

REQUEST FOR QUOTES (QSP # 2019-3-2)

CONSTRUCTION/MODERNIZATION

Interior Paint, Bath rehab at 4110 35Th St

Issue Date: March 13, 2019

Quotes Due: March 22, 2019 at 12:00 Noon

Issued by: Lubbock Housing Authority 1708 Crickets Avenue Lubbock, TX 79401

Contractor Information:

Name: _____

Address: _____

Business Phone: _____ Cell Phone _____ Fax _____

Email Address _____ Contractor SS or Tax ID #: _____

Total Quote Amount: _____

Total Labor: \$ _____ Total Materials: \$ _____

Total Profit \$ _____ Total Overhead \$ _____

Total calendar days you require to complete this project: _____

What is your earliest start date? _____

Other projects currently awarded by Lubbock Housing Authority and remaining time for completion _____

Is this business submitting this quote as a Section 3 Business Concern ☐ Yes ☐ No If YES, complete the enclosed APPLICATION FOR DESIGNATION AS A SECTION 3 BUSINESS CONCERN beginning on Page 7.

Note: If you are a Section 3 Business Concern and have previously submitted an ***APPLICATION FOR DESIGNATION AS A SECTION 3 BUSINESS CONCERN***, you are not required to complete the Section 3 documentation in this packet.

Contractor Signature: _____

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General Information

QSP SUBMISSION INSTRUCTIONS

- **Contact Information:** See Appendix A
- **Quote Deadline:** See Appendix A
- **Complete all enclosed forms**
- **Quotes must be delivered in person or by mail** (unless otherwise specified in Appendix A)
- **This is not a Sealed Bid process.** There will be no Public Bid Opening.

LHA Reserves the Right to:

1. Request an oral interview with, and additional information from, companies prior to final selection of a provider.
2. Consider information about a company in addition to the information submitted in the response or interview.
3. Reject any and all responses and waive any irregularities.
4. Negotiate price and other factors not prohibited by regulation or law.
5. Cancel this RFQ for any reason, and without liability if cancellation is deemed to be in the best interest of the LHA. The proposer assumes the sole risk and responsibility for all expenses connected with the preparation of its quote.

Collusion

Respondent, by submitting a quote, hereby certifies that no officer, agent, or employee of the LHA has a pecuniary interest in this quote; that the quote is made in good faith without fraud, collusion, or connection of any kind with any other respondent; and that the respondent is competing solely in its own behalf without connection with, or obligation to any undisclosed person or company.

Disputes

In case of any doubt or differences of opinions as to the participation sought hereunder, or the interpretation of the provisions of the QSP, the decision of the LHA shall be final and binding upon all parties.

INSURANCE REQUIREMENTS

Certificate of Liability Insurance, minimum policy coverage of \$100,000.00 with the Lubbock Housing Authority named as an additional insured on the policy. Certificate of Workers Compensation.

The limits of liability for the insurance required under this Contract shall not be less than as follows:

a. Workers' Compensation:

1. Employer's Liability \$1,000,000.00

b. Contractor's Liability Insurance:

1. General Aggregate (Except Products –Completed Operations) \$100,000.00
2. Products – Completed Operations Aggregate \$100,000.00
3. Personal Injury (Per Person/Occurrence) \$100,000.00
4. Each Occurrence (Bodily Injury/Property Damage) \$100,000.00

5. Excess Liability

General Aggregate \$100,000.00

Each Occurrence \$100,000.00

Pre-award Conference

A Pre-award conference/project walkthrough will be held at the time and location specified in Appendix A. Attendance is recommended, but not mandatory.

Bonding: Not required on this project

X. DAVIS-BACON COMPLIANCE

All construction/modernization related contracts exceeding \$2,000 are subject to compliance with the requirements of the Davis-Bacon Act.

These requirements include, but are not limited to:

- Paying employees in compliance with the current Department of Labor Wage Rates for the applicable job classification.
- Ensure the current Wage Decision is displayed at the job site
- Ensure the DOL Davis-Bacon Poster (Form WH-1321) is posted at the job site
- Provide weekly certified payroll to the Housing Authority on a weekly basis (we recommend using the DOL's WH-347 payroll form)
- Allow Housing Authority staff to conduct employee interviews to verify Davis-Bacon compliance
- The General Contractor/Prime Contractor is responsible for full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the applicable labor standards.

NON-COLLUSIVE AFFIDAVIT FORM

AFFIDAVIT

State of Texas
County of Lubbock

SS

_____, being first duly sworn, deposes and says:

That he/she is **Owner** of the party (a partner or officer of the firm of, etc.) making the foregoing proposal of bid, that such proposal or bid is genuine and not collusive or sham; 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, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Housing Authority of the City of Lubbock, Texas or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

Signature of:

Bidder, if the bidder is an individual;
Partner, if the bidder is a partnership;
Officer, if the bidder is a corporation.

Subscribed and sworn to before me this _____ Day of _____, 20_____.

Notary Public, _____, County

Notary Signature

My commission expires _____ .

Section 3 Requirements/Opportunities

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 Lubbock Housing Authority(LHA) 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 LHA Residents and other low-and very low-income persons.

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 \$9000 |
| When the lowest responsive bid is at least \$100,000 but less than \$200,000 | 9% of that bid or \$16,000 |
| When the lowest responsive bid is at least \$ 200,000 but less than \$300,000 | 8% of that bid or \$21,000 |
| When the lowest responsive bid is at least \$ 300,000 but less than \$400,000 | 7% of that bid or \$24,000 |
| When the lowest responsive bid is at least \$ 400,000 but less than \$500,000 | 6% of that bid or \$25,000 |
| When the lowest responsive bid is at least \$ 500,000 but less than \$1 Million | 5% of that bid or \$40,000 |

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.

APPLICATION FOR DESIGNATION AS A SECTION 3 BUSINESS CONCERN

Notes for Qualifying as a Section 3 Business Concern:

1. The Applicant must supply the following information and return the same to Lubbock Housing Authority, 1708, Crickets Ave, Lubbock, TX 79401.
2. The Applicant will be required to submit a copy of the previous year's Federal Income Tax filings if initially determined eligible by owner income and residency.

SECTION 3 – STATEMENT OF QUALIFICATIONS

INSTRUCTION

The business concern or Contractor (hereinafter “Applicant”) must satisfy at least one of the following minimum requirements to be qualified as a Section 3 Business Concern before being awarded contracts under Section 3. Please check the appropriate box:

1. ☐ A majority 51% or more ownership of Applicant business shall be held by low to very low-income residents as defined by the current HUD income limits.
2. ☐ At least 30 percent of employees of the business are low to very low-income residents as defined by the current HUD income limits.
3. ☐ More than 25 percent of all contract work shall be performed by businesses that meet either of the conditions set forth in #'s 1 or 2 above.

Business Owner Information

| NAME/ADDRESS OF OWNER | SS# | % OWNERSHIP | % OWNERSHIP | # IN HOUSEHOLD |
|----------------------------------|------------|------------------------|------------------------|---------------------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |

Employee Information.

| Total Number of Employees | Total Number of Employees Qualified as a Section 3 Resident |
|--------------------------------------|--|
| | |

1. The company is
 - ☐ A Sole Proprietorship
 - ☐ A Partnership
 - ☐ A Joint Venture
 - ☐ A Corporation (If a corporation, please enclose a **copy** of corporation papers and corporate seal)
 - ☐ A (LLC)

2. Are you certified as a Section 3 Business Concern by any other agencies?

Name of Agencies: _____

3. Please sign the statement below to authorize the release of information to the Lubbock Housing Authority for the purpose of verifying your references. We have the right to request any additional information to validate information presented.

I hereby authorize the release of information to the Lubbock Housing Authority for the purpose of verifying my information supplied on this application.

Contractor's Signature

Date

APPENDIX A: General Information

Request for Quotes

The Lubbock Housing Authority (LHA) is issuing a Request for Quotes (QSP # 2019-3-2 for Interior paint, Bath rehab at 4110 35th St, **Lubbock, TX**. Completed bid documents must be received at the LHA Central Office, 1708 Crickets Ave, Lubbock, TX no later than 12:00 Noon. on 3/22/2019

Plans, specifications and bid response documents may be obtained online at the Housing Agency Marketplace (<https://ha.economicengine.com/>).

The LHA encourages Section 3 Business Concerns, Minority and Women's Owned Businesses to submit bids.

Critical Dates QSP #2019-3-1

| | |
|---|---|
| Pre-quote Conference / Walkthrough | 3/19/2019, 10:00 a.m., 4110 35 th St. Lubbock, TX |
| Questions due by | 2:00 p.m. 3/20/19 |
| Answers given by | 4:00 p.m. 3/21/19 |
| Quote Receipt Deadline | 12:00 Noon . on 3/22/2019 No quotes will be accepted after this time. No exceptions. |

| Project Contact Information |
|---|
| Todd Steelman 1708 Crickets Ave. Lubbock TX. 79401 806-776-2301 Todd@lubbockha.org Fax: 806/762-0836 |

Scope of Work

Interior Painting, Renovation of bathroom.

Time Requirements

Contract Date **Contract Date:** The contract must be signed within five business days after the Quote Due Date.

Start Date **Start Date:** Contractor must start work within five business days after the contract is signed unless approved in writing by the Housing Authority.

Completion **Completion:** The project must be complete within 10 business days after the Start Date unless approved in writing by the Housing Authority.

| | General |
|--------------------|--|
| | Contractor is responsible for confirming measurements and quantities prior to submitting bid. |
| | Contractor responsible for providing all labor and materials, including paint. |
| | Contractor will obtain permits and incur costs of permits and fees required to complete this project. |
| | The Contractor shall maintain insurance required by this solicitation. The Contractor must notify the Housing Authority immediately upon any lapse in coverage. |
| | The Contractor shall comply with all laws and requirements regarding licensing, inspections and fees. |
| | All salvage debris & material will become the property of, and be promptly disposed of by, the contractor in a legal manner. |
| | All aspects of this project will be conducted in accordance with HUD 5370 EZ, General Conditions of the Construction Contract and other applicable forms provided in bid packages. |
| | The Contractor shall complete all activities included in the attached specifications and write-up |
| Davis-Bacon | For all construction related/modernization contracts exceeding \$2,000.00, compliance with all applicable Davis-Bacon wages and reporting activities is required. This compliance includes, but is not limited to: |
| | <ul style="list-style-type: none"> • Payroll reporting |
| | <ul style="list-style-type: none"> • Onsite document postings |
| | <ul style="list-style-type: none"> • Paying employees wage rates equal to, or exceeding, the rates noted on the current applicable Wage Determination for each classification listed. |
| | Set controls to guard access to the work area during demolition and installation of the new materials to maintain safety of the residents during performance of the work. |

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|-----------------|--|
| | The contractor shall take steps to avoid any damage to the units' walls, flooring and resident belongings/furnishings. |
| | The contractor is responsible for all measurements and calculations prior to bidding. Change Orders shall not be issued due to the failure of the Contractor to conduct onsite inspections or confirm measurements. |
| | The Contractor shall complete all activities and leave the unit ready for immediate occupancy at the completion of the project. |
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| | |
| Bathroom | <ul style="list-style-type: none"> • Remove existing tub and shower. <ul style="list-style-type: none"> ○ Install new tub and shower kit made by A², or approved equivalent. ○ White color. ○ Install all new shower valves and drain, shower valves to be "Delta model # 1343 NPS" or approved equal. • Install 4"x4" tile around entire shower and tub. Use white colored tile. • Remove all sheetrock and Mylar from walls, install water resistant board, Install 2 x 8 around the two sides of shower walls without plumbing, the bottom to be 30" above floor nailed between studs to enable the installation of grab bar if needed in the future, use only 2x8 or greater to fill the distance. • Install new vinyl baseboard after floor is installed and walls are painted. • Replace vinyl floor tile with like kind and quality with a color to match as close as possible. <ul style="list-style-type: none"> ○ Repair/replace sub-floor as necessary • Remove popcorn texture from ceiling <ul style="list-style-type: none"> ○ Texture to match wall surface • Remove all tile and replace with water resistant green board. <ul style="list-style-type: none"> ○ Tape float, texture and paint to match existing house. • Paint all interior surfaces (including walls, ceiling, doors, closet shelves, window/door trim.) <ul style="list-style-type: none"> ○ All paint used on the interior to be semi-gloss acrylic latex. ○ The method of application may be any approved manner so as to provide complete coverage of material being coated. ○ All holes to be filled or repaired and textured to match adjacent surfaces prior to painting. ○ All spills and splatters to be cleaned up prior to job being approved. |

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| | <ul style="list-style-type: none"> ○ If painting an occupied unit it is the responsibility of the contractor to provide protection for furnishings in unit. ● Replace fan/light/heater unit <ul style="list-style-type: none"> ○ Vent the unit through the roof. ○ Install flashing and vent cap. ○ Installation must be in compliance with local code. ○ Replace vent/heater/fan switches. ● Remove sink <ul style="list-style-type: none"> ○ Replace with oak finish 18" vanity with new one-piece sink top. ○ Faucet shall be single handle and have a die cast housing. ○ Replace angle stop valves and supply lines ● Remove and replace toilet (toilet must be reinstalled and functional at the end of each work day) <ul style="list-style-type: none"> ○ ADA compliant (high-rise) ○ Elongated bowl ○ Must have lever flush handle (no push buttons) ● Reinstall <ul style="list-style-type: none"> ○ Soapdish ○ Towel bars ○ Medicine cabinet ● Clean Bathroom <ul style="list-style-type: none"> ○ Remove all debris ○ Clean all fixtures. ○ Clean mirror ○ Clean floors ○ Clean cabinet/drawers interior and exterior |
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| | |
| Vents | Clean vents to remove smoke residue |
| | |
| Interior light | Replace light fixtures with led fixtures. |
| Interior Walls | Patch holes in walls and closets, paint all interior to match existing. This was smokers house for many years, Contractor must insure they use proper materials and technique to remove all signs of smoking including smell and stains from walls. |
| | |
| Kitchen | Refinish cabinets, replace vent hood, clean backsplash. Replace light fixture with led fixture. |
| Ceilings | Remove popcorn surface and replace with orange peel finish in entire unit. |

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Make Ready Write-up and Contractor

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| Entire Unit |
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| Remove and dispose all trash including storage closet/unit |
| Remove and clean all HVAC registers. Reinstall |
| Remove and clean all light globes. Reinstall |
| Remove and clean all outlet covers and switch plates. Reinstall. |
| Ensure no paint is on covers, switches or outlets. |
| Clean all walls prior to painting to ensure smoking stains will not soak thru new paint. |
| Clean all window surfaces (interior and exterior) |
| Clean window sills and trim. (including all dirt/debris collected where window meets the sill) |
| Clean interior doors and trim |
| Clean exterior doors |
| Clean screen doors |
| Sweep, mop, wax and buff all floors |
| |
| Kitchen |
| |
| Clean stove and oven, including exterior surfaces |
| Clean and deodorize refrigerator/freezer including exterior surfaces and top. |
| Clean vent hood including screen. |
| Clean sink and plumbing fixtures |
| Clean Counter |
| Remove trash, food particles, etc. from cabinets and drawers. |
| Clean interior/exterior surfaces of upper/lower cabinets including drawers and doors. |
| Clean top surface of cabinets. |
| |
| Bathroom |
| Clean tub/handles/faucet |
| Clean toilet interior and exterior |
| Clean vanity, mirrors and medicine cabinet (interior and exterior surfaces) |
| |
| Exterior |
| Remove and dispose all trash and debris from exterior buildings including garages and storage units. |
| Clean and degrease front and rear porch surfaces. |
| Clean thresholds at all entry doors |
| Remove and dispose all trash and debris from site including flowerbeds |
| |

NOTES:

Do not use abrasive cleaners that will remove paint or enamel finish from appliance or plumbing fixture surfaces.

Do not use cleaners that will damage/discolor tile, vinyl or carpet.

APPENDIX C: Davis-Bacon Wage Decision

General Decision Number: TX190227 01/04/2019 TX227

Superseded General Decision Number: TX20180274

State: Texas

Construction Type: Residential

Counties: Crosby and Lubbock Counties in Texas.

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

| | |
|---------------------|------------------|
| Modification Number | Publication Date |
| 0 | 01/04/2019 |

* ELEC0602-004 09/01/2018

Rates

Fringes

Electrician.....\$ 22.11 3%+9.25

SUTX2009-180 06/03/2009

| | Rates | Fringes |
|---------------------------------|----------|---------|
| CARPENTER..... | \$ 11.76 | 0.00 |
| LABORER: Common or General..... | \$ 7.58 | 0.00 |
| PAINTER: Brush and Roller..... | \$ 9.13 | 0.00 |
| PLUMBER..... | \$ 15.50 | 2.00 |
| ROOFER..... | \$ 9.35 | 0.00 |
| SHEET METAL WORKER..... | \$ 10.88 | 0.00 |

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

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

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

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

a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current

negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

Administrative Review Board
U.S. Department of Labor

200 Constitution Avenue, N.W.
Washington, DC 20210

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

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END OF GENERAL DECISION

APPENDIX D:

General Contract Conditions HUD form 5370-ez

General Contract Conditions for Small Construction/Development Contracts

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

Applicability. The following contract clauses are applicable and must be inserted into small construction/development contracts, greater than \$2,000 but not more than \$100,000.

1. Definitions

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

2. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers. The only liens on the PHA's property shall be the Declaration of Trust or other liens approved by HUD.

3. Disputes

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

4. Default

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

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

5. Termination for Convenience

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

6. Insurance

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

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

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$100,000.00 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 the State minimum per occurrence.

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

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

7. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which

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

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

8. Changes

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

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) PHA-furnished facilities, equipment, materials, services, or site; or,
- (4) Directing the acceleration in the performance of the work.

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

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

- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for 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.

9. Examination and Retention of Contractor's Records

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

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

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

11. Energy Efficiency

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

12. Procurement of Recovered Materials

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

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

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

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

14. Labor Standards - Davis-Bacon and Related Acts

(a) Minimum Wages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (d) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

- (i) the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
- (ii) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- (iii) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program.