1 _____ **Date** _____

C5.2 Addendum #2 _____ **Date** _____

C5.3 Addendum #3 _____ **Date** _____

C5.4 Addendum #4 _____ **Date** _____

C6.0 Company Name/Contact Information

C6.1 Company Name: _____

C6.2 Address: _____

C6.3 Phone: _____

C6.4 Email: _____

C6.5 Authorize Agent Signature: _____

C6.6 Authorize Agent Name (Printed): _____

Attachment D
Bid Bond Template

Attachment E
Bidder's Certification

BIDDER'S CERTIFICATION

By signing below, Bidder certifies that the following statements are true and correct:

- E1.0** He/she has full authority to bind Bidder and that no member of Proposer's organization is disbarred, suspended or otherwise prohibited from contracting with any Federal, State, or Local agency,
- E2.0** Items for which Bidders were provided herein will be delivered as specified in the bid,
- E3.0** In performing this contract, the Contractor(s) shall comply with any and all applicable Federal, State, and Local laws including but not limited to: Occupation Safety & Health, Equal Employment Opportunity, Immigration and Naturalization, The Americans with Disabilities Act, State Tax and Insurance Law, and the Fair Housing Act.,
- E4.0** Bidder agrees that this bid shall remain open and valid for at least a period of 90 days from the date of the Bid Opening and that this bid shall constitute an offer, which, if accepted by SMHA and subject to the terms and conditions of such acceptance, shall result in a contract between SMHA and the undersigned Bidder,
- E5.0** He/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this bid,
- E6.0** Bidder, nor the firm, corporation, partnership, or institution represented by the Bidder, or anyone acting for such firm, corporation, partnership, or institution has violated the antitrust laws of the State of Ohio or the Federal Antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business,
- E7.0** Bidder has not received compensation for participation in the preparation of the specifications for this IFB,
- E8.0 Non-Collusive Affidavit:** The undersigned party submitting this bid hereby certifies that such bid is genuine and not collusive and that said Bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any Bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other Bidder, to fix overhead profit or cost element of said bid price, or that of any other Bidder or to secure any advantage against SMHA or any person interested in the proposed contract and that all statements in said bid are true,
- E9.0** He/she has full authority to bind Bidder and that no member of Proposer's organization is disbarred, suspend or otherwise prohibited from contracting with any Federal, State, or Local agency, and the individual or business entity named in this bid is eligible to receive the specified payment and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate,
- E10.0 Lobbying Prohibition:** The Contractor(s) agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of federally appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract the making of any federal grant the making of any federal loan the entering into any cooperative agreement or the modification of any federal contract, grant, loan, or cooperative agreement.

Signed: _____

Print Name: _____

Print Company Name: _____

Date: _____

Seal (If Corporation)

Attachment F
Section 3 Clause

SECTION 3 CLAUSE

This affidavit must display an original signature and notary seal.

Business Name: _____

Business Address: _____

City: _____ State: _____ Zip: _____ County: _____

Business Phone: _____ Fax Number: _____

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. **The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135,** and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference

in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

I certify that I have read the above information and understand the Section 3 requirements and numerical goals.

NOTARIZATION: (Only sign in the presence of a Notary Public)

Signature

Print Name

Title

Date

State of _____ County of _____ on this _____ day of _____ 20_____,
before me appeared _____ acknowledging that he/she has read and
understands the Section 3 requirements and numerical goals set forth.

Notary Signature

Commission Expiration

Notary Seal

Attachment G

Section 3 Business Self-Certification (Optional)

SECTION 3 BUSINESS SELF-CERTIFICATION

Optional, only to be submitted by those Businesses seeking to be Section 3 Certified.

Business Name: _____
Business Address: _____
City: _____ State: _____ Zip: _____ County: _____
Business Phone: _____ Fax Number: _____
Email Address: _____
Contractor's License: Class ____ A ____ B ____ C ____ N/A License Number: _____
Business License Number: _____ Federal ID Number: _____
Type of Business: _____

Types of Section 3 Business Enterprises

Please check "Yes" or "No". If you answer "Yes" to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. Is fifty-one percent (51%) of your business owned by a Section 3 resident*; or

Yes No

2. Are at least thirty percent (30%) of your full time employees persons that are currently Section 3 residents*, or within three (3) years of the date of first employment with the business concern were Section 3 residents*; or

Yes No

3. Can you provide evidence, as required, of a commitment to subcontract in excess of twenty-five percent (25%) of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications in the above two paragraphs?

Yes No

Verification- The Company hereby agrees to provide, upon request, documents verifying the information provided on this form.

I declare and affirm, under penalty of law, that the statements made herein are true and accurate to the best of my knowledge. I understand that falsifying information and incomplete statements will disqualify certification status.

Signature of Business Owner or Authorized Representative

Date

*Section 3 resident is: 1) Resident of Public and Indian Housing; or 2) Resident of the Metropolitan Area or Non-Metropolitan County that meet the definition of Low and Very Low Income.

Attachment H

Priorities & Preference for Section 3 Business Concerns in Contracting Opportunities (Reference)

PRIORITIES & PREFERENCE FOR SECTION 3 BUSINESS CONCERNS IN CONTRACTING OPPORTUNITIES (REFERENCE)

Section 3 Priorities: SMHA has established the following Section 3 Priorities (as defined by 24 CFR §135.36). If any of the priority applies, the Bidder shall identify said priority on the Bid Fee Sheet (**Attachment C**). SMHA may request additional documentation from any Bidder claiming a Section 3 priority.

Priority I

Business concerns that are fifty-one percent (51%) or more owned by residents of the housing development or developments for which the Section 3-covered assistance is expended.

Priority II

Business concerns whose workforce includes thirty percent (30%) of residents of the housing development for which the Section 3-covered assistance is expended, or within three (3) years of the date of first employment with the business concern, were residents of the Section 3-covered housing development.

Priority III

Business concerns that are fifty-one percent (51%) or more owned by residents of any other housing development or developments.

Priority IV

Business concerns whose workforce includes thirty percent (30%) of residents of any other public housing development or developments, or within three (3) years of the date of first employment with the business concern, were Section 3 residents of any other public housing development.

Priority V

Business concerns participating in HUD Youth-build programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended.

Priority VI

Business concerns that are fifty-one percent (51%) or more owned by Section 3 residents in the metropolitan area, or whose permanent, full-time workforce includes no less than 30 percent of Section 3 residents in the metropolitan area, or within three (3) years of the date of employment with the business concern, were Section 3 residents in the metropolitan area.

Priority VII

Business concerns that subcontract in excess of twenty-five percent (25%) of the total amount of subcontracts to Section 3 business concerns.

Section 3 Preference: HUD authorizes within 24 CFR 135 that SMHA may make award to qualified Section 3 business concerns with the highest priority ranking and the lowest responsive bid if:

- The bid is within the maximum total contract price established by SMHA; and
- The bid is not more than "x" higher than the total bid price of the lowest responsive bid from any responsible bidder. "x" is determined below:

When the lowest responsive bid is:	"x" = lesser of:
Less than \$100,000	10% of that bid or \$9,000
At least \$100,000 but less than \$200,000	9% of that bid or \$16,000
At least \$200,000 but less than \$300,000	8% of that bid or \$21,000
At least \$300,000 but less than \$400,000	7% of that bid or \$24,000
At least \$400,000 but less than \$500,000	6% of that bid or \$25,000
At least \$500,000 but less than \$1 million	5% of that bid or \$40,000
At least \$1 million but less than \$2 million	4% of that bid or \$60,000
At least \$2 million but less than \$4 million	3% of that bid or \$80,000
At least \$4 million but less than \$7 million	2% of that bid or \$105,000
\$7 million or more	1.5% of the lowest responsive bid with no dollar limit.

If no responsive bid by a Section 3 business concern meets the aforementioned requirements, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

Attachment I
Small Business (SWMBE) Utilization Plan

SMALL BUSINESS (SWMBE) UTILIZATION PLAN

11.0 Instructions: The Bidder shall include hereunder a plan to assist SMHA in its goal to establish participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in SMHA prime contracts and subcontracting opportunities. Contractors must make a good faith effort to subcontract with said companies SWMBE Opportunities to subcontract with said companies should be listed here. **If compliance cannot be obtained, the Bidder is required to provide written documentation with the bid as to why he/she could not obtain such participation.** Attach additional sheets if more space is needed.

12.0 Small Business (SWMBE) Utilization Plan:

H2.1

This image shows a full page of blank, lined paper. It features approximately 20 evenly spaced horizontal black lines running across the width of the page, typical of notebook or primary writing paper. The background is white, and there are no margins, text, or other markings present.

Attachment J

List of Past Performance/Experience/Client Information

LIST OF PAST PERFORMANCE/EXPERIENCE/CLIENT INFORMATION

J1.0 Instructions: The Bidders shall submit three (3) former or current clients, preferably other than SMHA, for whom the Bidder has performed similar or like services to those being proposed herein

J2.0 List of Past Performance/Experience/Client Information

J2.1 Client #1

Company Name: _____

Address: _____

Email: _____

Phone Number: _____

Contact Person: _____

Brief Description of Similar Work Performed: _____

J2.2 Client #2

Company Name: _____

Address: _____

Email: _____

Phone Number: _____

Contact Person: _____

Brief Description of Similar Work Performed: _____

J2.3 Client #3

Company Name: _____

Address: _____

Email: _____

Phone Number: _____

[illegible]

Attachment K
List of Sub-Contractors/Joint Venture

LIST OF SUB-CONTRACTORS/JOINT VENTURE

K1.0 Subcontractors

K1.1 Will this project have sub-contractors? (Check One) _____ Yes _____ No

K1.1.1 If "Yes", proceed to K1.2. If "No", proceed to K2.0.

K1.2 Instructions: Please list all sub-contractors (including contact information) that will be working on any projects resulting from this contract. Each subcontractor should provide: Contractor Profile Form. Attach additional pages if needed.

K1.2.1 List of Subcontractors

Company Name: _____

Address: _____

Email: _____

Phone Number: _____

Contact Person: _____

Documentation Attached: _____ Yes _____ No

Company Name: _____

Address: _____

Email: _____

Phone Number: _____

Contact Person: _____

Documentation Attached: _____ Yes _____ No

Company Name: _____

Address: _____

Email: _____

Phone Number: _____

Contact Person: _____

Documentation Attached: _____ Yes _____ No

Company Name: _____

Address: _____

Email: _____

Phone Number: _____

Contact Person: _____

Documentation Attached: _____ Yes _____ No

K2.0 Joint Venture

K2.1 Will this project be a joint venture? (Check One) _____ **Yes** _____ **No**

K2.1.1 If "Yes", proceed to K2.2. If "No", no additional information is needed for this tab.

K2.2 Instructions: Please list all companies involved in the joint venture (including contact information). Each company should provide: Vendor Registration Forms & W-9, Contractor Profile Form, and Section 3 Paperwork. Attach additional pages if needed.

K2.2.1 List of Joint Venture Companies

Company Name: _____

Address: _____

Email: _____

Phone Number: _____

Contact Person: _____

Documentation Attached:

Note: Usage of a sub-contractor will be contingent upon SMHA's prior written approval.

Attachment L

Contractor Profile Form

CONTRACTOR PROFILE FORM

L1.0 Instructions: Please complete the below for in its entirety. If additional space is needed, please attach a separate sheet.

Project Name: _____ Project No. _____

Contractor/Business Name: _____

Business Address: _____

Telephone: (____) ____-____ Fax: (____) ____-____

Federal Tax ID #: _____ State Tax ID #: _____

Our contract is with _____ in the amount of \$ _____

for _____

(identify specific work to be performed)

Will any work be subcontracted out? Yes _____ No _____

If yes, to whom? _____

Person(s) authorized to sign (certify) Payroll reports: 1) _____

2) _____

Identify work classification(s), base wage payment and total wage for each individual performing work on the project site. Attach additional sheets if necessary.

Work Classification from wage decision (include group number, if applicable)	Base Rate of Pay	Fringe	Total Wage (Including Fringe)

The fringe benefit payment will be (check A, B or C below):

(A) _____ paid to a Union benefit plan (or plans) in the amounts indicated below:

Complete chart below or attach schedule of fringe benefits.

Benefit	Amount
Vacation and Holiday	
Union Dues	
Health and Welfare Benefits	
Pension	
Annuity	
Other (Identify)	

Benefit funds are deposited into accounts maintained by: _____

Address: _____

Telephone: (____) ____-____ Acct. #: (____) ____-____

(B) _____ paid directly (with the pay check) to each worker in the amount of \$ _____

(C) _____ paid to an unfunded benefit plan (or plans) in the amounts indicated below:

*****If requested, copies of benefit plans to be submitted for review/approval.*****

Benefit	Amount
Pension	
Medical	
Dental	
Other (Identify)	

Benefit funds are deposited into accounts maintained by: _____

Address: _____

Telephone: (____) ____-____ Acct. #: _____

Is this a sole proprietorship or partnership business? Yes _____ No _____

Caucasian Owned – WBE _____ MBE _____

Owner/Principal Officer Name (Please Print)

Signature

Date

Attachment M

Vendor Registration Forms & W-9



VENDOR REGISTRATION FORM

ECONOMIC INCLUSION (Select all that apply; at least 1 must be selected)

Certifying documentation or a notarized declaration must be provided to SMHA to prove status:

- | | |
|--|---|
| <input type="checkbox"/> Not Applicable | <input type="checkbox"/> Disabled Owned |
| <input type="checkbox"/> Small Business Enterprise | <input type="checkbox"/> Veteran Owned |
| <input type="checkbox"/> Women Owned (at least 51%) | <input type="checkbox"/> Section 3 Business Concern (What is this?) |
| <input type="checkbox"/> Minority Owned (at least 51%) | |

TYPE OF BUSINESS /SERVICES OFFERED:

PLEASE SEND ALL INVOICES TO:
EMAIL: INVOICES@STARKMHA.ORG OR
MAIL: 400 E. TUSCARAWAS ST. CANTON, OH 44702



VENDOR REGISTRATION FORM

REFERENCES (Must enter 3 references)

Please provide references (within the last 12 months) for the services or goods that your business provides:

1 Company:
Contact Name:
Phone:
Physical Address:
E-mail:

2 Company:
Contact Name:
Phone:
Physical Address:
E-mail:

3 Company:
Contact Name:
Phone:
Physical Address:
E-mail:

DISCLAIMER

The completion and submission of the Vendor Registration Form does not guarantee any minimum or maximum amount of work for a Vendor. It simply means that a Vendor is registered to conduct business with SMHA as opportunities are made available. At that time, the Vendor may have the opportunity to submit a bid, quote or proposal. Likewise, the submission of a bid, quote or proposal does not guarantee any Vendor the right to an award as all procurement activity conducted by SMHA must be in full compliance with the following regulations:

- 2 CFR 200
- HUD Procurement Handbook 7460.8 REV 2
- SMHA's Procurement Policy and Procedures

You must submit a W-9 Form and a copy of your insurance certificate

Stark Metropolitan Housing Authority

Dear SMHA vendor:

It is Stark Metropolitan Housing Authorities (SMHA) goal and responsibility to treat organizations (vendors / contractors) providing services and or goods fairly and appropriately. Our vendors are critical in order for SMHA to achieve its mission statement:

"PEOPLE HOUSING PEOPLE: The Stark Metropolitan Housing Authority provides eligible residents of Stark County with quality housing in decent, safe, nourishing neighborhoods, by working in partnership with public and private sector. SMHA provides families with housing choices and opportunities to achieve self-sufficiency."

Vendors must submit invoices electronically to invoices@starkmha.org or mail to 400 East Tuscarawas Street Canton, Ohio 44702, Attention Accounts Payable. SMHA payment terms is "NET 30 DAYS". Net 30 days is common and typical industry and business payment standard. Net 30 days allows adequate time for SMHA to process transactions for payment with vendors. SMHA will deviate from net 30 days for vendors offering payment discounts for timelier payment. SMHA will attempt to take advantage of all payment discounts. Payment process typically involves staff forwarding appropriate supporting documentation, receipt of invoice and approval of invoice for payment. Vendors or contractors subject to provisions of Davis Bacon Act, SMHA is not permitted to make final complete payment until all required Davis Bacon documents have been received and verified.

Vendor must submit invoice electronically to invoices@starkmha.org or mail to 400 East Tuscarawas Street Canton, Ohio 44702, Attention Accounts Payable. Invoices sent to any other post office address, employee or email might delay timely payment. SMHA finance department will make payment within 30 days of invoice date. For timely payment of correctly dated vendor invoices, SMHA's check to vendor will be dated and mailed within 30 days of vendor invoice date.

No staff, except for Executive Director, Deputy Director or Finance Director can waive, modify, adjust or amend NET 30 DAY payment term or requirement to submit invoices electronically to invoices@starkmha.org or mailed to 400 East Tuscarawas Street Canton, Ohio 44702, Attention Accounts Payable.

Signature: _____ Date: _____

STARK METROPOLITAN HOUSING AUTHORITY
Vendor Agreement for Electronic Payment/Deposit

Name / Entity: _____
(Must agree with IRS W- 9)

Federal ID or SSN: _____
(Must agree with IRS W- 9)

Mailing Address: _____

Phone Number: _____ Email Address: _____
(Mandatory for payment notification)

I hereby authorize Stark Metropolitan Housing Authority (SMHA), to initiate credit entries (deposits) to below depository and to initiate, if necessary, debit entries and adjustments to any transactions credited in error.

Depository (Bank) Name: _____

Depository (Bank) Address: _____

Type of Account (check one): ☐ Checking ☐ Savings

Exact Name on Account: _____

Routing Number: _____ Account Number: _____

Your signature below is your continuing authorization for Stark Metropolitan Housing Authority ("SMHA") to follow your written instructions to deposit funds in the account listed above and you agree that your continuing authorization will remain in effect unless you revoke the authorization in writing and submit to SMHA within a reasonable time for SMHA to adjust its accounting procedures. Further, you confirm that the below name and signature is of an authorized representative with authority to act on behalf of the above entity/individual property owner. As such, you hereby authorize SMHA to recognize and acknowledge the signature subscribed below in depositing funds into your account.

A confirmation of account information on financial institution/bank letterhead or an original voided check, must accompany this document. Facsimile copies of checks, starter checks and deposit slips are not acceptable. When submitting documentation on bank letterhead, it must contain the name of financial institution, electronic routing transit number, account number and type of bank account (checking or savings).

By signing below, I confirm that I am an authorized representation and the information entered above is accurate and complete.

Name(s) (please print): _____

Signature(s) _____ Date: _____

Documents can be mailed to: SMHA 400 Tuscarawas Street East, Canton Ohio 44702
Attn: Finance Dept.

Internal: SMHA staff are not to complete this document on behalf of any property owner, vendor and/or contractor.
G:\Accounting\Forms File\Vendor\Vendor ACH Form Revised 2.04.2020.doc

Stark Metropolitan Housing Authority

Vendor Application - Master File Form (new/update/modify)

Legal Name : _____
(Above must agree with W-9 form)

DBA : _____

Mailing Address : _____

Secondary Address : _____

Point of Contact Name : _____

Point of Contact Phone: _____

Point of Contact Email : _____

Alternate Email: _____

Point of Contact Fax : _____

Federal ID# or Social
Security number : _____

W-9 attached: YES / NO

(Above must agree with W-9 form)

Business Classification : (Select all that apply must select at least 1)

Individual/sole proprietor _____

Partnership _____

C Corporation _____

Other _____

S Corporation _____

Limited Liability _____

Enter the Tax classification (C= C Corporation, S= S Corporation, P= Partnership)

Please provide Workers Comp. Certificate & Certificate of Insurance

Terms notice provided : YES / NO (Terms are **Net 30 Days** upon receipt of a properly dated invoice.)

Minority/Sec.3 Owned : YES / NO Type : _____

PLEASE SEND ALL INVOICES TO: invoices@starkmha.org or 400 Tuscarawas St E. , Canton, OH 44702

(Please above indicate - Vendor must receive a Terms letter & complete a W-9)

Vendor: _____ **Date:** _____

(Note: Vendor / Supplier signature is required to set up a new vendor account in order to do business with SMHA. Vendor / Supplier has read and agrees to SMHA's 30 day payment terms as outline in vendor terms notice.)

For Accounting Department:

Finance Staff: _____ Date: _____

Finance Review: _____ Date: _____

Yardi Vendor Code: _____

Issue 1099 YES NO

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

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

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

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

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

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

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

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

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

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

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

2. Explanations and Interpretations to Prospective Bidders

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

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

3. Amendments to Invitations for Bids

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

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

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

4. Responsibility of Prospective Contractor

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

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

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

5. Late Submissions, Modifications, and Withdrawal of Bids

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

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

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

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

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

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

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

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

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

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

6. Bid Opening

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

7. Service of Protest

(a) Definitions. As used in this provision:

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

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

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

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

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

8. Contract Award

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

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

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

(d) The PHA/IHA may reject any and all bids, except other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

9. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an Irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

10. Assurance of Completion

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[] (3) a 20 percent cash escrow;

[] (4) a 25 percent irrevocable letter of credit; or,

[] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

11. Preconstruction Conference (applicable to construction contracts)

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450a(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

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

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to be used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [] does [] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

Attachment N

HUD Forms

HUD 5369

HUD 5369-A

HUD 5370

Please note that the Authority has no legal right or ability to (and will not) at any time negotiate any clauses contained within ANY of the HUD forms included as part of this IFB

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

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

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

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Organizational Conflicts of Interest Certification

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

(a) Result in an unfair competitive advantage to the bidder; or,
(b) Impair the bidder's objectivity in performing the contract work.
[] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

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

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

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

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

6. Minimum Bid Acceptance Period

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

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

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

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

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

The bidder represents and certifies that it:

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

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

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

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

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

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

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

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

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

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

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

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

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

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

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

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

The bidder certifies that:

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

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

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

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

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

(b) A fully executed "Previous Participation Certificate"

[] is, [] is not included with the bid.

13. Bidder's Signature

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

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 1/31/2017)

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

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).

The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses to the collection of information are required to obtain a benefit or to retain a benefit.

The information requested does not lend itself to confidentiality.

HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
- (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
- (d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
- (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
- (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
- (g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
- (h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.
- (i) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
- (l) "Work" means materials, workmanship, and manufacture and fabrication of components.

2. Contractor's Responsibility for Work

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

3. Architect's Duties, Responsibilities, and Authority

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

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

4. Other Contracts

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

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

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

6. Construction Progress Schedule

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

7. Site Investigation and Conditions Affecting the Work

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

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

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

8. Differing Site Conditions

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

9. Specifications and Drawings for Construction

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

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

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

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

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

10. As-Built Drawings

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

11. Material and Workmanship

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

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

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

12. Permits and Codes

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

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

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

13. Health, Safety, and Accident Prevention

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

14. Temporary Heating

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

15. Availability and Use of Utility Services

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

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

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

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

17. Temporary Buildings and Transportation of Materials

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

18. Clean Air and Water

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

19. Energy Efficiency

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

20. Inspection and Acceptance of Construction

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

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

21. Use and Possession Prior to Completion

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

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

22. Warranty of Title

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

23. Warranty of Construction

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

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

24. Prohibition Against Liens

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

Administrative Requirements

25. Contract Period

The Contractor shall complete all work required on this contract within _____ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

26. Order of Provisions

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

27. Payments

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

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

- (d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than _____ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that
- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
 - (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
 - (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

Name: _____

Title: _____

Date: _____

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

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

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

28. Contract Modifications

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

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

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

29. Changes

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

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

30. Suspension of Work

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

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

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

31. Disputes

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

32. Default

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

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

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

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

(2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.

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

33. Liquidated Damages

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

(b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final

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

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

34. Termination for Convenience

(a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.

(b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.

(c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.

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

35. Assignment of Contract

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

36. Insurance

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

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

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$_____ [Contracting Officer insert amount]

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

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

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

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

37. Subcontracts

- (a) Definitions. As used in this contract -

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

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

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

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

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

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

39. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.
- 40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.**
- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- (g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

41. Interest of Members of Congress

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

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

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

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

- (a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44. Royalties and Patents

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

45. Examination and Retention of Contractor's Records

- (a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

46. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

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

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

(2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the

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

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

(c) Payrolls and basic records.

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

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
 - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
 - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

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

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

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

47. Non-Federal Prevailing Wage Rates

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

48. Procurement of Recovered Materials.

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

Attachment O
Wage Decision

"General Decision Number: OH20200015 01/03/2020

Superseded General Decision Number: OH20190015

State: Ohio

Construction Type: Residential

Counties: Carroll and Stark Counties in Ohio.

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date
0 01/03/2020

ELEC0540-010 11/27/2017

	Rates	Fringes
ELECTRICIAN.....	\$ 18.62	1%+9.19

ENGI0018-027 05/01/2019

	Rates	Fringes
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POWER EQUIPMENT OPERATOR
(Bulldozer).....\$ 37.02 15.20

ENG10066-026 06/01/2017

Rates Fringes

POWER EQUIPMENT OPERATOR
Crane.....\$ 22.08 19.66

LABO0265-004 06/01/2018

Rates Fringes

LABORER (Mason Tender-Brick).....\$ 20.25 16.20

* PAIN0707-001 05/01/2019

Rates Fringes

PAINTER (Brush and Roller).....\$ 23.91 16.55

PLAS0109-006 05/01/2018

Rates Fringes

CEMENT MASON/CONCRETE FINISHER...\$ 28.86 17.11

SHEE0033-016 06/01/2019

Rates Fringes

SHEET METAL WORKER (HVAC Duct
Installation Only).....\$ 31.37 25.19

SUOH2012-016 07/20/2012

Rates Fringes

BRICKLAYER.....\$ 28.40 11.78

CARPENTER.....\$ 20.19 6.51

LABORER: Common or General.....\$ 21.50 5.23

OPERATOR: Backhoe/Excavator.....\$ 29.49 11.16

OPERATOR: Bobcat/Skid
Steer/Skid Loader.....\$ 29.49 11.16

PLUMBER.....\$ 20.00 5.52

ROOFER.....\$ 16.85 3.83

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

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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

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

Union Rate Identifiers

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

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

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

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

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

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

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

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

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

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

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

END OF GENERAL DECISION

Attachment O
Wage Decision

"General Decision Number: OH20200106 11/06/2020

Superseded General Decision Number: OH20190106

State: Ohio

Construction Type: Building

Counties: Carroll and Stark Counties in Ohio.

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020
1	02/07/2020
2	07/10/2020
3	09/25/2020
4	11/06/2020

* ASBE0002-003 08/01/2020

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 42.03	26.90

BROH0006-003 05/01/2019

	Rates	Fringes
BRICKLAYER.....	\$ 28.61	17.55

BROH0006-008 06/01/2019

	Rates	Fringes
TILE SETTER.....	\$ 25.27	13.99

BROH0008-007 06/01/2019

	Rates	Fringes
TILE FINISHER.....	\$ 22.68	13.97

CARP0285-007 05/01/2019

	Rates	Fringes
CARPENTER (Drywall Hanging and Metal Stud Installation Only).....	\$ 26.79	18.34

ELEC0540-001 09/01/2018

	Rates	Fringes
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 21.65	15.63

ELEC0540-008 01/01/2020

	Rates	Fringes
ELECTRICIAN (Excludes Low Voltage Wiring).....	\$ 33.71	24.22

ENGI0018-035 05/01/2018

	Rates	Fringes
POWER EQUIPMENT OPERATOR Backhoe/Excavator/Trackhoe..	\$ 35.89	15.09

ENGI0066-045 06/01/2017

	Rates	Fringes
POWER EQUIPMENT OPERATOR Forklift.....	\$ 28.87	19.66
Grader/Blade.....	\$ 32.42	19.66
Mechanic.....	\$ 32.92	19.66

IRON0550-010 05/01/2019

	Rates	Fringes
IRONWORKER (Ornamental, Reinforcing and Structural).....	\$ 28.90	19.87

LAB01015-006 05/01/2019

	Rates	Fringes
LABORER Common or General.....	\$ 28.37	10.70
Mason Tender - Brick.....	\$ 29.12	10.70

PAIN0841-003 08/01/2020

	Rates	Fringes
PAINTER (Brush and Roller).....	\$ 26.83	14.02

 PAIN1162-003 05/01/2019

	Rates	Fringes
GLAZIER.....	\$ 26.50	13.29

 PLUM0094-007 05/01/2020

	Rates	Fringes
PLUMBER (Includes HVAC Unit Installation).....	\$ 35.78	21.44

 PLUM0168-005 05/01/2016

	Rates	Fringes
PIPEFITTER (Excludes HVAC Unit Installation).....	\$ 34.53	17.49

 ROOF0088-003 06/01/2020

	Rates	Fringes
ROOFER.....	\$ 27.00	19.53

 SHEE0033-027 06/04/2018

	Rates	Fringes
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 30.57	27.49

 * UAVG-OH-0021 01/01/2019

	Rates	Fringes
OPERATOR: Oiler.....	\$ 27.56	16.37

 * UAVG-OH-0023 01/01/2019

	Rates	Fringes
LABORER: Mason Tender - Cement/Concrete.....	\$ 29.55	10.90

 SUOH2012-108 08/29/2014

	Rates	Fringes
CARPENTER, Excludes Drywall Hanging, and Metal Stud Installation.....	\$ 24.30	10.71
CEMENT MASON/CONCRETE FINISHER...	\$ 26.07	12.34
LABORER: Pipelayer.....	\$ 23.98	8.58
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 30.26	12.58
OPERATOR: Bulldozer.....	\$ 22.55	8.03
OPERATOR: Crane.....	\$ 29.51	11.77

OPERATOR: Loader.....	\$ 29.66	12.61
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 30.28	13.29
OPERATOR: Roller.....	\$ 28.83	12.72
PAINTER: Spray.....	\$ 22.78	12.40
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 34.16	0.00
TRUCK DRIVER: Dump (All Types)...	\$ 22.78	12.61

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this

classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

On survey related matters, initial contact, including requests

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION"

Attachment P
Employee Rights Poster

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

Charity Rysak - SMHA
Pwage@starkmha.org
330-454-8051 ext. 378
Deb Diez- HUD
312-913-8127

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

Attachment Q
Certified Payroll Report

Rev. Dec. 2008

PROJECT OR CONTRACT NO.

(over)

Date _____

I, _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____ that during the payroll period commencing on the
(Building or Work)

_____ day of _____, and ending the _____ day of _____,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ -- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ -- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

REMARKS:	
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NAME AND TITLE	SIGNATURE
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THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

Attachment R
Non-Collusive Affidavit

NON-COLLUSION AFFIDAVIT

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated this ____ day of _____, _____

(Name of Organization)

(Title of Person Signing)

(Signature)

ACKNOWLEDGEMENT

STATE OF _____)

) ss

COUNTY OF _____)

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this _____ day of _____, _____.

Notary Public Signature

My Commission Expires: _____