



REQUEST FOR PROPOSALS (RFP)

FOR

**Paint the Exterior of the Buildings at Raymundo Rangel
and Christ the King Apts.**

FOR

**HOUSING AUTHORITY OF THE
CITY OF SAN ANTONIO, TEXAS
AND
AFFILIATED ENTITIES**

RFP No. 1105-910-54-3533

Prepared by:

**Department of Procurement
Of the
San Antonio Housing Authority
818 South Flores Street
San Antonio, Texas 78204**

President & CEO Lourdes Castro Ramirez

August 2011

**Request for Proposals
For
Paint the Exterior of the Buildings at Raymundo Rangel
and Christ the King Apts.**

The Housing Authority of the City of San Antonio, Texas and its affiliated entities d/b/a San Antonio Housing Authority (“SAHA”) hereby invites qualified independent Contractors to submit proposals to **Paint the Exterior of the Buildings at Raymundo Rangel and Christ the King Apts. Painting the exterior of the buildings will preserve the assets and enhance the aesthetics of the properties.**

As a part of our social mission and federal mandate, SAHA is committed to providing economic, training and educational opportunities to the low income individuals in the communities we serve. All contractors are required to recruit and hire low income individuals for new positions and provide training & educational opportunities to the greatest extent feasible for these individuals.

This Request for Proposals (RFP) contains submission requirements, scope of services, period of services, terms and conditions and other pertinent information for submitting a proper and responsive response. Prospective proposers desiring any explanation or interpretation of the solicitation must request it at least seven (7) calendar days before the RFP submittal deadline. The request must be addressed to Carl Bottoms, Procurement Supervisor, at the address stated below. Any information given to a prospective proposer about this solicitation will be furnished to all other prospective respondents as a written amendment to the solicitation.

Late submissions will not be accepted. Submissions received prior to the opening will be held in confidence until the opening. Submissions will be evaluated on the criteria stated in the RFP. After evaluation of the responses, the Contract will be awarded to the proposer/s representing the “Best Value” to SAHA after preferences for Section 3 business concerns are considered. The resulting Contract may be funded through Section 3 covered assistance and as such will be subject to Section 3, 24 CFR Part 135. SAHA and its affiliated entities reserve the right to reject any and all submissions.

The Request for Qualifications can be obtained by calling 210-477-6059 or online at <http://www.saha.org> or <https://nahro.economicengine.com>.

Contact Person: Carl Bottoms
Procurement Supervisor
(210) 477-6165

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

HOUSING AUTHORITY OF THE
CITY OF SAN ANTONIO, TEXAS

By: _____
Lourdes Castro Ramirez
President and CEO

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RFP INFORMATION AT A GLANCE

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| SAHA CONTACT PERSON | Carl Bottoms, Procurement Supervisor 818 S. Flores San Antonio, TX 78204-1400 carlton_bottoms@saha.org Phone: 210-477-6165 Fax: 210-477-6167 |
| HOW TO OBTAIN THE RFP DOCUMENTS ON THE APPLICABLE INTERNET SITE | 1. Access www.saha.org . 2. Drag your pointer over "Business with SAHA" and click on "Current Bids". 3. Follow the listed directions or 4. Access http://nahro.economicengine.com . |
| HOW TO FULLY RESPOND TO THIS RFP BY SUBMITTING A PROPOSAL SUBMITTAL | Submit 1 original and 3 exact copies of your proposal to the SAHA Procurement Dept. following the format as described under Item 5, Proposal Format. |
| DATE ISSUED | August 8, 2011 |
| PRE-SUBMITTAL MEETING | August 19, 2011 at 10:00 A.M., SAHA Central Office, 818 S. Flores, San Antonio, TX 78204 |
| PROPOSAL SUBMITAL RETURN & DEADLINE | September 13, 2011, 11:00 A.M. Central Time SAHA Procurement Dept. 818 S. Flores, San Antonio, TX 78204 |
| ANTICIPATED APPROVAL BY THE BOARD | October 2011 |

INTRODUCTION

The San Antonio Housing Authority (SAHA) is a public housing agency created by resolution of the City of San Antonio in 1938 pursuant to the Texas Housing Authorities Law (now Chapter 392 of the Texas Local Government Code) and federal law. SAHA is a unit of government and its functions are essential governmental functions. The property of SAHA is used for essential public and governmental purposes and is exempt from all taxes, including sales tax on all its purchases of supplies and services.

SAHA enters into and executes contracts and other instruments that are necessary and convenient to the exercise of its powers. SAHA maintains contractual arrangements with United States Department of Housing and Urban Development (HUD) to manage and operate its low rent public housing program and administers the Section 8 Housing Assistance Payments Programs. SAHA programs are federally funded along with development and modernization grants and rental income.

Its primary activity is the ownership and management of over 6,300 public housing units. It also administers rental assistance for almost 12,000 privately owned rental units through the Section 8 program. It operates and manages its housing developments to provide decent, safe, sanitary and affordable housing to low income families, the elderly, and the disabled, and implements various programs designed and funded by HUD.

SAHA has created a number of affiliated public facility corporations ("PFCs") pursuant to Chapter 303 of the Texas Local Government Code (the Public Facility Corporation Act). In some instances, these PFCs own projects. In other cases, PFCs or other related entities serve as partners in partnerships that have been awarded low-income housing tax credits. SAHA's affiliated entities own and operate over 3,000 units of affordable housing.

SAHA staff also manages the San Antonio Housing Finance Corporation ("Finance Corporation"), which is primarily a conduit issuer of bonds for developers of affordable housing projects. The Finance Corporation was created pursuant to Chapter 394 of the Texas Local Government Code (the Texas Housing Finance Corporations Act). When used herein, "SAHA" shall include its affiliated entities.

REQUEST FOR PROPOSAL

Paint the Exterior of the Buildings at Raymundo Rangel and Christ the King Apts.

1.0 GENERAL INFORMATION

- 1.1 **Statement of Purpose:** The Housing Authority of the City of San Antonio and its affiliated entities (SAHA) is seeking proposals from independent contractors with demonstrated professional competence and experience to **Paint the Exterior of the Buildings at Raymundo Rangel and Christ the King Apts.**
- 1.2 Prospective proposers acknowledge by downloading and receiving the RFP documents and/or by submitting a proposal that the submission of a proposal to SAHA is not a right by which to be awarded a contract, but merely is an offer by the prospective proposer to perform the requirements of the RFP documents in the event SAHA decides to consider to award a contract to that proposer.
- 1.3 **Definitions:** Throughout this Request for Proposal and all resulting documents, the terms below shall be defined as follows:
- 1.3.1 **“Best Value”** means that SAHA will in an evaluation of each proposal submittal, consider factors other than just cost in making the award decision.
- 1.3.2 **“Contract Administrator (CA)”** SAHA Director of Procurement or his/her designated replacement.
- 1.3.3 **“Contracting Officer”** when named within an RFP document shall refer to the SAHA President and CEO or his/her designee.
- 1.3.4 **“Contract”** refers to the fully executed written agreement that ensues from the RFP. Whereas all RFP documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within an RFP document; such is referring to both the RFP documents and the ensuing contract document.
- 1.3.5 **“Contractor”** and the term "successful proposer" may be used interchangeably.
- 1.3.6 **“Day(s)”** unless otherwise specified, shall refer to calendar days.
- 1.3.7 **“HUD”** is the United States Department of Housing and Urban Development. HUD is the Federal agency from which SAHA receives funding; however, pertaining to this RFP, correspondences, including proposal submittals, received from each proposer must exhaust all

provisions contained herein prior to contacting HUD (i.e. in the case of a protest).

- 1.3.8** “**Herein**” shall refer to all documents issued pursuant to the noted RFP, including the RFP documents and the attachments.
- 1.3.9** “**President & CEO**” is the SAHA President and Chief Executive Officer.
- 1.3.10** “**Offer**” is the proposal submittal that the proposer delivers to SAHA in response to the RFP.
- 1.3.11** “**Offeror**” or “**Offerors**” are the proposer or proposers.
- 1.3.12** “**Parties**” When “the parties,” “both parties” and “either party” is stated within the RFP documents or the contract, such refers to SAHA and the successful proposer(s).
- 1.3.13** “**Proposal**” and/or “**Proposal Submittal or Bid**” is the "hard copy" document that the proposer is required to, as detailed within the RFP document, deliver to SAHA.
- 1.3.14** “**Protestant**” is a prospective proposer or proposer(s) who feel(s) that he/she has been treated inequitably by SAHA and wishes SAHA to correct the inequitable condition or situation. To be eligible to file a protest with SAHA pertaining to an RFP or contract, the protestant must have been involved in the RFP process in some manner as a prospective proposer or proposer.
- 1.3.15** “**Prospective Proposer**” or “**Proposer or Bidders**” A prospective proposer is a firm or individual who has been notified of the RFP solicitation and/or who has requested and/or received the RFP documents and is considering responding with a proposal; a proposer is a firm or individual who has submitted a proposal in response to the RFP. All terms and conditions shall apply equally to all prospective proposers as well as proposers, though prospective proposers may not, after the deadline set for receiving proposals, receive further notices pertaining to that RFP--meaning, certain notices are only delivered to proposers and not to prospective proposers.
- 1.3.16** “**Request For Proposals**” (RFP) is the competitive proposal process allowed by HUD, especially as defined within Chapter 7 of HUD Procurement Handbook 7460.8 REV 2.

- 1.3.17** “**RFP Document(s)**” When stated in the singular or the plural form, such refers to the body of documents, including attachments and the information posted on the <https://nahro.economicengine.com> Internet site and <http://www.saha.org>, that SAHA makes available to all prospective proposers wherein are detailed SAHA's requirements.
- 1.3.18** “**SAHA**” is the Housing Authority of the City of San Antonio, Texas and all its affiliated entities. Unless otherwise defined herein or within the ensuing contract, whenever the term "SAHA" is used without clearly designating a responsible SAHA staff person, the proposer(s) may assume that responsibility for that item rests with the SAHA CA.
- 1.4** **Non-Mandatory Pre-Proposal Conference:** A pre-proposal conference will be held on August 19, 2011 at 10:00 a.m. Central Time at SAHA Central Office, located at 818 South Flores, San Antonio, Texas. The purpose of this conference is to assist prospective proposers in the full understanding of the RFP documents so that proposers are confident in submitting an appropriate proposal; therefore, at this conference, SAHA will conduct an overview of the RFP documents, including attachments. Because the purpose of this conference is to review the RFP documents, attendees should bring a copy of the RFP documents to this conference. **SAHA will not distribute at this conference any copies of the RFP documents.** Questions concerning the contents of the project and procedural aspects of the RFP will be answered at this time; however, the CA may require that some questions be delivered in writing prior to a response. Any questions not answered during the conference will be responded to in writing and an addendum posted on SAHA’s website: www.saha.org and <https://nahro.economicengine.com>. All prospective proposers are encouraged to attend; however, if proposers do not plan to attend the conference, any questions or request for information must be submitted in writing to the CA seven (7) days prior to the proposal submission deadline.
- 1.5** **Proposal Submission Deadline:** **September 13, 2011** at 11:00 a.m. (Central Time) at SAHA Central Office, 818 S. Flores, San Antonio, Texas
- 1.6** **Proposer’s Responsibilities-Contact with SAHA:** It is the responsibility of the proposer to address all communication and correspondences pertaining to this RFP process to the CA only. Proposers must not make inquiry or communicate with any other SAHA staff member or official (including members of the Board of Commissioners) pertaining to this RFP. Failure to abide by this requirement may be cause for SAHA to not consider a proposal submittal received from any proposer who has not followed this directive. During the RFP solicitation process, the SAHA CA will not conduct any ex parte conversations which may give one prospective proposer an advantage over other prospective proposers.

1.7 Type of Contract resulting from RFP: A Firm Fixed-Fee

2.0 SAHA'S RESERVATION OF RIGHTS

- 2.1 SAHA reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by SAHA to be in its best interests.
- 2.2 SAHA reserves the right not to award a contract pursuant to this RFP.
- 2.3 SAHA reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon 14 days written notice to the successful proposer(s).
- 2.4 SAHA reserves the right to determine the days, hours and locations that the successful proposer(s) shall provide the services called for in this RFP.
- 2.5 SAHA reserves the right to retain all proposals submitted and not permit withdrawal for a period of 60 days subsequent to the deadline for receiving proposals without the written consent from the CA.
- 2.6 SAHA reserves the right to negotiate the fees proposed by all proposers. If such negotiations are not, in the opinion of SAHA's CA successfully concluded within a reasonable timeframe as determined by SAHA, SAHA shall retain the right to end such negotiations.
- 2.7 SAHA reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.
- 2.8 SAHA shall have no obligation to compensate any proposer for any costs incurred in responding to this RFP.
- 2.9 SAHA reserves the right to at any time during the RFP or contract process to prohibit any further participation by a proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein. Each prospective proposer further agrees that he/she will inform SAHA's CA in writing within five (5) days of the discovery of any item that is issued thereafter by SAHA that he/she feels needs to be addressed. Failure to abide by this timeframe shall relieve SAHA, but not the prospective proposer, of any responsibility pertaining to such issue.
- 2.10 SAHA reserves the right to, prior to award, revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the RFP documents issued, within any attachment or drawing, or within any

addenda issued. All addenda will be posted on SAHA's website www.saha.org and <https://nahro.economicengine.com>. Such changes that are issued before the proposal submission deadline shall be binding upon all prospective proposers.

- 2.11** In the case of rejection of all proposals, SAHA reserves the right to advertise for new proposals or to proceed to do the work otherwise, if in the judgment of SAHA, the best interest of SAHA will be promoted.
- 2.12** SAHA reserves the right to, without any liability; cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties.
- 2.13** SAHA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to SAHA, if:
 - 2.13.1** Funding is not available,
 - 2.13.2** Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,
 - 2.13.3** SAHA's requirements in good faith change after award of the contract.
- 2.14** SAHA reserves the right to make an award to more than one proposer based on ratings or to make an award with or without negotiations or Best and Final Offers (BAFO).
- 2.15** SAHA 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 SAHA within two (2) days of written request.
- 2.16** SAHA 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 RFP and any resulting contract.
- 2.17** SAHA reserves the right to contact any individuals, entities, or organizations that have had a business relationship with the proposer regardless of their inclusion in the reference section of the proposal submittal.
- 2.18** SAHA reserves the right to add or delete locations and/or properties for services on an as-needed basis.
- 2.19** In the event any resulting contract is prematurely terminated due to non-performance and/or withdrawal by the Contractor, SAHA 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 services and/or cover the difference of a higher cost (difference between terminated Contractor's rate and new company's rate) beginning the date of Contractor's termination through the contract expiration date.

3.0 SCOPE OF PROPOSAL/TECHNICAL SPECIFICATIONS

3.1 Specifications and Drawings are Attachment F to this RFP

3.2 Locations:

Christ the King, 4502 W. Martin S., San Antonio, TX 78237
Raymundo Rangel, 1021 S. San Eduardo, San Antonio, TX 78237

3.3 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 RFP.

3.4 PRODUCT QUALITY STANDARD:

Contractor shall use products that meet or exceed the specifications included herein and in all cases meet or exceed the requirements of the HUD and local building codes.

3.5 INSPECTIONS:

All renovations, replacements & repairs shall be subject to inspection and approval by a SAHA representative. The final inspection shall be conducted by all parties responsible for the job especially SAHA's representative and the Contractor's representative.

3.6 LICENSING:

Contractor/s shall be licensed as required by the jurisdiction in which the project is to be performed and the license shall be current and in good standing. Copies of the licenses shall be placed under Tab 10.

3.7 GENERAL CONTRACTOR REQUIREMENTS:

3.7.1 Contractor is responsible for field verifying all quantities and dimensions.

3.7.2 Responsibility for Subcontractors: All requirements for the "Prime" contractor shall also apply to any and all subcontractors. It is the Prime Contractors' responsibility to insure the compliance of the subcontractors. Regardless of subcontracting, the Prime Contractor remains liable to SAHA for the performance and compliance of the subcontractors.

3.8 All products listed herein are to reference a known quality and level of performance. SAHA will consider alternate brands of equal quality and performance. The Proposer must indicate on the Proposal Fee Sheet if they are proposing an alternate product, and provide complete manufacturer's specification. In all cases SAHA shall be the final determiner of equality. All substitutions will be approved in writing; no oral approvals shall be recognized.

3.9 BONDING:

3.9.1 BONDING: All Surety Bonds shall be issued by companies licensed to do business in the State of Texas, approved by the U.S. Treasury and "A" rated or better by A. M. Best. Acceptable Payment & Performance Bonds shall be provided to SAHA within ten (10) days after Contract execution by both parties. Individual Surety Companies will not be accepted.

3.9.3 Bid Bond:

SAHA requires a Bid Bond for this bid in the amount of 5% of the Base Bid. Bid Bond shall be submitted with the Proposal Fee Sheet. Bid Bond must be submitted with proposal. Proposals without Bid Bond will be rejected.

3.9.4 Performance Bond:

The Contractor must provide SAHA a 100% Performance Bond for total contract value, however if the Contractor is unable to acquire the equitable bonding that is acceptable to SAHA within ten (10) days of signed contract, then the Contractor will be deemed in breach of contract.

3.9.5 Payment Bond:

The Contractor must provide SAHA a 100% Payment Bond for each Project Contract executed by SAHA, however if the Contractor is unable to acquire the equitable bonding that is acceptable to SAHA within ten (10) days of signed contract, then the Contractor will be deemed in breach of contract.

3.9.6 Notice to Proceed:

Start work date will be determined by the SAHA Project Manager and Contractor's Manager. Contractor shall not begin work until a Notice to Proceed is received from SAHA signed by the contracting officer.

- 3.10** Contractor shall perform criminal history checks and drug screening tests on all prospective employees performing work under this RFP and any resulting contract and provide summaries of the results to SAHA CA. Prospective employees whose criminal history check discloses a misdemeanor or felony involving public indecency or harm to persons or property will not be employed to perform work under this RFP 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.
- 3.11** Contractor shall utilize Section 3 residents as defined in Attachment D to perform the requirements under this bid to the greatest extent feasible and shall document such efforts quarterly. There is a 30% goal for hiring Section 3 residents on any contracts resulting from this RFP. Contractors will be evaluated on his performance at achieving this goal and such evaluation shall be a factor in future awards. Contractor must submit a detailed Section 3 utilization plan with bid. Failure to do so can result in disqualification of bid.
- 3.12** EPA Requirements: Contractor must be EPA certified. Contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified by EPA and must follow specific work practices to prevent lead contamination.

This includes, but is not limited to:

Contain the work area.

Minimize dust.

Clean up thoroughly.

Contractors must provide to SAHA and tenants a copy of the EPA pamphlet *“Renovate Right: Important Lead Hazard Information for Families, Childcare Providers and Schools,”* before the renovations start. Federal law requires this in housing, child-care facilities and schools built before 1978 and when renovating six square feet or more of painted surfaces in a room for interior projects or more than twenty square feet of painted surfaces for exterior projects. For a copy of this pamphlet go to

www.epa.gov/lead/pubs/renovaterightbrochure.pdf

4.0 CONDITIONS TO PROPOSE:

- 4.1 Pre-Qualification of Proposers:** Prospective proposers will not be required to pre-qualify in order to submit a proposal. However, all proposers will be required to submit adequate information showing that the proposer is qualified to perform the required work (i.e. Profile of Firm Form (Attachment C). Failure

by the prospective proposer to provide the requested information may, at SAHA's discretion, eliminate that proposer from consideration, provided that all proposers were required to submit the same information.

4.2 RFP Forms, Documents, Specifications and Drawings:

4.2.1 Prior to submitting a proposal in response to the RFP, it shall be each prospective proposer's responsibility to examine carefully and, as may be required, properly complete all documents issued pursuant to this RFP.

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 where provided are descriptive only and indicate type and quality desired. Proposals on brands of like nature and quality will be considered unless specified otherwise. If proposing other than references, proposal 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 proposal submittal. Failure to take exception to specifications or referenced data will require Contractor to furnish specified brand names, numbers, etc.

4.3 Submission and Receipt by SAHA:

4.3.1 Time for Receiving Proposals: Proposals received prior to the proposal submittal deadline at SAHA Central Offices, 818 S. Flores, San Antonio, Texas, shall be securely kept, unopened, by SAHA. The CA, whose duty it is to open such proposals, will decide when the specified time has arrive. No proposal received after the designated deadline shall be considered.

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

4.3.1.2 A total of one (1) original signature copy (marked "ORIGINAL") and three (3) exact copies, with a cover and extending tabs, of the proposal submittal, shall be placed unfolded in a sealed package with the proposer's name and return address and addressed as follows:

RFP # {Insert Number}
{Insert Exact Title of RFP}
{Insert Month, day, year, Time of Bid Opening}
The Housing Authority of the City of San Antonio
Procurement Department
818 S. Flores
San Antonio, Texas 78204

4.3.5 **Withdrawal of Proposals:** Proposals may be withdrawn as detailed within Section 5(g) of HUD-5369 (10/02). Negligence on the part of the proposer in preparing his/her proposal confers no right of withdrawal or modification of his/her proposal after such proposal has been received and opened.

4.3.5.1 **Procedure to withdraw proposal submittal:** A request for withdrawal of a proposal due to a purported error need not be considered by SAHA unless filed in writing by the proposer within 48 hours after the proposal deadline. Any such request shall contain a full explanation of any purported error and shall, if requested by SAHA, be supported by the original calculations on which the proposal was computed, together with a certification and notarization thereon that such computation is the original and was prepared by the proposer 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 SAHA retains the right to accept or reject any proposed withdrawal for a mistake.

4.4 **Exceptions to Specifications:**

4.4.1 A prospective proposer may take exception to any of the proposal documents or any part of the information contained therein, by submitting, in writing to the SAHA CA, at least seven (7) days prior to the proposal submission deadline, a complete and specific explanation as to what he/she is taking exception. Proposed alternate documents or information must also be included. SAHA reserves the right to agree with the prospective proposer and issue a

revision to the applicable RFP requirements, or may reject the prospective proposer's request.

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

5.0 FORM OF PROPOSAL: The proposal submittal shall be submitted in the following manner. Failure to submit the proposal in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that proposal, and may, at the discretion of the SAHA CA, eliminate that proposer from consideration for award.

5.1 Required Forms: All required forms furnished by SAHA as a part of the RFP document issued shall, as instructed, be fully completed and submitted by the proposer. 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 proposer must "edit" the form back to its original form (for example, signature lines must appear on the page which the line was originally intended).

5.2 Tabbed Proposal Submittal: SAHA intends to retain the successful proposer pursuant to a "Best Value" basis, not a "Low Bid" basis. Therefore, so that SAHA can properly evaluate the proposals received, all proposals submitted in response to this RFP must be formatted in accordance with the sequence noted below. Each category must 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 proposal and labeled with the corresponding tab reference noted below. None of the proposed services may conflict with any requirement SAHA has published herein or has issued by addendum.

5.2.1 Tab 1, Form of Proposal: This Form is attached hereto as Attachment A to this RFP document. This one-page Form must be fully completed, and submitted under this tab as a part of the proposal submittal. The proposed fee section of this form will be intentionally left blank in the proposal submittals. The Fee Proposal Sheet & Cost Analysis (Attachment A) must be completed separately and placed in a sealed envelope. **DO NOT INCLUDE THE PROPOSED FEE SHEET, COST ANALYSIS, OR BID BOND IN THE PROPOSAL SUBMITTAL. THEY MUST BE SUBMITTED SEPARATELY IN A SEALED ENVELOPE AT THE TIME OF**

**PROPOSAL SUBMITTAL AND ATTACHED ONLY TO THE
"ORIGINAL" COPY.**

- 5.2.2 Tab 2, HUD Forms and Conflict of Interest Questionnaire:** These Forms are attached hereto as Attachment B to this RFP document and must be fully completed, executed where provided thereon and submitted under this tab as a part of the proposal submittal.
- 5.2.3 Tab 3, Profile of Firm Form:** The Profile of Firm Form is attached hereto as Attachment C to this RFP document. This two-page Form must be fully completed, executed and submitted under this tab as a part of the proposal submittal.
- 5.2.4 Tab 4, Managerial Capacity, Financial Viability:** The Proposer must submit under this tab a concise description of its managerial and financial capacity and utilization plan to deliver the proposed services, to include:

 - 5.2.4.1 Experience:** Firm's experience in the operation of projects of this or greater scope. List the projects that support your company's experience.
 - 5.2.4.2 Financial Viability:** Financial ability to provide such services to include copies of most recent financial statements and most recent audit if available.
 - 5.2.4.3 Project Management:** Project Manager and staff's painting expertise, include resumes of project manager and key staff.
- 5.2.5 Tab 5, Client Information:** The proposer shall submit three former or current clients, preferably other than SAHA, for whom the proposer has performed similar or like services to those being proposed herein. The list shall, at a minimum, include for each reference:

 - 5.2.5.1** The client's name
 - 5.2.5.2** The client's telephone number and address
 - 5.2.5.3** Description of services provided to the client
 - 5.2.5.4** Date of services; include completion time frame and days over/under schedule
 - 5.2.5.5** Pictures of recent projects and completed projects
 - 5.2.5.6** Warranty claims
- 5.2.6 Tab 6, Joint Venture/Subcontractors:** The proposer shall identify hereunder if this proposal is a joint venture or partnership with another entity. Please remember that all information required from

the proposer under the proceeding tabs must also be included for any joint venture or partner. One entity must be designated as the primary contact for the joint venture or partnership in the proposal. Proposers must also provide SAHA with the name, contact information to include address, phone number, email address, core area of business, and years of expertise for each subcontractor and supplier intended to be utilized by the Proposer to perform the services requested in this RFP. Proposer must realize that the actual usage of the subcontractor will be contingent upon SAHA's prior written approval, and Proposer remains responsible to SAHA for any and all services and goods provided pursuant to this RFP and any resulting contract. If no joint venture exists or subcontractors will not be utilized, please provide this statement, "NO JOINT VENTURE/ NO SUBCONTRACTORS" "Contractor intends to perform all work detailed in this RFP", in this section.

- 5.2.7 Tab 7, Section 3 Business Preference:** Any Proposer claiming a Section 3 Business Preference, he/she shall under this tab include the fully completed and executed Section 3 Business Preference Certification Form attached hereto as Attachment D and any documentation required by that form. Please include all supporting documentation with the bid. Supporting documentation includes but is not limited to income tax returns for low-income employees for whom Proposer is seeking the preference, verification of total number of full-time employees, names, addresses and social security numbers of low-income residents who are proposer's employees. **Note: If you qualify as a Section 3 Business Concern, your proposal will receive a preference over other proposals as specified in Attachment D.**
- 5.2.8 Tab 8, Small/Minority/Disadvantaged/Veteran Business Enterprise Utilization Plan:** The Proposer is required to include hereunder a plan to assist SAHA in its responsibility to foster the development of small and historically under-utilized business enterprises by identifying subcontracting opportunities with SWMBE companies. Contractor is required to show a good faith effort to employ SWMBE firms in the execution of this project. **FAILURE TO PROVIDE A S/W/MBE PLAN MAY CAUSE THE RESPONSE TO BE DISQUALIFIED AS NON-RESPONSIVE.**
- 5.2.9 Tab 9, Section 3 Business Plan:** Proposers are required to submit a detailed utilization plan outlining their efforts to employ qualified Section 3 businesses or persons to assist SAHA in attaining the ten percent goal as referenced in Attachment D. This may be satisfied by new hires, training or mentoring of Section 3 persons. **FAILURE TO PROVIDE A SECTION 3 PLAN**

MAY CAUSE THE RESPONSE TO BE DISQUALIFIED AS NON-RESPONSIVE.

5.2.10 Tab 9, Other Information: The Proposer may include hereunder any other general information that the proposer believes is appropriate to assist SAHA in its evaluation. If no pertinent information is to be placed under this tab, please place hereunder a statement that "NO INFORMATION IS BEING PLACED HEREUNDER."

5.3 Proposed Costs:

5.3.1 Unit Costs:

All fees are all-inclusive of all related costs that a proposer will incur to provide the noted services in compliance with this RFP, including, but not limited to: employee wages and benefits, clerical support, overhead, profit, licensing, insurance, materials, supplies, tools, equipment, long distance telephone calls, document copying and motor vehicle fuel.

5.4 Proposal Submittal Binding Method: It is preferable and recommended that the proposer bind the proposal submittals in such a manner that SAHA can, if needed, remove the binding (i.e. "comb-type, etc.) or remove the pages from the cover (i.e. 3-ring binder, etc.) to make copies then return the proposal submittal to its original condition.

6.0 PROPOSAL EVALUATION:

6.1 Proposal Opening Results: It is understood by all proposers/prospective proposers that the proposals are publicly opened and the results will be a matter of public record. When SAHA has concluded all evaluations, has chosen a final top-rated proposer, has completed the award and is ready to issue such results, SAHA shall notify the successful proposer.

6.1.1 All proposal documents submitted by the proposers are generally a matter of public record unless information is deemed to be proprietary.

6.2 Evaluation: Each proposal submittal will be evaluated based upon the following information and criteria:

6.2.1 Initial Evaluation- Responsiveness: Each proposal received will first be evaluated for responsiveness (i.e., meeting the minimum requirements as stated in the RFP).

6.2.2. Evaluation- Responsibility: SAHA shall select a minimum of a three-person panel, using the criteria established below, to evaluate each of the proposals submitted in response to this RFP to determine the proposer's level of responsibility. SAHA will consider capabilities or advantages that are clearly described in the proposal that may be confirmed by oral presentations, site visits, demonstrations, and references contacted by SAHA. All proposals would be evaluated as to their overall value to SAHA.

6.2.3 Restrictions: All persons having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a proposer will be excluded from participation on SAHA's evaluation panel. Similarly, all persons having ownership interest in and/or contract with a proposer will be excluded from participation on SAHA's evaluation panel.

6.2.4 Evaluation Criteria: The evaluation panel will use the following criteria to evaluate each proposal:

- 5-Excellent
- 4-Above Average
- 3-Average
- 4-Below Average
- 5-Non Responsive

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| No.. | Points | Weighted Average | CRITERION DESCRIPTION |
|------|--------|--------------------|--|
| 1 | 0-5 | 20% | Relevant experience: Firm's experience in the operation of projects of this or greater scope. List the projects that reflect your company's experience. |
| 2 | 0-5 | 10% | Financial Viability: Financial ability to provide such services to include copies of most recent financial statements and most recent audit if available. |
| 3 | 0-5 | 20% | Project Management Ability: Project Manager and staff's painting expertise, include resumes of project manager and key staff. |
| 4 | 0-5 | 20% | Strength of the Section 3 Plan |
| 5 | 0-5 | 5% | Strength of S/W/MBE Plan |
| 6 | 0-5 | 25% | Price proposal: base price to provide services |
| | | 100% | Total Points for Criteria |
| | | MAX. POINTS | HUD SECTION 3 |
| 1 | | 5 | Section 3 Preference: A firm may qualify for Section 3 status for up to an additional 5 points. |
| a | | 5 | Priority I: As detailed in Attachment D |
| b | | 4 | Priority II: As detailed in Attachment D |
| c | | 3 | Priority III: As detailed in Attachment D |
| d | | 2 | Priority IV: As detailed in Attachment D |

6.2.5 Competitive Range: Once a competitive range is established from the proposals submitted, SAHA reserves the right to require Proposers within the competitive range to make a presentation to the evaluation committee. Presentations, if requested, shall be a factor in the award recommendation.

6.2.6 Burden of Proof: If requested by SAHA, it shall be the responsibility of the proposer(s) to furnish SAHA with sufficient data or physical samples, within a specified time, so that SAHA may determine if the goods or services offered conform to the specifications.

6.3 Mistake in Proposal Submitted:

6.3.1 Unless otherwise prohibited within the RFP documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at SAHA's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to the SAHA CA, for his/her review. This mistake must be corrected before the issuance of any contract documents. Such correction shall not operate to give any proposer an advantage over another.

6.4 Irregular Proposal Submittal: A proposal shall be considered irregular for any one of the following reasons, any one or more of which may, at SAHA's discretion, be reason for rejection:

6.4.1 If the forms furnished by SAHA are not used or are altered or if the proposed costs are not submitted as required and where provided.

6.4.2 If all requested completed attachments do not accompany the proposal submittal.

6.4.3 If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite or ambiguous as to its meaning or give the proposer submitting the same a competitive advantage over other proposers.

6.4.4 If the proposer adds any provisions reserving the right to accept or reject any award or to enter into a contract pursuant to an award.

6.4.5 If the individual cost proposal items submitted by a specific proposer are unbalanced in the sense that the listed price of any cost item departs by more than 25% from SAHA's cost estimate for that item.

6.5 Disqualification of Proposers: Any one or more of the following shall be considered as sufficient for the disqualification of a prospective proposer and the rejection of his/her proposal:

6.5.1 Evidence of collusion among prospective proposers. Participants in such collusion will receive no recognition as bidders or proposers for any future work with SAHA until such participant shall have been reinstated as a qualified bidder or proposer. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.

- 6.5.2** More than one proposal for the same work from an individual, firm, or corporation under the same or different name(s).
- 6.5.3** Lack of competency, lack of experience and/or lack of adequate machinery, plant and/or other resources.
- 6.5.4** Unsatisfactory performance record as shown by past work for SAHA or with any other local, state or federal agency, judged from the standpoint of workmanship and progress.
- 6.5.5** Incomplete work, which in the judgment of SAHA, might hinder or prevent prompt completion of additional work, if awarded.
- 6.5.6** Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
- 6.5.7** Failure to comply with any qualification requirements of SAHA.
- 6.5.8** Failure to list, if required, all subcontractors (if subcontractors are allowed by SAHA) who will be employed by the successful proposer(s) to complete the work of the proposed contract.
- 6.5.9** As required by the RFP documents, failure of the successful proposer to be properly licensed by the City, County and/or the State of Texas and/or to be insured by a commercial general liability policy and/or worker's compensation policy and/or business automobile liability policy, if applicable. If a proposer receives an award unless otherwise waived in the Contract, the Contractor will be required to provide original certificates of the following insurance requirements to SAHA within 10 days of contract signature:

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| Professional Liability | Required Limits |
|--|---|
| SAHA 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 SAHA such as appraisers, inspectors, attorneys, engineers or consultants. | \$1,000,000 |
| Business Automobile Liability | Required Limits |
| SAHA and its affiliates must be named as an additional insured and as the certificate holder. | \$500,000 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 A waiver of Subrogation in favor of SAHA must be included in the Workers' Compensation policy. SAHA and its affiliates must be named as a Certificate Holder on both. | Statutory \$500,000 |
| Commercial General Liability | Required Limits |
| This is required for any vendor who will be doing hands on work at SAHA properties. SAHA and its affiliates must be named as an Additional Insured and as the Certificate Holder. | \$1,000,000 per accident \$2,000,000 aggregate |

6.5.10 Any reason to be determined, in good faith, to be in the best interests of SAHA.

6.6 Award of Proposal(s): The successful proposer shall be determined by the top-rated responsive and responsible proposer as determined by the evaluation process detailed above including any preferences for Section 3 Business Concerns or Employees and any further negotiations, provided his/her proposal 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 SAHA, to the bests interests of SAHA to accept the proposal. SAHA reserves the right to award multiple awards based upon evaluation ratings.

7.0 Right to Protest:

7.1 Rights: Any prospective or actual proposer, offeror, or contractor who is allegedly aggrieved in connection with the solicitation of a proposal or award of a contract, shall have the right to protest. Such right only applies to deviations from laws, rules, regulations, or procedures. Disagreements with the evaluators' judgments as to the number of points scored are not reasons for an appeal. An alleged aggrieved protestant claiming this right is hereby informed

that these regulations do not provide for administrative appeal as a matter of right for that alleged aggrieved protestant.

7.1.1 An alleged aggrieved “protestant” is a prospective proposer or proposer who feels that he/she has been treated inequitably by SAHA and wishes SAHA to correct the alleged inequitable condition or situation. To be eligible to file a protest with SAHA pertaining to an RFP or contract, the alleged aggrieved protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e. recipient of the RFP documents) when the alleged situation occurred. SAHA has no obligation to consider a protest filed by any party that does not meet these criteria.

7.2 Procedure to Protest: An alleged aggrieved protestant shall comply with the following protest procedures, and failure to comply in the manner prescribed shall automatically relieve SAHA from accepting or considering that protest:

7.2.1 The alleged aggrieved protestant must file, in writing, to the SAHA CA the exact reason for the protest, attaching any supportive data. The protestant must state within the written protest document specifically (not by inference) what action by SAHA or condition is being protested as inequitable, making, where appropriate specific reference to the RFP documents issued and including the specific citation of law, rule, regulation, or procedure upon which the protest is based. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve SAHA from any responsibility to take any corrective action, and as a result of noncompliance, the appeal will be dismissed without further review.

7.2.2 Any actual or prospective contractor may protest the solicitation or award of a contract for material violation of SAHA’s procurement policy. Any protest against a SAHA solicitation must be received before the due date for receipt of bids or proposals 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 Director of Procurement. All appeals shall be marked as follows and sent to the address listed below:

APPEAL OF RFP NO. {Insert RFP # here}
San Antonio Housing Authority
Attn: Stacy Padgett
Director of Procurement
818 South Flores,
San Antonio, TX 78204

8.0 Disputes under the contract:

8.1 Procedures: In the event that any matter, claim, or dispute arises between the parties, whether or not related to this RFP or any resulting contract, both parties shall be subject to nonbinding mediation if agreed to by both parties within thirty 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 selection of the arbitrator.

9.0 Additional Considerations:

9.1 Non-Escalation: Unless otherwise specified within the RFP documents, the unit prices reflected on the bid shall remain firm with no provision for price increases during the term of any resulting contract.

9.2 Required Permits and Licenses: Unless otherwise stated in the RFP documents, all Federal, State or local permits and licenses which may be required to provide the services ensuing from any award of this RFP, whether or not they are known to either the SAHA or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the successful proposer and all offers submitted by the proposer shall reflect all costs required by the successful proposer to procure and provide such necessary permits or licenses.

9.3 Taxes: All persons doing business with SAHA are hereby made aware that SAHA is exempt from paying Texas State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.

9.4 Government Standards: It is the responsibility of the prospective proposer to ensure that all items and services proposed conform to all local, state and federal law concerning safety (OSHA) and environmental control (EPA and Bexar County Pollution Regulations) and any other enacted ordinance, code, law or regulation. The successful proposer 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 proposer for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.

9.5 Free on Board (FOB) and Delivery: All costs submitted by the successful proposer shall reflect the cost of delivering the proposed items and/or services to the locations specified within the RFP documents or within the Contract. All costs in the proposal submittal shall be quoted as FOB Destination, Freight Prepaid and allowed unless otherwise stated in this RFP.

9.5.1 The successful proposer 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 proposer. Upon default, the successful proposer agrees that SAHA may, at its option, rescind the finalized contract under the termination clause herein and seek compensatory damages as provided by law.

9.6 Work on SAHA Property: If the successful proposer's work under the contract involves operations by the successful proposer on SAHA premises, the successful proposer shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, shall indemnify SAHA, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful proposer, its agents, employees, or subcontractors.

9.7 Estimated Quantities: Unless otherwise indicated, the quantities reflected within the RFP documents, to the best of SAHA's knowledge, reflect projected consumption data. These quantities are not meant to infer or imply actual consumption figures or quantities that will be purchased by SAHA under the finalized contract; but, pursuant to all RFP documents, these quantities will be used only as calculation figures to determine the successful proposer. SAHA makes no guarantee as to the actual quantity that will be purchased under the Contract resulting from this RFP.

9.8 Warranty:

9.8.1 The services provided under the contract shall conform to all information contained within the RFP 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. All services and goods provided pursuant to this RFP and the resulting contract shall be covered by the most favorable commercial warranties given to any customer for same or similar supplies or services, but in any event such goods and services shall be warranted for at least a period of one (1) year.

9.8.2 The liability of the successful proposer to SAHA (except as to title) arising out of the furnishing of services/goods under the terms of the

contract shall not exceed the correcting of the defect(s) in the services/goods provided under the contract, and upon expiration of the warranty period all such liability shall terminate except under the warranty for merchantability and the warranty of fitness for a particular purpose. However, this limitation does not preclude SAHA from seeking indirect, consequential, incidental exemplary, and liquidated damages.

- 9.9 Official, Agent and Employees of the SAHA Not Personally Liable:** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the SAHA 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.
- 9.10 Subcontractors:** Unless otherwise stated within the RFP documents, the successful proposer may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the SAHA CA.
- 9.11 Salaries and Expenses Related to the Successful Proposers Employees:** Unless otherwise stated within the RFP documents, the successful proposer 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 proposer 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.
- 9.12 Independent Contractor:** Unless otherwise stated within the RFP documents or the contract, the successful proposer 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.
- 9.13 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.
- 9.14 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 term or condition 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.

9.15 Time of the Essence: Time is of the essence as to each provision in which a timeframe for performance is provided in this RFP. Failure to meet these timeframes may be considered a material breach, and SAHA may pursue compensatory and/or liquidated damages under the contract.

9.16 Limitation of Liability: In no event shall SAHA be liable to the successful proposer for any indirect, incidental, consequential or exemplary damages.

9.17 Indemnity: The Contractor shall indemnify and hold harmless SAHA 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 personal injury or property damage 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, any subcontractor, or any employee, agent or representative of the Contractor or any subcontractor, **AND REGARDLESS OF WHETHER CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF SAHA. CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS INDEMNITY CONTROLS OVER ALL OTHER PROVISIONS IN THE AGREEMENT, SURVIVES TERMINATION OF THIS AGREEMENT, AND APPLIES TO CLAIMS AND LIABILITY ARISING OUT OF THE SOLE OR CONCURRENT NEGLIGENCE OF SAHA.**

9.18 Public/Contracting Statutes. SAHA is a governmental entity as that term is defined in the procurement statutes. SAHA and this RFP and all resulting contracts are subject to federal, state and local laws, rules, regulations and policies relating to procurement.

9.19 Termination: Any contract resulting from this RFP may be terminated under the following conditions:

9.19.1 By mutual consent of both parties, and

9.19.2 For Termination For Cause: As detailed within HUD-5370 (11/2006), attached hereto:

9.19.2.1 SAHA may terminate any and all contracts for default at any time in whole or in part, if the contractor fails to perform any of the provisions of any contract, so fails to pursue the work as to endanger performance in accordance with the terms of the RFP or any resulting contracts, and after receipt of written notice from SAHA,

fails to correct such failures within seven (7) days or such other period as SAHA may authorize or require.

9.19.2.1.1 Upon receipt of a notice of termination issued from SAHA, the Contractor shall immediately cease all activities under any contract resulting from this RFP, unless expressly directed otherwise by SAHA in the notice of termination.

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

9.19.3 Termination for Convenience: In the sole discretion of the CEO, SAHA may terminate any and all contracts resulting from this RFP in whole or part upon fourteen days prior notice to the Contractor when it is determined to be in the best interest of SAHA.

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

9.19.5 In the event the resulting contract from this RFP is terminated for any reason, or upon its expiration, SAHA 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 shall transfer title and deliver to SAHA any partially completed work products, deliverables, source and object code, or documentation that the Contractor has produced or acquired in the performance of any resulting contract.

9.20 Examination and Retention of Contractor's Records: SAHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under all contracts executed as a result of this RFP, 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 and transcriptions.

9.21 Invoicing

- 9.21.1** Contractor(s) will only be allowed to invoice for the cost of services/goods in compliance with his/ her proposal or best and final offer as accepted by SAHA.
- 9.21.2** Invoices must contain a complete description of the work or service that was performed, the contract price for each service, the purchase order number, date of service, and address of service location or delivery address.
- 9.21.3** Contractor(s) must submit a separate invoice for each purchase order issued by SAHA. Each property location must have a separate and unique purchase order number.
- 9.21.4** Payment shall be made by SAHA's Fiscal Department within 30 days of the receipt of a properly submitted invoice and SAHA's acceptance of Contractor's work unless SAHA earns the discount for early payment offered by Contractor. One (1) original invoice with supporting documentation shall be promptly submitted, to:
- San Antonio Housing Authority
Finance and Accounting
P.O. Box 830428
San Antonio, TX 78283-0428
Or
Email: accountspayable@saha.org
- 9.21.5** Upon the Award of Contract, Contractor shall receive a request from SAHA to process all payments electronically to insure prompt and efficient payment of all invoices.
- 9.21.6** If offered by Contractor, SAHA seeks a discount for early payment. SAHA shall only take such a discount if earned.
- 9.21.7** All invoices shall be submitted to SAHA within 30 days of receipt of goods or services. SAHA reserves the right to deny payment if not invoiced within this time frame.
- 9.21.8** If progress payments are applicable to a contract resulting from this RFP, payments shall be per HUD 5370 (11/2006). Contractor shall submit a graph showing progress of the project with each progress payment requested.

9.22 Interlocal Participation

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

9.22.2 In no event shall SAHA be considered a dealer, remarketer, agent or other representative of Contractor or Entity. Further, SAHA 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.

9.22.3 Purchase orders shall be submitted to Contractor by the individual Entity.

9.22.4 SAHA 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 SAHA.

9.23 Right to data and Patent Rights: SAHA shall have exclusive ownership of all, proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of any resulting contract, 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.

9.24 Lobbying Certification: By proposing to do business with SAHA or by doing business with SAHA, each proposer certifies the following:

9.24.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress, 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.

- 9.24.2** 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- 9.24.3** The successful proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers, (including but not limited to subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- 9.24.4** This clause is a material misrepresentation of fact upon which reliance will be placed when the award is made or a contract is entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.
- 9.25 Executive Order 11246:** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- 9.26 Copeland “Anti-Kickback” Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 9.27 Davis-Bacon Act:** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 9.28 Fair Labor Standards Act:** Both parties hereby agree to comply with the provisions of the Fair Labor Standards Act (29 U.S.C. 201, et seq).
- 9.29 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act:** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in

excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).

- 9.30 Clean Act Air:** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean air Act (42 U.S.C. 1857 (h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) and any amendments.
- 9.31 Energy Policy and Conservation Act:** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 STAT. 871) and any amendments.
- 9.32 Executive Order 11061:** Both parties agree that they will comply with this order, which directs the Secretary of HUD to take all action, which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 9.33 Public Law 88-352, Title VI of the Civil Rights Act of 1964, and its amendments:** Both parties agree that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. SAHA hereby extends this requirement to the Contractor and its subcontractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. Seq.).
- 9.34 Public Law 90-284, Title VIII of the Civil Rights Act of 1968 and its amendments (Fair Housing Act):** Both parties agree to comply and prohibit any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. As a result, SAHA requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 9.35 Age Discrimination Act of 1975 and its amendments:** SAHA requires the Contractor to prohibit discrimination on the basis of age.
- 9.36 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.) and its amendments:** SAHA requires Contractors to comply with this law.
- 9.37 HUD Information Bulletin 909-23:** Contractors shall comply with the following laws and regulations:

- 9.37.1** Notice of Assistance Regarding Patent and Copyright Infringement
- 9.37.2** Clean Air and Water Certification
- 9.37.3** Energy Policy and Conservation Act

9.38 Copy Rights/Rights in Data SAHA has unlimited rights to any data, including computer software, developed by the Contractor in the performance of the Contract specifically:

- 9.38.1** Except as provided elsewhere in this clause, SAHA shall have unlimited rights in data first produced in the performance of this Contract; form, fit, and function data delivered under this Contract; data delivered under this Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Contract; and all other data delivered under this Contract unless provided otherwise for limited rights data or restricted computer software.
- 9.38.2** Contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, unless provided otherwise in this contract; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this contract; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this contract; and establish claim to copyright subsisting in data first produced in the performance of this Contract to the extent provided below.
- 9.38.3** For data first produced in the performance of this Contract, the contractor may establish, without prior approval of the CA, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this Contract. The Contractor grants SAHA and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of SAHA.
- 9.38.4** The Contractor shall not, without the prior written permission of the CA, incorporate in data delivered under this Contract any data not first produced in the performance of this Contract and which contains copyright notice, unless the Contractor identifies such data and grants SAHA a license of the same scope as identified in the preceding paragraph.

9.38.5 SAHA agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this Contract are improperly marked, SAHA may either at its discretion return the data to the Contractor or cancel or ignore the markings.

9.38.6 The Contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the Contractor's obligations under this Contract.

9.38.7 Notwithstanding any provisions to the contrary contained in the Contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this Contract, and irrespective of whether any such contract has been proposed prior to the award of this Contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the Contractor agrees that SAHA shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this Contract. The terms and conditions of any resulting contract, including any commercial lease or licensing contract shall be subject to the following procedures.

9.38.7.1 The restricted computer software delivered under a resulting contract may not be used, reproduced, or disclosed by SAHA except as provided below or as expressly stated otherwise in a resulting contract. The restricted computer software may be used accordingly:

9.38.7.1.1. Used or copied for use in or with the computers for which it was acquired, including use at any SAHA location to which such computer may be transferred;

9.38.7.1.2 Used or copied for use in or with backup computer if any computer for which it was acquired is inoperative;

9.38.7.1.3 Reproduced for safekeeping (archives) or backup purposes;

9.38.7.1.4 Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered,

restricted computer software shall be subject to the same restrictions set forth in a resulting contract; and

9.38.7.1.5 Used or copied for use in or transferred to a replacement computer.

9.39 Additional Information: Each provision of law and each clause, which is required by law to be inserted in this RFP or any contract, shall be deemed to have been inserted herein, and this RFP 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 fore-mentioned statutes, regulations and executive orders are not intended as an indication that such statute, regulation or executive order is necessary applicable nor is an omission of such statute, regulation or executive order intended to indicate that it is not applicable.

9.40 Conflicting Conditions: In the even there is a conflict between the documents comprising this RFP and any resulting contracts, the following order of precedence shall govern: (1) the more restrictive terms of either: any and all attached HUD forms and the term/conditions in the body of any resulting contract; (2) the RFP; 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.

9.41 Interpretations: No official oral interpretation can be made to any Proposer as to the meaning of any instruction, condition, specifications, drawing (if any), or any other document issued pertaining to this RFP. Every request for an official interpretation shall be made by the prospective proposer, in writing at least seven (7) days prior to the submission deadline. Official interpretations will be issued in the form of addenda, which will be posted on www.saha.org and <https://nahro.economicengine.com>; but it shall be the prospective proposer's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the RFP documents and the proposed contract with the successful proposer and all proposers shall be bound by such addenda, whether or not received by the prospective or successful proposer(s).

9.42 Contract Form: SAHA will not execute a contract on the successful Proposer's form. By submitting a proposal, the successful proposer agrees to this condition. However, SAHA will consider any contract clauses that the proposer wishes to include therein, but the failure of SAHA to include such clauses does not give the successful proposer the right to refuse to execute SAHA's contract form. It is the responsibility of each prospective proposer to notify SAHA, in writing, with the proposal submittal of any contract clauses that he/she is not

willing to include in the final executed contract. SAHA will consider such clauses and determine whether or not to amend the Contract.

9.43 Liquidated Damages: For each day that performance under a resulting contract from this RFP is delayed beyond the time specified for completion, the successful proposer shall be liable for liquidated damages in the amount of \$100.00 per day. However, the timeframe for performance may be adjusted at SAHA's discretion in writing and received by the successful proposer prior to default under any resulting contract.

9.43.1 Force majeure: Neither SAHA nor the Contractor shall be held responsible for delays or default caused by fire, flood, riot, acts of God or war where such cause was beyond, respectively, SAHA or Contractor's reasonable control. Contractor 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.

9.44 Immigration Reform: By submitting a proposal Contractor certifies compliance with the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986 who will perform any labor or services under any resulting contract.

9.45 Most Favored Customer: The Contractor agrees that if during the term of any resulting contract, the Contractor 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 will at SAHA's option, be amended to accord equivalent advantage to SAHA.

9.46 Lapse in Insurance Coverage: In the event Contractor fails to maintain insurance as required by a resulting contract, the Contractor shall immediately cure such lapse in insurance coverage at the Contractor's expense, and pay SAHA in full for all costs and expenses incurred by SAHA under this Contract as a result of Contractor's failure to maintain insurance as required, including costs and reasonable attorney's fees relating to SAHA'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 Contractors. Moreover, SAHA shall retain from monies or payments owed to Contractor by SAHA five percent (5%) of the value of the Contract and place this retainage into an account to cover SAHA's potential exposure to liability during the period of such lapse. This retainage shall be held by SAHA 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 SAHA for any matter that should have been covered by the required insurance.

Remainder of this page left blank intentionally

**ATTACHMENT A
FORM OF PROPOSAL
PROPOSAL FEE SHEET
PROPOSER'S CERTIFICATION**

FORM OF PROPOSAL

(This Form must be fully completed and placed under Tab No. 1 of the "hard copy" tabbed proposal submittal.)

INSTRUCTIONS: The items listed below must be completed and included in the Proposal unless otherwise specifically noted. Please complete this form by marking X, where provided, to indicate that the referenced information has been included. Also, complete the Section 3 Statement and the Proposer's Statement noted on the subsequent page:

| X=ITEM INCLUDED | SUBMITTAL ITEMS |
|-----------------|--|
| _____ | Tab 1 Form of Proposal (Attachment A) |
| _____ | Tab 2 HUD Forms & Conflict of Interest Questionnaire(Attachment B) |
| _____ | Tab 3 Profile of Firm Form (Attachment C) |
| _____ | Tab 4 Managerial Capacity/Financial Viability |
| _____ | Tab 5 Client Information |
| _____ | Tab 6 Subcontractor/Joint Venture Information |
| _____ | Tab 7 Section 3 Plan and Forms for Section 3 Preference |
| _____ | Tab 8 S/W/MBE Small Business Plan |
| _____ | Tab 9 Section 3 Plan |
| _____ | Tab 10 Other Information, Optional |

SECTION 3 STATEMENT

Are you claiming a Section 3 business preference? _____YES _____NO

If YES, pursuant to the Section 3 portion within the Conditions and Specifications, and pursuant to the documentation justifying such submitted under Tab 6, which priority are you claiming?

Priority I: _____

Priority II _____

Priority III _____

Priority IV _____

**Proposal Fees Sheet for Painting the Exterior of the Building at
Raymundo Rangel and Christ the King Apts.**

**Total Cost to Paint the exterior Buildings at Raymundo Rangel per the
specifications**

\$_____

Days to Complete the Project _____ Days

**If the Contractor fails to list the number of days to complete, this project must be
completed in 150 days from notification to begin work.**

**Total Cost to Paint the exterior Buildings at Christ the King per the
specifications**

\$_____

Days to Complete the Project _____ Days

**If the Contractor fails to list the number of days to complete, this project must
be completed in 90 days from notification to begin work**

PROPOSER'S STATEMENT

The undersigned proposer hereby states that by completing and submitting this Form and all other documents within this proposal submittal, he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and that if SAHA discovers that any information entered herein to be false, that shall entitle SAHA to not consider or make award or to cancel any award with the undersigned party. Further, by completing and submitting the proposal submittal, and by entering and submitting the costs where provided, the undersigned proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by SAHA, in hard copy. Pursuant to all RFP Documents, all attachments, and all completed Documents submitted by proposer, including these forms and all attachments, the undersigned proposes to supply SAHA with the services described herein for the fee(s) entered within the areas provided.

Non-Collusive Affidavit: The undersigned party submitting this proposal 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 the SAHA or any person interested in the proposed contract; and that all statements in said bid are true. **Initials** _____

In performing this contract, the contractor(s) shall comply with any and all applicable federal, state or local laws including but not limited to: Occupational Safety & Health, Equal Employment Opportunity, Immigration and Naturalization, The Americans with Disabilities Act, State Tax and Insurance Law, and the Fair Housing Act. **Initials** _____

Addenda Acknowledgements

Addendum #1 _____ Date _____

Addendum #2 _____ Date _____

Addendum #3 _____ Date _____

Addendum #4 _____ Date _____

Signature

Date

Printed Name

Company

E-mail address if available

Cost Analysis

HUD regulations require a cost analysis prior to an award of contract. Please supply the information requested below as to how the fees on the proposal fee sheet were calculated.

List each of the items below:

| | |
|--|----------|
| Labor | \$ _____ |
| Material | \$ _____ |
| Overhead | \$ _____ |
| General & Administrative Expenses | \$ _____ |
| PROFIT OR FEE | \$ _____ |

Bidder's Certification

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

1. He/she has full authority to bind Bidder and that no member of Bidder's organization is disbarred, suspended or otherwise prohibited from contracting with any federal, state or local agency;
2. Items for which bids were provided herein will be delivered as specified in the bid,
3. Bidder proposes to furnish and deliver in accordance with the terms, conditions, and specifications embodied herein, all of which terms, conditions, and specifications are hereby accepted and made a part of this bid, all materials and supplies, which are described on the bid worksheets herein and opposite of which prices have been entered, at the price or prices quoted, subject to valid price reductions as hereafter defined, as ordered for delivery, by SAHA,
4. 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 SAHA and subject to the terms and conditions of such acceptance, shall result in a contract between SAHA and the undersigned Bidder,
5. 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,
6. Bidder, nor the firm, corporation, partnership, or institution represented by the Bidder, or anyone acting for such firm, corporation or institution has violated the antitrust laws of the State of Texas 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,
7. Bidder has not received compensation for participation in the preparation of the specifications for this RFP, and
8. 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 may be withheld if this certification is inaccurate,

SIGNED: _____

(Print Name)

(Print Company Name)

(Company Phone & Fax & Email Address)

(Date)

ATTACHMENT B
HUD FORMS & CONFLICT OF INTEREST QUESTIONNAIRE

HUD Form 5369- (8-93)
Instructions to Offerors

HUD Form 5369-A (8-93)
Certifications & Representations

HUD Form 5370
General Conditions for Construction Projects

Conflict of Interest Questionnaire

**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 —

Director of Procurement
Stacy Padgett
818 S. Flores
San Antonio, TX 78204

(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, accept 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. 450e(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 [X] 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.

**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.

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

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

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

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

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

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

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

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

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Organizational Conflicts of Interest Certification

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

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

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

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

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

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

6. Minimum Bid Acceptance Period

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

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

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

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

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

The bidder represents and certifies that it:

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

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

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

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

The bidder certifies that:

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

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

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

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

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

(b) A fully executed "Previous Participation Certificate" [] is, [] is not included with the bid.

13. Bidder's Signature

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

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

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. 12/31/2011)

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.
- (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 [100] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
 - (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
 - (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
 - (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
 - (f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
 - (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
 - (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

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

2. Contractor's Responsibility for Work

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

4. Other Contracts

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

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

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

6. Construction Progress Schedule

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

7. Site Investigation and Conditions Affecting the Work

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

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

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

8. Differing Site Conditions

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

9. Specifications and Drawings for Construction

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

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

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

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 2 (one year unless otherwise indicated) years 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 under this contract within 240 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 30 days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:
 - (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
 - (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
 - (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

Name:

Title:

Date:

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

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

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

28. Contract Modifications

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

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

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

29. Changes

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

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.
- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

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

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

30. Suspension of Work

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

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

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

31. Disputes

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

32. Default

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

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

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

33. Liquidated Damages

- (a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of \$ 100.00 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 \$1,000,000_ [Contracting Officer insert amount]

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

- (3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$500,000 [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.

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date

ATTACHMENT C PROFILE OF FIRM FORM

PROFILE OF FIRM FORM (Attachment C)

(This Form must be fully completed and placed under Tab No. 3 of the "hard copy" tabbed proposal submittal.)

- (1) Prime ____ Sub-contractor ____ (This form must be completed by and for each).
- (2) Name of Firm: _____ Telephone: _____ Fax: _____
- (3) Street Address, City, State, Zip: _____
- (4) Please attached a brief biography/resume of the company, including the following information:
 (a) Year Firm Established; (b) Year Firm Established in [JURISDICTION]; (c) Former Name and Year Established (if applicable); (d) Name of Parent Company and Date Acquired (if applicable).
- (5) Identify Principals/Partners in Firm (Provide resumes for each under Tab No. 3)

| <i>NAME</i> | <i>TITLE</i> | % OF OWNERSHIP |
|--------------------|---------------------|-----------------------|
| | | |
| | | |
| | | |

- (6) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; please submit under Tab No. 3 a brief resume for each. (Do not duplicate any resumes required above):

| <i>NAME</i> | <i>TITLE</i> |
|--------------------|---------------------|
| | |
| | |
| | |

- (7) Offerer's Diversity Statement: You must check all of the following that apply to the ownership of this firm and enter where provided the correct percentage (%) of ownership of each:

- Caucasian American (Male) _____%
 Public-Held Corporation _____%
 Government Agency _____%
 Non-Profit Organization _____%

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise (Qualifies by virtue of 51% or more ownership and active management by one or more of the following:

- Resident-Owned* _____%
 African American _____%
 Native American _____%
 Hispanic American _____%
 Asian/Pacific American _____%
 Hasidic Jew _____%
 Asian/Indian American _____%

- Woman-Owned (MBE) _____%
 Woman-Owned (Caucasian) _____%
 Disabled Veteran _____%
 Other (Specify): _____%

SWMBE Certification Number: _____

Certified by (Agency): _____
 (NOTE: A CERTIFICATION/NUMBER NOT REQUIRED TO PROPOSE – ENTER IF AVAILABLE)

PROFILE OF FIRM FORM continued (Attachment C)

**(This Form must be fully completed and placed under Tab No. 3 of the "hard copy" tabbed proposal
submittal.)**

- (8) Federal Tax ID No.: _____
- (9) City of San Antonio Business License No.: _____
- (10) State of Texas License Type and No.: _____
- (11) Has your firm or any member of your firm been a party to litigation with a public entity? If yes, when, with whom and state the circumstances and any resolution.
- (12) Has your firm or any member of your firm ever sued or been sued by the San Antonio Housing Authority or its affiliated entities? If yes, when and state the circumstances and any resolution of the lawsuit.
- (13) Has your firm or any member of your firm ever had a claim brought against because of breach of contract or nonperformance? If yes, when and state the circumstances and any resolution of the matter.
- (14) Debarred Statement: Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of Texas, or any local government agency within or without the State of Texas? Yes No
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.
- (15) Disclosure Statement: Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the HA? Yes No
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.
- (16) Non-Collusive Affidavit: The undersigned party submitting this proposal hereby certifies that such proposal is genuine and not collusive and that said Offerer has not colluded, conspired, connived or agreed, directly or indirectly, with any Offerer or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price of affiant or of any other Offerer, to fix overhead, profit or cost element of said proposal price, or that of any other Offerer or to secure any advantage against the SAHA or any person interested in the proposed contract; and that all statements in said proposal are true.
- (17) Verification Statement: The undersigned Offerer hereby states that by completing and submitting this form he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and agrees that if the SAHA discovers that any information entered herein is false, that shall entitle the SAHA to not consider nor make award or to cancel any award with the undersigned party.

Signature

Date

Printed Name

Company

Seal if by Corporation

ATTACHMENT D SECTION 3 GUIDELINES AND FORMS

Board Resolution No. 4062
and Program Plan for Compliance with Requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) Part 135 – Economic Opportunities for Low- and Very Low-Income Persons.

Purpose:

The purpose of Section 3 of the Housing and Urban Development of 1968 (12 U.S.C. 1701u) (Section 3) is to ensure that employment and other economic and business opportunities generated by HUD Financial Assistance shall be directed to San Antonio Housing Authority (SAHA) Residents and other low- and very low-income persons, particularly those who are recipients of government housing assistance and to business concerns which provide economic opportunities to SAHA Residents and other low- and very low-income persons.

General Policy Statement:

It is the declared policy of the San Antonio Housing Authority (SAHA) that Equal Employment Opportunities shall be provided for every employee and applicant for employment regardless of race, color, religion, sex, national origin, handicap, or economic status; and, that through the award of contracts to contractors, vendors, and suppliers, that employment and business opportunities be created for residents of SAHA properties and other qualified low- and very low income persons residing within the geographical boundaries of City of San Antonio. This policy does not end with the mere prohibition of discriminatory practices by programs receiving HUD financial assistance or contractors, subcontractors, and vendors contracting with SAHA. SAHA recognizes its obligation as well as the obligation of potential contractors, subcontractors, to develop practical steps to achieve the goal of providing meaningful, full-time permanent employment opportunities, as well as business opportunities to SAHA Residents and other Section 3 eligible persons.

Such obligation shall be demonstrated not merely through inclusion of positive or “best effort” steps, but shall result in a reasonable level of success in the recruitment, employment, and utilization of SAHA Residents and other Section 3 eligible persons and businesses in the workforce and subcontracting of work resulting out of the expenditure of HUD funding. The SAHA’s Contracting Officer, through official resolution, shall examine and consider a contractor/vendor’s success in providing employment and business opportunities to SAHA Residents prior to acting on any proposed contract award.

Numerical Goals for Section 3 Compliance:

Consistent with 24 CFR 85.36 (c)(2), Section 3 is a federal statute that expressly encourages, to the maximum extent

feasible. To that end, SAHA has adopted the following numerical goals for meeting the greatest extent feasible requirement to provide economic opportunities to section 3 Residents and Section 3 Business Concerns in the procurement and awarding of modernization-funded construction, maintenance and professional service contracts:

NUMERICAL GOALS FOR SECTION 3 COMPLIANCE

| Areas of Focus (Applies to all contracts) | Numerical Goal |
|---|----------------|
| Contractor and Sub-contractor Hiring (full-time, part-time, temporary, Seasonal) applies to construction and maintenance service contracts. | 10% |
| Contract Awards (applies to construction contracts). | 10% |
| All other Contract Awards (i.e., services, and professional services). | 3% |
| These goals apply to all Contractors as well as any tier Sub-contractor | |

Recipients and Contractors may demonstrate compliance with the “greatest extent feasible” requirement of Section 3 by meeting the numerical goals set forth in this Section 3 Program for providing training, employment, and contracting opportunities to Section 3 Residents and Section Business Concerns. Efforts to employ Section 3 Residents to the greatest extent feasible should be made at all job levels.

SAHA, in its own operations, shall endeavor to achieve the goals of Section 3 and shall provide equal responsibility to its contractors, vendors and suppliers to implement progressive efforts to also attain compliance. In doing so, SAHA shall evaluate contractors’ compliance towards achieving the goals of Section 3 and ensure a system of leveling sanctions against contractor, vendor, or supplier for non-compliance.

SAN ANTONIO HOUSING AUTHORITY
Procurement and Contract Administration

The numerical goals established above represent minimum numerical targets and all prospective contractors shall be advised and encouraged to seek Section 3 participation to the greatest extent feasible. Any contractor that meets the minimum numerical goals set forth above will be considered to have complied with the Section 3 requirements. Any contractor that does not meet the numerical goals set forth above has the burden of demonstrating why it was not feasible to meet the numerical goals. In the event no competing contractors were successful in meeting the minimum goals set forth above, SAHA shall consider documentation provided by the contractor evidencing impediments encountered despite actions taken to comply with the Section 3 requirements. Such evidence shall be subject to the satisfaction of the Authority.

All contractors submitting bids/proposals to the Housing Authority shall be required to complete certifications, as appropriate, as acknowledgment of the Section 3 contracting and employment provisions as required by this selection. Such certifications shall be supported with adequate evidence to support representations made. The certifications required to be submitted with the bid/proposal consist of the following:

- h. Certification for business concerns seeking Section 3 preference.
- e. Contractor certification of efforts to fully comply with

Employment and training provisions of Section 3.

Prior to the award of any contract, the contractor shall enter into negotiations with SAHA for the purpose of incorporating into the contract a provision, to the greatest extent possible, hiring of Public Housing residents or other Section 3 residents to be trained or employed on the contract. Such resulting provision shall obligate the contractor toward the greatest extent possible, achieving the numerical goals listed above and shall be based on a detailed workforce analysis to be compiled by the contractor and submitted to the Authority prior to award of contract.

Definitions:

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA that contains the terms and conditions under which HUD assists the PHA or IHA in providing decent, safe, and sanitary housing for low-income families. The ACC must be in the form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization, and/or operation of a low-income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all

HUD regulations and implementing requirements and procedures.

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, and State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHOO), resident management corporation, resident council, or cooperative association.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Department or HUD means the Department of Housing and Urban Development, including its field offices to which authority has been delegated to perform functions under this part.

Employment opportunities generated by section 3 covered assistance means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in § 135.3 (a) (1)).

Housing development means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD's public and Indian housing program regulations codified in 24 CFR Chapter IX.

HUD Youth build programs means programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12699), and provide disadvantaged youth with opportunities of employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

TPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

SAN ANTONIO HOUSING AUTHORITY
Procurement and Contract Administration

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Other HUD programs means HUD programs, other than HUD public and Indian housing programs, that provide housing and community development assistance for “section 3 covered projects,” as defined in this section.

Public housing resident has the meaning given this term in 24 CFR part 963.

Recipient means any entity, which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association.

Section 3 means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3-business concern means a business concern, as defined in this section:

- (1) That is 51 percent or more owned by section 3 residents; or
- (2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
- (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of “section 3 business concern.”

Section 3 covered assistance means:

- (1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act;
- (2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act;
- (3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act.

Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with section 3-covered project.

Section 3-covered project means the construction, reconstruction, conversion, rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings, maintenance or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 resident means:

- (1) A public housing resident; or
- (2) An individual who resides in the metropolitan area or non-metropolitan county in which the section 3 covered assistance is expended, and who is:
 - I. A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80% of the median family income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80% of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or
 - II. A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50% of the median family income for the area, as determined by the Secretary with adjustments made for smaller or larger families, except that the Secretary may establish income ceilings higher or lower than 50% of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of unusually high or low family incomes.
- (3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Service area means the geographical area in which the persons benefiting from the section 3-covered project reside.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor’s obligation for the performance of work generated by the

expenditure of section covered assistance, or arising in connection with a section 3 covered project.

Section 3 joint venture means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

- (1) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- (2) Performs at least 25% of the work and is contractually entitled to compensation proportionate to its work.

Preference for Section 3 Business Concerns (Contracting)

SAHA in accordance with Section 3 of the Housing and Urban development Act of 1968, requires contractors and sub-contractors (including professional service contracts) to direct their efforts towards awarding contracts to section 3 business concerns in the following order of priority and expend greatest extent feasible efforts to achieve, at minimum, the numerical goals established in this section:

▪ **1st Priority – Category 1 Section 3 Businesses**

Business concerns that are 51% or more owned by residents of the housing development(s) for which work is performed, or whose full-time, permanent workforce includes 30% of these persons as employees.

▪ **2nd Priority – Category 2 Section 3 Businesses**

Business concerns that are 51% or more owned by residents of other San Antonio Housing Authority Public Housing developments other than the development(s) where the work is performed or whose full-time permanent workforce includes 30% of these person(s) as employees.

▪ **3rd Priority – Category 3 Section 3 Businesses**

Business concerns that are designated HUD Youth-build programs being carried out in the City of San Antonio.

▪ **4th Priority – Category 4 Section 3 Businesses**

Business concerns that are 51% or more owned by a section 3 resident(s), or whose permanent, full-time workforce includes no less than 30% Section 3 residents (category 4 businesses), or that subcontract in excess of 25% of the total amount of sub-contracts to Section 3 business concerns.

A section 3-business concern seeking a contract for a sub-contract shall submit evidence to SAHA, if requested,

sufficient to demonstrate to the satisfaction of the Contracting Officer that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract. Federal Regulations at 24CFR85.36, concerning the ability of the contractor to perform successfully, requires consideration of the contractor’s record in complying with Public Policy requirements, technical capacity, financial capacity and integrity. Section 3 compliance is a matter of properly considered as part of this determination.

Preference in Award of Section 3 Contracts

Preference in the award of Section 3 contracts that are awarded under the sealed bid procurement process shall be provided in accordance with the following:

Sealed bids shall be solicited from all businesses (Section 3 business concerns, and non-Section 3 business concerns). An award will be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid, provided that bid is:

- A. *Within the maximum total contract price established in the Authority’s budget for the project for which bids are being taken.*
- And
- B. *It is not more than “X” higher than the total bid price of the lowest responsive bid from any responsive bidder.*

“X” IS DETERMINED AS FOLLOWS:

| | “X” = Lesser of: |
|--|---|
| When the lowest responsive bid is less than \$100,000 | 10% of that bid or \$9,000 |
| WHEN THE LOWEST RESPONSIVE BID IS: | |
| 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 | 1-1/2% of the lowest bid with no dollar limit |

Preference in the award of Section 3 contracts that are awarded under the competitive negotiation (qualification based) method of procurement shall be accomplished by providing an evaluation criteria specific to the Section 3 rule and assigning a value equivalent to not more than fifteen (15) percent of the total number of available rating points. Such Section 3 evaluation criteria shall be for the provision of the preference for Section 3 business concerns.

Preference for Section 3 Residents (Employment & Training)

SAHA, in accordance with Section 3 of the Housing and Urban Development Act of 1968, requires contractors and sub-contractors (including professional service contracts) to direct their efforts toward providing training and employment opportunities to Section 3 residents in the following order of priority and expend greatest extent feasible efforts to achieve at minimum, the numerical goals established in this section:

- 1st Priority – Category 1 Section 3 Residents
Residents of the development for which work is performed.
- 2nd Priority – Category 2 Section 3 Residents
Residents of other Public Housing developments outside of the development(s) where the work is performed.
- 3rd Priority – Category 3 Section 3 Residents
Residents of the City of San Antonio who are participants in HUD Youthbuild programs being carried out in the City.
- 4th Priority – Category 4 Section 3 Residents
Other Section 3 Residents.

Certification Procedure:

SAHA has its own program of self- certification for individuals and business concerns seeking recognition as a Section 3 resident or Section 3 business concern as defined in this Section 3 Program. SAHA's Procurement and Contract Administration department is charged with administering SAHA's Section 3-certification program. Any Individual or business concern seeking Section 3 preferences in the awarding of contracts or purchase agreements shall complete appropriate certification forms and provide adequate documentation as evidence of eligibility for preference under the Section 3 program. An individual or business concern may apply for certification as a Section 3 resident or Section 3 business concern either prior to bidding for SAHA work or during the actual bidding process. Any business concern that submits certification for preference after receipt of bid will not be considered eligible for Section 3 preference in the evaluation of that specific bid award. Certifications for Section 3 preference for business concerns must be received by SAHA prior to the submission of bids or along

with the bid. Certifications for eligibility as a Section 3 resident may be made at any time. Individuals or business concerns seeking to file for Section 3 preference shall contact:

A resident seeking preference in training and employment shall certify that he/she is a Section 3 resident by completing the appropriate certification form and attaching adequate proof of Section 3 eligibility.

A business concern seeking preference in the awarding of a contract or purchase shall certify that the business concern is a Section 3 business by completing the appropriate certification form and attaching adequate proof of Section 3 eligibility as required.

Protest Procedure:

SAHA desires to offer to concerned parties a procedure whereby complaints alleging non-compliance with the Section 3 Statute can receive prompt and equitable hearing and resolution. Protest surrounding SAHA's Section 3 program may be submitted in writing to the Section 3 Coordinator:

All complaints of non-compliance with the Section 3 Statue shall conform with the following requirements:

6. Complaints shall be filed in writing and shall contain the name, address, and phone number of the person filing the complaint, and a brief description of the alleged violation of the regulations.
- Complaints shall be filed within thirty (30) calendar days after the complaint becomes aware of the alleged violation.
7. An investigation as may be appropriate, will follow the filing of a complaint. The investigation will be conducted by SAHA's Section 3 Coordinator. These rules contemplate informal, but thorough investigations, affording all interested persons and their representative, if any, an opportunity to submit testimony and/or evidence as may be available and relevant to the complaint.
- g. Written documentation as to the validity of the complaint and a description of the findings or resolution, if any, will be issued by the Section 3 Coordinator no later than thirty (30) days after the filing of a complaint.

In cases where concerned parties wish to have its complaint considered outside of SAHA, a complaint may be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, D.C., 20410. A complaint must be received no later than 180 days from the date of the action or omission upon which the complaints based, unless the time for filing is extended by the Assistant Secretary for good cause shown.



Contract & Subcontract Activity
For The San Antonio Housing Authority

Reporting Qtr: _____

Contract No: _____

Prime Contractor ID No: _____

Date Submitted: _____

Award Amount: _____

| Grantee/Project Owner/Developer/Sponsor/Builder/Agency | | | Location (City, State, Zip Code) | | | Amount of Contract or Sub-Contract | Type of trade Code(See Below) | Subcontractor Business Racial/Ethnic Code (See Below) | Women Owned Business (Yes or No) | Sub-Contractor Identification (ID) Number | Section 3 Business (Yes or No) |
|--|------|------------------------------------|----------------------------------|-------|----------|------------------------------------|-------------------------------|---|----------------------------------|---|--------------------------------|
| Name of Contact Person | | Phone Number (Including Area Code) | Reporting Period | | | | | | | | |
| Item No. | Name | Street Address | City | State | Zip Code | A. | B. | C. | D. | E. | F. |
| 1 | | | | | | | | | | | |
| 2 | | | | | | | | | | | |
| 3 | | | | | | | | | | | |
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| 13 | | | | | | | | | | | |
| 14 | | | | | | | | | | | |
| 15 | | | | | | | | | | | |

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u., mandates that the Department ensure that employment and other economic activities generated by its housing and community development assistance programs are directed toward Low- and very low-income persons, particularly those who are recipients of government assistance for housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to HUD, and by recipients as a self-monitoring tool.

B: Type of Trade Codes

- 1 = New Construction
- 2 = Substantial Rehab.
- 3 = Repair
- 4 = Service
- 5 = Project Mangt.
- 6 = Professional
- 7 = Tenant Services
- 8 = Education/Training
- 9 = Arch./Engrg. Appraisal
- 0 = Other

C: Racial/Ethnic Codes:

- 1 = White Americans
- 2 = Black Americans
- 3 = Native Americans
- 4 = Hispanic Americans
- 5 = Asian/Pacific Americans
- 6 = Hasidic Jews

Certified this _____ day of _____

By: _____

Note: Please Attach all Compliance Reports (S3-60002B Forms)



Contractor's Section 3 Compliance Report

For The San Antonio Housing Authority

1 Prime Contractor: **2**
 Sub-Contractor: _____
 Address: **3** _____
 Telephone No: **4** _____

Contract No: **5** _____
 Sub-Contractor ID No: **6** _____
 Contract Start Date: **7** _____
 Contract Completion Date: **8** _____
 Contact Person: **9** _____

For Months Of: **10** _____
 Reporting Quarter: **11** _____
 Prime Contractor ID No: **12** _____
 Date of Report: **13** _____
 Contract Amount: **14** _____
 Type of Service: **15** _____

Methods undertaken to achieve the employment objectives of Section 3 Compliance.

16 _____

Certified this _____ day of _____
21
 By: _____

| (A) Job Category | (B) | | (C) | | (D) | |
|--|------------------|---------------------------------------|---|---|--|---|
| | No. of New Hires | Total No. of Hours that are New Hires | No. of New Hires that are Section 3 Residents | Total No. of Hours that are Section 3 Residents | No. of Section 3 Employee's and Trainees | Total No. of Hours that are Section 3 Employee's and Trainees |
| 17 _____ | 18 _____ | _____ | 19 _____ | _____ | 20 _____ | _____ |
| Totals for This Reporting Period: | | _____ | _____ | _____ | _____ | _____ |
| Totals from Contract Start to Date: | | _____ | _____ | _____ | _____ | _____ |

SAMPLE DO NOT USE

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u., mandates that the Department ensure that employment and other economic activities generated by its housing and community development assistance programs are directed toward Low- and very low-income persons, particularly those who are recipients of government assistance for housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to HUD, and by recipients as a self-monitoring tool.

Contractor's Section 3 Compliance Report - Instructions

- 1) Check-mark the applicable box if you're a Contractor or Sub-contractor.
- 2) Enter the business name of the Prime Contractor or Sub-Contractor who is reporting section 3 compliance activity.
- 3) Enter the business address of the Prime Contractor or Sub-Contractor who is reporting section 3 compliance activity.
- 4) Enter the Area code and telephone number of the Prime Contractor or Sub-Contractor who is reporting section 3 compliance activity.
- 5) Enter the Contract Number issued by SAHA for the award in which you are contracting or sub-contracting.
- 6) If you are a sub-contractor, enter your federal identification number.
- 7) Enter the date in mm/dd/yyyy format for which this contract started.
- 8) Enter the date in mm/dd/yyyy format for which this contract ends.
- 9) Enter the name of the person with knowledge of the award and the recipients implementation of section 3.
- 10) Enter the months in which you are reporting section 3 compliance activity.
- 11) Enter the reporting quarter in which you are reporting section 3 compliance activity. The Quarters for which we reference by HUD standards are as follows – (1st qtr Oct, Nov, Dec) (2nd qtr. Jan, Feb, Mar) (3rd qtr. Apr, May, Jun) (4th qtr. Jul, Aug, Sep).
- 12) Enter the Federal Identification of the Prime Contractor of which this contract was awarded.
- 13) Enter the date in mm/dd/yyyy format that you are submitting the Contractor's Section 3 Compliance Report.
- 14) Enter the total dollar amount, rounded to the nearest dollar received by the recipient under this contract.
- 15) Enter the type of service you are providing; e.g., construction, non-construction, secretarial, carpentry, painting, electrical, masonry, etc.
- 16) Identify efforts made to direct the employment and other economic opportunities achieved toward low and very low income persons, particularly those who are recipients of government assistance for housing.
- 17) Enter the job category skill for work performed; e.g., professional, secretarial, carpentry, painting, electrical, masonry, etc. Professionals are defined as people who have special knowledge of an occupation (e.g., supervisors, architects, surveyors, planners, and computer programmers). For Construction positions, list each trade and provide data in columns B,C,D for each trade where persons were employed.
- 18) Enter the number of new hires and the total amount of hours accumulated under the contract for which you are reporting this period for the stated job category. New hires refers to a person who is not on the contractor's or recipients payroll for employment at the time of selection for the section 3 covered award.
- 19) Enter the number of new hires that were section 3 residents and the total amount of hours accumulated under the contract for which you are reporting this period for the stated job category. Section 3 new hires refers to a section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the section 3 covered award.
- 20) Enter the number of section 3 residents that were employed and trained and the total amount of hours accumulated under this contract for the stated job category.
- 21) Sign and date that you certify the information you are providing is accurate and true.
- 22) Forward original report form (S3-60002b) to Prime Contractor. Prime Contractor shall forward to Project Manager. Project Manager will forward Original to SAHA Section 3 Coordinator.

Certification for Business Concerns Seeking Section 3 Preference

Name of Business: _____

Address of business: _____

Type of Section 3 Business:

Corporation

Partnership

Phone No.: _____

Sole Proprietorship

Joint Venture

Pager No.: _____

Name and Address of Section 3 Resident(s) in 51% ownership position:

Attached is the following documentation as evidence of section 3 status. X as Appropriate

- Copy of resident lease with San Antonio Housing Authority
- Copy of receipt of public assistance
- Copy of evidence of participation in a public assistance program
- Other evidence as appropriate

For the Section 3 business entity as applicable:

- Copy of Articles of Incorporation
- Assumed business Name Certificate
- List of owners/stockholders and % ownership of each owner
- Organizational chart w/names, titles & brief functional statement
- Certificate of Good Standings
- Partnership Agreement
- Corporation Annual Report
- Latest Board minutes appointing officers
- Additional Documentation

CORPORATE SEAL

Attested by:

Name:

Date:

(Authorizing Name & Signature)

SECTION 3 PROGRAM
Contractor Certification of Efforts to Fully Comply with
Employment and Training Provisions of Section 3

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

- Is a Section 3 Business concern. A Section 3 Business concern means a business concern:
 1. That is 51% or more owned by Section 3 Resident(s); or
 2. Whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 residents, or within the last three years of the date of first employment with the business concern were Section 3 residents; or
 3. That provides evidence of a commitment to subcontract in excess of 25% of the dollar value of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs 1 or 2 herein.
- Is Not a Section 3 Business concern but who has and will continue to seek compliance with Section 3 by certifying to the following efforts to be undertaken.

EFFORTS TO AWARD SUBCONTRACTOR TO SECTION 3 CONCERNS:
(Check ALL that apply.)

- By contacting business assistance agencies, minority contractors associations and community organizations to inform them of the contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids for a portion of the work.
- By advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas of the applicable development(s) owned and managed by the Housing Authority.
- By providing written notice to all known Section 3 business concerns of contracting opportunities. This notice should be in sufficient time to allow the Section 3 business concerns to respond to bid invitations.
- By following up with Section 3 business concerns that have expressed interest in the contracting opportunities.
- By coordinating meetings at which Section 3 business concerns could be informed of specific elements of the work for which subcontract bids are being sought.
- By conducting workshops on contracting procedures and specific contracting opportunities in a timely manner so that Section 3 business concerns can take advantage of contracting opportunities.
- By advising Section 3 business concerns as to where they may seek assistance to overcome barriers such as inability to obtain bonding, lines of credit, financing, or insurance and aiding Section 3 businesses in qualifying for such bonding, financing, insurance, etc.
- Where appropriate, by breaking out contract work into economically feasible units to facilitate participation by Section 3 businesses
- By developing and using a list of eligible Section 3 business concerns
- By actively supporting and undertaking joint ventures with Section 3 businesses

EFFORTS TO PROVIDE TRAINING AND EMPLOYMENT TO SECTION 3 RESIDENTS

- By entering into a "first source" hiring agreements with organizations representing Section 3 residents
- By establishing training programs, which are consistent with the requirements of the Department of Labor, specifically for Section 3 residents in the building trades.
- By advertising employment and training positions to dwelling units occupied by Category 1 and 2 residents
- By contacting resident councils and other resident organizations in the affected housing development to request assistance in notifying residents of the training and employment positions to be filled
- By arranging interviews and conducting interviews on the job site
- By undertaking such continued job-training efforts as may be necessary to ensure the continued employment of Section 3 residents previously hired for employment opportunities.

Authorized Signature of the Bidder

APPLICANT "SECTION 3" CERTIFICATION FORM

Name: _____
 Legal Address: _____
 City: _____ State: _____ Zip: _____
 Phone: _____ or fax: _____

Position Applied For: _____

(All applicants are required to complete and sign this form.)

In general, Section 3 gives applicants whose household income in the past year was less than 80% of the area median income a preference in the hiring process so long as they are qualified for the position for which they are applying.

Only those applicants who complete the disclosure and meet the Section 3 requirements will be eligible for the preference, HOWEVER, employment offers for applicants claiming a Section 3 preference will be conditional upon providing proof of eligibility at the time of hire.

CAUTION: Any applicant falsely claiming a Section 3 preference will immediately be removed from consideration of employment.

 _____ Option 1: I choose not to disclose this information and understand that I will not be granted a Section 3 preference in the hiring process

OR

_____ Option 2: I choose to disclose the following information to determine if I am eligible for a Section 3 preference (complete questions below)

1. Are you a resident of public housing or Section 8? (Check One) _____ Yes _____ No
2. The number of persons in my household is _____.
3. From the chart below, locate the number of persons in your household and enter the dollar amount from that box here _____.

| # of persons in Household | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|--|----------|----------|----------|----------|----------|----------|----------|----------|
| 80% Area Median Income (FY 2010 Income Limits) | \$32,400 | \$37,000 | \$41,650 | \$46,250 | \$49,950 | \$53,650 | \$57,350 | \$61,050 |

Section 3 Preference Eligibility Test

_____ Yes _____ No My legal address is within Bexar County, TX.

_____ Yes _____ No My household income last year was equal to or less than the amount listed on Line 3.

If the answers to both questions are YES, you are entitled to a Section 3 preference.

 By signing, I certify that all of the information given above is true and accurate and that if found to be inaccurate, I understand that I may be disqualified as an applicant and/or a certified section 3 resident and may be grounds for termination of any employment or contract that resulted from this application and/or certification.

Signature _____

DATE: _____

ATTACHMENT E WAGE DECISION

General Decision Number: TX100022 03/12/2010 TX22

Superseded General Decision Number: TX20080022

State: Texas

Construction Type: Residential

Counties: Bexar, Comal and Guadalupe Counties in Texas.

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

Modification Number Publication Date
0 03/12/2010

* SUTX1983-005 05/01/1983

| | Rates | Fringes |
|---|---------|---------|
| Air Conditioning Mechanic..... | \$ 7.25 | |
| CARPENTER..... | \$ 7.25 | |
| CEMENT MASON/CONCRETE FINISHER... | \$ 7.46 | |
| DRYWALL HANGER..... | \$ 8.73 | |
| ELECTRICIAN..... | \$ 9.66 | |
| IRONWORKER..... | \$ 7.25 | |
| LABORER..... | \$ 7.25 | |
| PAINTER (Including Drywall taping)..... | \$ 8.16 | |
| PLUMBER..... | \$ 7.70 | |
| ROOFER, Including Built Up, Composition and Single Ply Roofs..... | \$ 7.25 | |

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

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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)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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 F SPECIFICATIONS

SCOPE OF WORK FOR CHRIST THE KING

Office Building: Power wash, sand, scrape and brush as necessary to obtain a smooth finish. Caulk and apply primer and two coats of paint per the manufacturer's instructions and recommendations on the exterior of all building and all walkways. Use latex paint to match existing color.

Buildings: Power wash, sand, scrape and brush as necessary all seven buildings to obtain a smooth finish. Caulk and apply primer and two coats of paint per the manufacturer's instructions and recommendations on the exterior of all buildings and walkways. Use latex paint to match existing color.

Bldg (1) will have 6 units,

Bldg (2) will have 7 units,

Bldg (3) will have 12 unit's 6 units on top and 6 units on bottom,

Bldg (4) will have 8 units 4 unit's on top and 4 units on bottom,

Bldg (5) will have 12 units 6 unit's on top and 6 units on bottom,

Bldg (6) will have 3 units.

Buildings 3, 4, and 5 are two stories. The total number of units is 48.

TOTAL SQUARE FOOTAGE: Approximately 91,261 SQ. FT.

Rails and Stairwells:

Scrape, sand, prime and paint all hand rails at walkways and dumpster area

Clean up all paint debris;

Paint type: oil based enamel paint - black

TOTAL L.F – Approximately 773 linear feet

Unless otherwise indicated, provide factory-mixed coatings. When required, mix coatings to correct consistency in accordance with manufacturer's instructions before application. Do not reduce, thin, or dilute coatings or add materials to coatings unless such procedure is specifically described in manufacturer's product instructions.

Primers: Where the manufacturer offers options on primers for a particular substrate, use primer categorized as "best" by the manufacturer.

Caulk: Where the manufacturer offers options on paintable caulk for a particular substrate, use caulk categorized as "best" by the manufacturer.

Acceptance by SAHA is required prior to payment. Acceptance is based on paint having no runs or drips. All painted areas must be completely covered. All trash and debris must be removed from the property.

SCOPE OF WORK FOR RAYMUNDO RANGEL

Community Building: Power wash the exterior of entire building and all walkways. Caulk and apply primer and two coats of latex paint per the manufacturer's instructions and recommendations. Color to match existing color.

Buildings: Power wash, sand, scrape and brush as necessary all five buildings to obtain a smooth finish. Caulk and apply primer and two coats of paint per the manufacturer's instructions and recommendations to the exterior of all buildings and walkways. Use latex paint to match existing color.

Bldg (2) will have 4 unit's,
Bldg (3) will have 4 unit's,
Bldg (4) will have 6 units,
Bldg (5) will have 6 units,
Bldg (6) will have 6 units.
TOTAL NUMBER OF UNITS 26

TOTAL S.Q FEET: Approximately 23,070 sq ft

Unless otherwise indicated, provide factory-mixed coatings. When required, mix coatings to correct consistency in accordance with manufacturer's instructions before application. Do not reduce, thin, or dilute coatings or add materials to coatings unless such procedure is specifically described in manufacturer's product instructions.

Primers: Where the manufacturer offers options on primers for a particular substrate, use primer categorized as "best" by the manufacturer.

Caulk: Where the manufacturer offers options on paintable caulk for a particular substrate, use caulk categorized as "best" by the manufacturer.

Acceptance by SAHA is required prior to payment. Acceptance is based on paint having no runs or drips. All trash and debris must be removed from the property.