

SECTION J

SUPPLEMENTAL GENERAL CONDITIONS

Form HUD-5370, *General Conditions of the Contract for Construction*, is supplemented, amended, and modified by the provisions of this Section J. Additional supplements, amendments, and modifications are contained in Section M.

I. DEFINITIONS

- A. The term "Contract", in Paragraph 1. (b) of the *General Conditions*, includes all items identified at Article 3 of Section F, *Form of Contract*.
- B. The term "LMHA" shall have the same meaning as the other terms noted in Paragraph 1. (h) of the *General Conditions*.

II. CONTRACTOR'S RESPONSIBILITY FOR WORK

- A. The 12% performance requirement of Paragraph 2. (b) also applies to any entity represented as a subcontractor.
- B. As used in Paragraph 2. (h) of the *General Conditions*, the term "accepted" means written acceptance.
- C. Paragraph 2. (i) is added to the *General Conditions*, as follows:

The following forms, and any others LMHA may require, shall be used by the Contractor and are available for review upon request:

- HUD Form 5282, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees
 - HUD Form 5372, Construction Progress Schedule
 - HUD Form 51000, Schedule of Amounts for Contract Payments
 - HUD Form 51001, Periodic Estimate for Partial Payment (must be accompanied by LMHA Form 7001)
 - HUD Form 51002, Schedule of Change Orders
 - HUD Form 51003, Schedule of Materials Stored
 - HUD Form 51004, Summary of Materials Stored
 - WH Form 347, Payroll Reporting Form
 - WH Form-348, Payroll Statement of Compliance (on back of WH-347)
 - LMHA Form 7000, Request for Acceptance of a Subcontractor
 - LMHA Form 7001, Certifications of Payments to Subcontractors and Suppliers
 - LMHA Form 7002, Agreement to Store Materials Off-Site
- D. The Contractor shall perform the work in full compliance with LMHA requirements stated at the pre-bid conference(s), the pre-construction conference(s), and in the contract documents, unless otherwise expressly required by LMHA.

III. ARCHITECT'S DUTIES, RESPONSIBILITIES, AND AUTHORITY

- A. The following sentence is hereby deleted from Paragraph 3. (c)(1) of the *General Conditions* and is henceforth without force or effect:

"The Architect shall file a copy of the report with the Contractor's designated representative at the site."

- B. Paragraph 3. (d) is added to the *General Conditions* as follows:

In the event that no project architect/engineer is appointed, or the architect/engineer has contracted for limited services, the Contracting Officer, the Contracting Officer's Designee, or another person appointed by LMHA shall perform the necessary services under this paragraph.

- C. For purposes of this Contract, day-to-day construction administration shall be performed by LMHA's Program M manager.

IV. NOTICE TO PROCEED

- A. Paragraph 5. (b) of the *General Conditions* is replaced with the following:

The Contractor shall begin work on the date designated in the duly executed Notice to Proceed, bearing the original signature of the Contracting Officer's Designee and the Contractor. Work will not commence prior to receipt of such notice.

V. CONSTRUCTION PROGRESS SCHEDULE

- A. The following provisions are added to Paragraph 6. (a) of the *General Conditions*:

For projects expected to require more than five working days to complete, the Contractor, shall use a calendar schedule, with separate divisions for each major operation, activity, or category of work. Such schedules shall sequentially indicate the first and last day of work for each operation, activity, or category of work, as well as overall start and finish dates. The Contractor shall supplement the schedule with sub-schedules for each major operation, activity, or category of work. The Contractor shall schedule work so as to minimize adverse impact on the lives and activities of LMHA residents and employees and the quiet enjoyment of LMHA premises. The schedule shall include a reasonable time allocation for LMHA to conduct punch list and final inspections. No schedule shall be effective as against LMHA until such time as LMHA expressly approves it in writing.

If the Contractor fails to provide a fully acceptable schedule within the allotted time, LMHA may allow work to begin prior to receipt of a fully acceptable schedule. Such special consideration by LMHA shall not be construed as acceptance of any less-than-fully-acceptable schedule or schedules. Neither shall such action be the basis for, or any element of, any claim against LMHA or any LMHA officer, agent, or employee; nor shall it relieve the Contractor of the duty to provide a fully acceptable schedule in a timely fashion.

If LMHA permits the Contractor to begin work prior to LMHA's receipt of a fully acceptable schedule, LMHA may rescind, modify, or otherwise remedy such permission at any time LMHA deems such action appropriate. LMHA's remedies may include termination of the Contractor's right to proceed with part or all of the work. The Contractor shall have no claim, cause of action, remedy, or defense in connection with such actions by LMHA.

On the first working day of each month (or as LMHA otherwise directs) the Contractor shall submit an updated schedule showing any and all deviations from the originally approved schedule (or interim, less-than-fully-acceptable schedule). Each updated schedule shall indicate the total accumulated percentage of completion for each major operation, activity, or category of work. Updated schedules are for monitoring purposes and, unless expressly stated in writing by LMHA, shall not constitute an approved schedule revision or change of contract time for completion or basis for any claim by the Contractor.

B. The following provisions are added to Paragraph 6. (b) of the *General Conditions*:

Should any such action become necessary, the Contractor shall bear any increased cost to LMHA for architects', engineers', environmental monitoring consultants', or others' services needed in conjunction with the work. The Contractor shall within 30 days of receiving LMHA invoices for such increased costs remit payment to LMHA. If the Contractor fails to remit payment within 30 days LMHA shall deduct the amount of the unpaid invoice(s) from remaining payments to the Contractor.

C. Paragraph 6. (d) is added to the *General Conditions* as follows:

The Contractor's schedule, and any updated schedules, whether or not approved by the LMHA, shall not be construed by the Contractor as grounds for determining the date for completion for the purposes of assessing liquidated damages or delay damages. Liquidated and delay damages may only be assessed in relation to the time for completion indicated in Section L, *Special Conditions*, and the date for completion calculated there from and set forth in the Notice to Proceed, except as expressly modified by any change order.

D. Paragraph 6. (e) is added to the *General Conditions* as follows:

Paragraph 6.(d), above, notwithstanding, if the Contractor gives the LMHA certain assurances (including construction progress schedules) that a specific portion of the contract work will be completed on a specific date, and the LMHA plans relocation or use activities based on such assurances, and the Contractor should fails to complete said portion of the contract work on the specified date, and has not provided a minimum of thirty (30) days written notice to LMHA that completion will not occur on the specified date, then the Contractor shall be held liable for any costs incurred by LMHA as a result of that portion of the contract work not being completed on the specified date.

E. Paragraph 6. (f) is added to the *General Conditions* as follows:

Paragraph 6.(d), above, notwithstanding, where the Contractor gives LMHA assurances (including construction progress schedules) that some portion(s) of the contract work will be completed on a particular date or as indicated by the construction progress schedule, and LMHA plans for, solicits, or awards a contract for professional services in connection with activities under this contract, based on such assurances or schedule, and the Contractor should fails to complete said portion(s) of the contract work in accordance with said assurances or schedule, then the Contractor shall be liable for any increased cost to LMHA of securing or enjoying such professional services as a result of that failure.

VI. DIFFERING SITE CONDITIONS

A. Paragraph 8. (b)(1) is added to the *General Conditions* as follows:

LMHA will investigate the site conditions within 30 working days of receipt of written notice from the Contractor. Unless the site conditions materially differ from those indicated in this contract and are of a nature that requires stoppage of all work pending resolution, no adjustment of the contract time and/or price will be made for the time attributable to LMHA's investigation, direction, and processing in connection with the conditions.

VII. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

A. The following provisions are added to Paragraph 9. (a) of the *General Conditions*:

The Contractor shall maintain, in readable condition, at the project site or office, a complete set of approved project drawings, specifications, change orders, shop drawings, and submittals. All such items shall be readily available for review by LMHA or its representatives.

B. The following provisions are added to Paragraph 9. (c) of the *General Conditions*:

The terms "provide", "furnish", "furnish and install", and similar terms shall be interpreted to mean:

The Contractor -- without LMHA's participation or assistance, unless specifically promised in writing -- shall furnish and install the several components of the project work, complete, in place, and 100% ready for activation and use.

C. The following provisions are added to Paragraph 9. (f) of the *General Conditions*:

If shop drawings or other submittals show variance from the Contract Documents, and the Contractor fails to bring such variance to LMHA's attention, in writing, at the time of submittal, and LMHA, having failed to recognize such variance, approves such submittal, LMHA may, upon subsequent discovery of said variance, rescind approval and require the Contractor to remove any work performed under the previously approved submittal and replace that work in a manner complying with the requirements of the Contract Documents at no additional cost to LMHA and with no adjustment of the contract time.

D. Paragraph 9. (j) is added to the *General Conditions* as follows:

All documents submitted to LMHA shall be delivered in a neat and easily interpreted format and shall be accompanied by a transmittal cover letter identifying the items being submitted and stating the action requested of LMHA with respect to such items.

E. Paragraph 9. (k) is added to the *General Conditions* as follows:

The Contractor, by signing this contract, certifies that 1) the Contractor has thoroughly reviewed the contract documents, 2) the Contractor had the opportunity to attend at least one pre-bid conference, 3) the Contractor, prior to the bid opening, had sufficient opportunity to raise any and all questions regarding any perceived ambiguity, conflict, error, omission, irregularity, or defect of the contract documents or raised by other LMHA representations, 4) the Contractor, prior to the bid opening, addressed to LMHA any and all such questions that the Contractor may have had, 5) the Contractor would not have submitted a bid for this contract had LMHA not satisfactorily answered the Contractor's questions prior to the bid opening, 6) the Contractor waives any and all right to challenge LMHA's pre-bid responses to such questions in the future, 7) the Contractor understands and agrees that contract interpretation is solely LMHA's right and that where the Contractor's view of contract requirements differs from LMHA's, LMHA's view shall govern and the Contractor shall proceed with the work as directed by LMHA without change or adjustment of the contract time, price, or conditions, and 8) the Contractor waives any and all right to challenge LMHA's interpretation of the contract documents or other LMHA representations or to pursue any remedy of any kind related to such interpretation.

VIII. MATERIAL AND WORKMANSHIP

A. Paragraph 11. (a)(1) is added to the *General Conditions* as follows:

Wherever the words "or equal", or words of similar meaning, appear in the Contract Documents, they shall be interpreted to mean an item, material, equipment, article, product, method, or process equal in quality to that named and suitable to the same use and capable of performing the same function as that named with equivalent efficiency, as determined by LMHA based on salient features and intended purpose.

B. Paragraph 11. (a)(2) is added to the *General Conditions* as follows:

Proof of equality is not implied by the Contract Documents and is not LMHA's burden. The burden of proof of equality shall be upon the Contractor. LMHA shall weigh the evidence of equality with fairness to all parties. Inclusion of a brand name, or type of item, material, equipment, article, product, method, or process in the Contractor's bid shall not obligate LMHA to accept such item, material, equipment, article, product, method, or process, if, in LMHA's opinion, that item, material, equipment, article, product, method, or process does not meet the requirements of the Contract Documents and its acceptance is not in LMHA's best interest. LMHA's determination regarding equality shall be final.

C. The following provisions are added to Paragraph 11. (b)(2) of the *General Conditions*:

1. All documents submitted to LMHA shall be transmitted in a neat and easily interpreted format and shall be accompanied by a transmittal cover letter stating the action requested of LMHA with respect to such items.
2. If any submittal shows variance from the Contract Documents, and the Contractor fails to bring such variance to LMHA's attention, in writing at the time of submittal, and LMHA, having failed to recognize such variance, approves such submittal, LMHA may, upon subsequent discovery of said variance, rescind approval and require the Contractor to remove any work performed under the previously approved submittal and replace that work in a manner complying with the requirements of the Contract Documents at no additional cost to LMHA and with no adjustment of the contract time.

D. Paragraph 11. (b)(6) of the *General Conditions* is replaced with the following:

All samples shall become the property of LMHA and shall be retained by LMHA until such time as LMHA sees fit to dispose of them. LMHA may dispose of samples in any way it sees fit, with no liability to the Contractor.

E. Paragraph 11. (b)(7) is added to the *General Conditions* as follows:

In the event the specifications indicate that either of two or more materials, equipment, articles, products, or processes is acceptable, the Contractor shall propose one of those items and shall indicate the basis for that item's selection. The process of submittal and approval for such items shall be the same as that prescribed for other items elsewhere in these documents. LMHA shall evaluate the item to determine if approval is in LMHA's best interest. If LMHA does not approve the submittal, the Contractor shall submit an alternate for LMHA's consideration. LMHA's decision regarding any submittal shall be final and shall not be the basis for any increase in the contract price or time, provided the item finally approved by LMHA was among, or comparable to, those included in the listed options. The Contractor shall maintain a legible copy of each approved submittal at the project site for the use of LMHA and LMHA's representatives.

IX. HEALTH, SAFETY, AND ACCIDENT PREVENTION

A. Paragraph 13. (d)(1) is added to the *General Conditions* as follows:

Paragraph 13. (d), above, notwithstanding, LMHA's failure to identify any incident of, or potential for, non-compliance with these requirements shall not relieve the Contractor of the duty to maintain current knowledge of, and compliance with, all such requirements, whether existing at the time of contract award or implemented thereafter.

B. Paragraph 13. (D)(2) is added to the *General Conditions*, as follows:

The Contractor is hereby notified of the existence of, and requirement to comply with, 29 CFR 1926.62, OSHA's standard on lead exposure in the construction industry.

X. INSPECTION AND ACCEPTANCE OF CONSTRUCTION

A. The following provisions are added to Paragraph 20 of the *General Conditions*:

The terms "acceptance", "instructions", and "approvals", as used in Paragraph 20. (a)(1), 20. (d), and 20. (j) of the *General Conditions*, means written acceptance, instructions, and approvals. As used in this instrument, the term "final completion" means that the work designated by LMHA is—in LMHA's sole discretion—complete to allow LMHA to take full possession of it and use it for its intended purpose.

B. The following provisions are added to Paragraph 20. (j) of the *General Conditions*:

Such acceptance may be affected by the necessity of HUD inspections, reviews, etc. Should HUD become involved, any time required for HUD to complete its activities shall not be counted against the Contractor or against LMHA for the purposes of assessing liquidated damages or delay damages or for any other modification of the contract amount or time.

C. Paragraph 20. (k) is added to the *General Conditions* as follows:

LMHA's Program Manager and the Construction Manager will at all times have access to the work to observe the progress and quality wherever it is in preparation of progress, and the Contractor will provide proper facilities for such access and for necessary inspection and testing at the Contractor's expense.

D. Paragraph 20. (l) is added to the *General Conditions* as follows:

As part of achieving final completion, the Contractor shall organize and submit four (4) copies of any operating, service, maintenance, and installation manuals for each item of manufactured equipment or system supplied and installed under this contract. Data required shall include, but is not necessarily limited to, manufacturer's data and cut sheets, installation instructions and notes, start-up procedures, servicing and maintenance manuals and instructions, and any related data including parts lists and "as-built drawings." The Contractor shall also submit all related warranty documents and shall provide assurance that all warranties have been assigned to LMHA.

XI. WARRANTY OF CONSTRUCTION

A. The following provisions are added to Paragraph 23. (a) of the *General Conditions*:

The Contractor shall immediately and at no cost to LMHA, provide qualified service personnel, regardless of the time of day or night, to correct warranty related deficiencies, which may cause personal injury or damage to other components.

B. Paragraph 23 (k) is added to the *General Conditions* as follows:

Approximately eleven (11) months after final acceptance of the project, but in any case, prior to expiration of the warranty period, LMHA shall conduct a warranty inspection to identify items requiring repair or replacement. The Project Architect, if any, may participate in said inspection. The Contractor may also join in the inspection, if so desired, provided such participation is in the best interests of LMHA and LMHA residents. LMHA or the Project Architect shall then prepare a list of warranty items requiring correction and present said list to the Contractor for appropriate action. The Contractor shall coordinate and effect all necessary repairs, replacements, etc., including any incidental costs associated with such work, at no expense to LMHA and within 30 days of receipt of the list of warranty items. If the project was finally accepted by LMHA in several parts, warranty inspections and lists shall follow the timeline established by such acceptance.

XII. CONTRACT PERIOD

A. Paragraph 25 of the *General Conditions* is replaced with the following:

The Contractor shall complete all work required under this Contract within the time specified in Section L, *Special Conditions*, of the Contract, and on, or before, the date for completion set forth in the Notice to Proceed, and as modified by any approved change orders.

XIII. PAYMENTS

A. Paragraph 27. (c)(1) is added to the *General Conditions* as follows:

The above referenced breakdown shall be submitted on Form HUD-51000, *Schedule of Amounts for Contract Payments*, unless an alternate format has been approved, in writing, by LMHA. If Unit Prices are for any reason not included in the bid documents, LMHA may, at its discretion, rely upon this breakdown as a guide for determining additions to, or deductions from, the contract price.

B. The following provisions are added to Paragraph 27. (e) of the *General Conditions*:

The form of this certification will be provided by LMHA and shall be used by the Contractor. The Contractor shall complete, sign, and attach this certification form when submitting Form HUD-51001, *Periodic Estimate for Partial Payment*.

Insert the word "Timely" at the beginning of the second clause of the form so it begins, "Timely payments to subcontractors and suppliers have been made from previous payments ..."

C. Paragraph 27. (f) of the *General Conditions* shall be replaced as follows:

The PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract.

D. Paragraph 27. (l) is added to the *General Conditions* as follows:

Ten-Day Payment, Subcontractors -- The Contractor shall, within ten (10) consecutive calendar days after receiving payment from LMHA, pay all subcontractors for the work, or material, or both, for which the Contractor received payment from LMHA. The Contractor shall pay each subcontractor the full amount LMHA paid the Contractor with respect to the particular subcontractor, except that the Contractor may withhold retainage from subcontractors in the same percentage as LMHA withholds retainage from the Contractor. The Contractor's failure to perform this obligation is ground for LMHA to withhold, from future payments to the Contractor, any and all sums not paid to subcontractors. LMHA may not withhold funds if the Contractor submits an affidavit averring that a genuine dispute exists between the Contractor and the unpaid, or underpaid, subcontractor. LMHA may ignore such an affidavit, and may take such other action as LMHA may deem appropriate or necessary, where the Contractor has previously delivered to LMHA a payment request that included the amount allegedly in dispute between the Contractor and the subcontractor. LMHA reserves the right, without obligation, to place sums withheld under this provision in an interest-bearing escrow account or to pay such sums directly to subcontractors.

XIV. CONTRACT MODIFICATIONS

A. The following provisions are added to Paragraph 28. (c) of the *General Conditions*:

Time required for HUD or LMHA processing of proposed modifications shall not--under any circumstances--be construed as a delay on the part of LMHA. Nor shall the Contractor be entitled to additional payment for overhead, direct costs, impact costs, lost profit, etc., in connection with such review or processing time, either as a part of that modification or as a part of any other modification (s).

XV. CHANGES

A. Paragraph 29. (b) of the *General Conditions* is replaced with the following language:

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 (1) the Contractor gives the Contracting Officer written notice stating (a) the date, circumstances and source of the order and (b) that the Contractor regards the order as a change order and (2) in LMHA's sole opinion there has, in fact, been a material change. In the event of ambiguity, real or alleged, in the contract documents, it is for LMHA, not the Contractor, to determine the proper meaning and intent of the documents. Where the contract documents conceivably comprehend more than one method or means of accomplishing the work and the Contractor did not, before submitting its bid, expressly state the method or means it intended to use the Contractor shall use the method or means LMHA prescribes. Where the Contractor fails to expressly raise such issues prior to bidding the work the Contractor shall perform as LMHA directs, regardless of what the Contractor may have construed the documents as meaning, without any adjustment of time, price, or other conditions.

B. The following provisions are added to Paragraph 29. (d) of the *General Conditions*:

The Contractor's mere assertion that a change has occurred, that the Contractor's costs are increased because of some LMHA action, or that the specifications are defective is not sufficient ground for a change or an equitable adjustment. The Contractor bears a heavy burden of proof and LMHA, alone, shall determine whether the Contractor has carried that burden sufficiently to merit a change and equitable adjustment.

C. The following provisions are added to Paragraph 29. (g) of the *General Conditions*:

Such information shall, at the very least, demonstrate all ways in which the project's critical path may be delayed and why such delay cannot be avoided or mitigated by rescheduling or resequencing work activities. Such information is required both for compensable and non-compensable time extension requests. These provisions shall not be construed as conflicting with, nullifying, or in any way limiting or abrogating the prohibitions set forth in Items XIII and XIV, above, regarding review time.

XVI. DISPUTES

A. The following Paragraph 31. (e)(1) is added to the *General Conditions*:

Under no circumstances shall LMHA be compelled to submit to arbitration, mediation, or other form of alternative dispute resolution (ADR), except by LMHA's express written consent. Under no circumstances shall any arbitration, mediation, or other form of ADR (Alternate Dispute Resolution) to which LMHA may submit be binding upon LMHA, except by LMHA's prior express written consent.

B. The following Paragraph 31. (e)(2) is added to the *General Conditions*:

The Contractor shall not resort to legal action in any court unless and until the Contractor has actually exhausted all administrative remedies.

XVII. LIQUIDATED DAMAGES

A. Paragraph 33. (a) of the *General Conditions* notwithstanding, the terms of Liquidated Damages are stated at Section F, *Form of Contract*, of the Contract.

XVIII. TERMINATION FOR CONVENIENCE

A. The time set forth in Paragraph 34. (c) of the *General Conditions* shall be sixty (60) days, but may be longer if deemed necessary by LMHA.

XIX. INSURANCE

A. Paragraph 36. (a)(2) of the *General Conditions* is amended as follows:

Commercial General Liability combined single limit for bodily injury and property damage shall be not less than \$1,000,000.00 per occurrence.

B. Paragraph 36. (a)(3) of the *General Conditions* is amended as follows:

Automobile Liability combined single limit for bodily injury and property damage shall be not less than \$1,000,000.00 per occurrence. Automobile Insurance Certificate shall include a 1980 Motor Carrier Act endorsement for contracts involving the transportation of hazardous waste.

C. The following sentence(s) shall be added to Paragraph 36. (b) of the *General Conditions*:

The Contractor shall be fully responsible for protection, maintenance, and insurance of the property against theft, vandalism, accidental mishaps, natural disasters, and any other harm during the construction period.

The builder's risk policy shall be in form and substance acceptable to LMHA and shall include (i) a soft cost endorsement in the amount of \$300,000 and (ii) a debris removal sublimit no less than 50% of the amount paid for the direct loss.

D. Paragraphs 36. (d), (e), and (f) are added to the *General Conditions* as follows:

(d) For contracts involving lead-based paint or asbestos abatement the Contractor and affected subcontractors shall maintain appropriate liability insurance expressly providing coverage for those activities. The minimum limit of coverage shall be \$1,000,000.00 per occurrence. "Claims-Made" policies are unacceptable for lead-based paint or asbestos activities.

(e) **Under no circumstances shall any contractor or subcontractor perform work on LMHA property prior to LMHA's acknowledgment of receipt of proper and satisfactory proof of such party's insurance as specified herein.** Likewise, any contractor or subcontractor whose insurance certificate has expired shall immediately cease work on LMHA property until such time as LMHA acknowledges receipt of a current, acceptable certificate. It is the Contractor's responsibility to ensure that all insurance certificates are kept up-to-date.

(f) Insurance Certificates shall:

- Identify the project site; and,
- Indicate the Contract Number; and,
- Include LMHA as an additionally insured; and,
- Include the following language, verbatim, with regard to cancellation:

None of the above described policies shall be canceled or non-renewed without at least thirty (30) days prior written notice from the issuing company to the Additional Insured named at left.
and,

- Bear the original signature of the Carrier's authorized representative.

XX. SUBCONTRACTS

A. The following provisions are added to Paragraph 37. (a)(1) of the *General Conditions*:

Employment of an individual or entity to perform work for a set amount of payment per unit of work or on a "per job" basis, is strictly prohibited where such arrangement results in the individual or any individual employed by the entity receiving less than the applicable Davis-Bacon hourly wage (including fringe benefits). Any doubt as to such issues shall be resolved against the Contractor and LMHA shall act against the Contractor as LMHA deems appropriate to resolve the matter and the Contractor shall have no recourse against LMHA for any action taken in the matter.

Third tier subcontracting is not strictly prohibited, but is strongly discouraged and subject to approval by the LMHA. Third tier subcontractors must submit for LMHA's consideration all the same documents as subcontractors.

B. Paragraph 37. (a)(2)(i) is added to the *General Conditions* as follows:

To maintain high standards of quality and craftsmanship in materials and services and to facilitate expedient completion of the work, suppliers, vendors, and firms must demonstrate that they have been established and operating successfully in the area of expertise in which they propose to participate may work on this project. For example, a firm that normally erects or supplies masonry, but proposes to furnish or install windows on this project, would not qualify as a window subcontractor (i.e., supplier, vendor, or firm).

The Contractor shall submit evidence, suitable to LMHA, of any subcontractor's qualifications whenever LMHA requests such evidence, whether before or after LMHA's acceptance of such subcontractor. In the event LMHA approves a subcontractor and later determines the subcontractor is not suitable the Contractor shall, upon LMHA's demand, dismiss the subcontractor and propose a suitable replacement for LMHA's consideration. No adjustment increasing the contract time or price shall flow from such action by LMHA.

C. Paragraph 37. (b)(1) is added to the *General Conditions* as follows:

Contractor's may consult the **System for Award Management (SAM)** (formerly known as the U.S. General Services Administration's *Excluded Parties List - EPL*) using the following link: <https://sam.gov/SAM/pages/public/searchRecords/searchResults.jsf> to determine subcontractor eligibility.

D. Paragraph 37. (f) is added to the *General Conditions* as follows:

The Contractor shall not enter into any subcontract agreement prior to receipt of LMHA's written acceptance of the proposed subcontractor. The Contractor shall not instruct or permit anyone to perform work on this project without LMHA's express written consent. LMHA shall make no payment for work performed by any subcontractor whom LMHA has not accepted in writing, or whom LMHA has subsequently determined is unacceptable. Failure to comply with these requirements is grounds for LMHA to order work stoppage, termination of the

Contractor's right to proceed, or any other action LMHA deems necessary to ensure compliance.

E. Paragraph 37. (g) is added to the *General Conditions* as follows:

Only one subcontractor may be employed at any time for each category of work. Multiple subcontractors for the same category of work will not be considered unless each of those subcontractors appeared on the *List of Proposed Subcontractors* in the bid documents. If at any time the Contractor wishes to employ multiple subcontractors in the same category of work, all of the proposed subcontractors for that category of work must be submitted simultaneously for LMHA's consideration.

LMHA may approve the use of multiple subcontractors in a single category of work, if the contractor produces evidence, satisfactory to LMHA, that use of a single subcontractor would be less cost-effective, less efficient, or is not feasible. Such approval will be based solely on the best interests of LMHA.

F. Paragraph 37. (h) is added to the *General Conditions* as follows:

The Contractor shall require all subcontractors proposed to participate in this project to complete and sign a form certifying that the subcontractor is familiar with the requirements of the contract between the Contractor and LMHA and agrees to be bound by those requirements insofar as they apply to said subcontractor (forms will be provided at the pre-construction meeting).

G. Paragraph 37. (i) is added to the *General Conditions* as follows:

If the general contractor is authorized to substitute subcontractors (including 3rd tier subcontractors) and a cost saving to the general contractor is realized, 50% of the saving shall be credited to the Louisville Metro Housing Authority.

XXI. LABOR STANDARDS, DAVIS-BACON AND RELATED ACTS

A. Paragraph 46. (a)(2)(V) is added to the *General Conditions* as follows:

The General Wage Decision applicable to this project, and required by the Federal Davis-Bacon Act, is included in these documents at Section K.

B. The following provisions are added to Paragraph 46. (c)(2)(i) of the *General Conditions*:

All payrolls shall be submitted on Form WH-347. No other form may be used without LMHA's prior written consent. If granted, LMHA may at any time rescind such consent should the alternative form prove less than satisfactory for LMHA's purposes.

C. The following provisions are added to Paragraph 46. (c)(2)(i) of the *General Conditions*:

Payrolls shall be submitted no later than five working days after the last day of that payroll period to which they pertain.

D. Paragraph 46. (l) is added to the *General Conditions* as follows:

LMHA shall notify the Contractor, in writing, of labor standards discrepancies as they become known. Should any discrepancy remain unresolved thirty (30) consecutive calendar days after notification from LMHA, LMHA shall begin recording time expended by LMHA employees in pursuit of resolving such discrepancy. For each such hour, or portion of an hour, the sum of \$30.00 shall be set-off from remaining payments to the Contractor as compensation for such costs. Such charges shall continue accruing until the discrepancy is satisfactorily resolved.

END OF SECTION J

SECTION K

FEDERAL DAVIS-BACON GENERAL WAGE DECISION

General Decision Number: KY190093 02/01/2019 KY93

Superseded General Decision Number: KY20180172

State: Kentucky

Construction Type: Building

County: Jefferson County in Kentucky.

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 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
1	02/01/2019

BOIL0040-001 03/01/2018

	Rates	Fringes
BOILERMAKER.....	\$ 35.10	27.56

CARP0175-001 06/01/2018

	Rates	Fringes
CARPENTER (Includes Acoustical Ceiling Installation, Drywall Hanging, Metal Stud Installation, Form Work, and Floor Laying - Carpet and		

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Vinyl).....\$ 25.50 18.26

CARP1076-001 06/01/2018

Rates Fringes

MILLWRIGHT.....\$ 27.20 19.97

ELEC0369-012 05/30/2018

Rates Fringes

ELECTRICIAN (Includes Low Voltage Wiring).....\$ 31.66 17.01

* ELEV0020-001 01/01/2019

Rates Fringes

ELEVATOR MECHANIC.....\$ 45.05 33.705

PAID HOLIDAYS:

a. New Year's Day, Memorial Day, Independence Day, Labor Day, Vetern's Day, Thanksgiving Day, the Friday after Thanksgiving, and Christmas Day.

b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years; 6% for less than 5 years' service.

ENGI0181-054 06/01/2018

Rates Fringes

POWER EQUIPMENT OPERATOR (Drill).....\$ 31.80 15.75

ENGI0181-079 06/01/2018

Rates Fringes

POWER EQUIPMENT OPERATOR (Loader).....\$ 31.80 15.75

ENGI0181-081 06/01/2018

Rates Fringes

POWER EQUIPMENT OPERATOR (Crane).....\$ 32.89 15.75

CRANES WITH BOOM 150 FEET & OVER, INCLUDING JIB, SHALL RECEIVE \$.75 ABOVE THE WAGE RATE; 250 FEET AND OVER, INCLUDING JIB, SHALL RECEIVE \$1.50 ABOVE THE WAGE RATE. ALL CRANES WITH PILING LEADS WILL RECEIVE \$.50 ABOVE THE WAGE, REGARDLESS OF BOOM LENGTH.

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ENGI0181-082 06/01/2018

	Rates	Fringes
POWER EQUIPMENT OPERATOR (Forklift).....	\$ 31.80	15.75

ENGI0181-093 06/01/2018

	Rates	Fringes
POWER EQUIPMENT OPERATOR (Oiler).....	\$ 26.78	15.75

IRON0044-017 06/01/2018

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 28.17	21.20

IRON0070-014 06/01/2018

	Rates	Fringes
IRONWORKER (Structural and Reinforcing).....	\$ 28.79	22.50

LABO0576-016 07/01/2018

	Rates	Fringes
LABORER (Backfiller, Carpenter Tender, Demolition, Common or General).....	\$ 20.04	10.63

LABO0576-019 07/01/2018

	Rates	Fringes
LABORER (Grouting, Mason Tender - Cement/Concrete, Power Tool Operator, Tamper - Hand Held).....	\$ 20.24	10.63

PLUM0502-006 08/01/2018

	Rates	Fringes
PLUMBER.....	\$ 34.62	20.78

PLUM0502-011 08/01/2018

	Rates	Fringes
PIPEFITTER (Includes HVAC Pipe and Unit Installation).....	\$ 34.62	20.78

ROOF0147-001 04/01/2018

	Rates	Fringes
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ROOFER.....	\$ 24.43	10.20

SFKY0669-001 04/01/2018		
	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 35.05	19.74

SHEE0110-005 06/01/2017		
	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct Installation).....	\$ 29.17	22.00

* UAVG-KY-0015 01/01/2019		
	Rates	Fringes
LABORER: Airtool Operator.....	\$ 20.14	10.63

* UAVG-KY-0017 01/01/2019		
	Rates	Fringes
LABORER: Vibrating Plate.....	\$ 20.16	10.63

* UAVG-KY-0019 01/01/2019		
	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 28.60	16.62

SUKY2015-032 06/02/2015		
	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 26.83	12.67
BRICKLAYER.....	\$ 24.03	8.03
CEMENT MASON/CONCRETE FINISHER...\$	20.21	9.70
LABORER: Concrete Saw (Hand Held/Walk Behind).....	\$ 19.93	5.97
LABORER: Mason Tender - Brick...\$	14.30	1.13
LABORER: Pipelayer.....	\$ 20.36	9.90
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 22.27	3.72
OPERATOR: Bulldozer.....	\$ 21.49	3.84
OPERATOR: Paver (Asphalt,		

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Aggregate, and Concrete).....	\$ 22.52	4.00
OPERATOR: Roller.....	\$ 23.60	12.65
PAINTER (Brush and Roller).....	\$ 21.28	11.94
PAINTER: Spray.....	\$ 22.81	11.87
TILE FINISHER.....	\$ 15.42	5.63
TILE SETTER.....	\$ 22.64	6.10
TRUCK DRIVER: Dump Truck.....	\$ 23.60	8.03

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

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"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

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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

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SECTION L
SPECIAL CONDITIONS

1. ORDER OF WORK

- A. Under no circumstances shall any contractor or subcontractor perform work on LMHA property prior to LMHA's receipt of proper and satisfactory evidence of such party's insurance as specified elsewhere in the Contract. Likewise, any contractor or subcontractor whose insurance certificate has expired shall immediately cease work on LMHA property until such time as a new and current certificate is received by LMHA. It is the Contractor's responsibility to ensure that all insurance certificates are kept up-to-date.
- B. No work shall commence under the Contract unless and until all pre-work requirements have been met and all necessary materials and equipment are on-hand and ready to be installed complete, in-place, and ready for use, as specified in the Contract.
- C. The Contractor shall give priority to completing work in the order directed by LMHA. Minimizing inconvenience to residents is a Contract priority. The Contractor shall make every feasible effort to schedule and prosecute the work in such manner as to minimize inconvenience to LMHA residents. The Contractor is forewarned, LMHA may change the work sequence at any time and may do so more than once. If, the Contractor demonstrates that such a change materially increases the cost of performance, LMHA may grant an equitable adjustment.
- D. The Contractor shall prepare a calendar schedule of the entire project. The schedule shall ensure that the contract is completed on or before the stipulated date for completion. All work shall be planned and performed so as to minimize inconvenience to LMHA residents and employees. Where the contract requires work in an occupied area the Contractor shall take all necessary steps to ensure that all work in such dwelling is completed as quickly as reasonably possible. The calendar schedule shall.
- Ensure that the contract is completed within the allotted time for completion;
 - Identify starting and completion dates for each element of work;
 - Identify starting and completion dates for the total project.

2. TIME FOR COMPLETION

- A. Work, including preparation and submittal of schedules and other required items, shall commence on the date stipulated in the duly executed Notice to Proceed. The Contract Period shall be:
NINETY (90) CALENDAR DAYS.
- B. The Contractor shall not perform, or permit, overtime or holiday work without the LMHA's prior written consent. The following days are observed holidays:
- New Year Day - January 1
 - Martin Luther King, Jr. Day - Third Monday in January
 - Memorial Day - Last Monday in May
 - Independence Day - July 4
 - Labor Day - First Monday in September

Thanksgiving Day - Fourth Thursday in November
Day after Thanksgiving Day - Fourth Friday in November
Christmas Day - December 25
Day after Christmas Day - December 26

- C. NOTE: If holiday falls on a Saturday, it will be observed on the preceding Friday. If holiday falls on a Sunday, it will be observed on the following Monday.
- D. The Contractor is hereby advised that LMHA administrative personnel may take vacation(s), or other leave, during the contract period. Every effort will be made to maintain smooth administration of the contract during such vacations, however, any effect such vacations may have on the administration of this contract shall not be construed by the Contractor as the basis for delay or damage claims.
- E. The Contractor may perform work between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except as otherwise provided by the Contract or otherwise directed or permitted in writing by the LMHA.

3. MINIMUM DAILY ACTIVITY

- A. General Construction: Time is of the essence. The Contractor shall provide all labor, materials, and equipment necessary to complete the work as quickly as reasonably possible. The Contractor shall exercise professional judgment to ensure provision of adequate resources to accomplish the work without unduly interfering with LMHA residents' use and enjoyment of their homes.

4. SITE CONDITIONS

- A. The Contractor shall remove all debris from the site and clean all work areas at the end of each day of work. The Contractor shall keep the project site clean and free from debris at all times. If the Contractor is negligent or lax in discharging these responsibilities, the LMHA may furnish labor and equipment to perform the needed work and may deduct the cost of such work from the Contract Price.
- B. The Contractor shall provide appropriately sized trash receptacles at the project site and shall ensure that they are promptly removed when full. The Contractor shall not dispose of trash in LMHA trash receptacles.
- C. Workers shall use designated areas when eating lunch, taking breaks, etc., and shall properly dispose of all personal debris.
- D. The Contractor is ultimately responsible for securing its work areas, equipment, and other interests.

6. PROJECT SITE

A. The project site is located in the City of Louisville, Kentucky, and is identified elsewhere in the Contract.

7. COMMUNICATIONS

A. The Contractor shall present all notices, demands, requests, proposals, instructions, approvals, and claims in writing. Regarding matters related to this project, the Contractor shall communicate only with LMHA's Program Manager, unless otherwise authorized in writing by LMHA's Contracting Officer.

B. Any notice to, or demand upon, the Contractor shall be sufficiently given if delivered at the Contractor's address indicated on the signature page of the *Form of Contract* (or at such other address as the Contractor may, from time to time, designate, in writing, to LMHA) or if deposited in the U.S. Mail in a postage prepaid envelope, or if delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.

C. Unless otherwise stated in writing by the Contracting Officer, only the following individuals have the authority to order work under this contract on LMHA's behalf:

LMHA Employee	Name
Contracting Officer	Lisa Osanka
Director, Capital Improvements Department	Norma Ward
Construction Manager, Capital Improvements Department	Mike Lyall

D. **The Contractor performs work ordered by any other persons at its own risk.** LMHA will notify the Contractor if LMHA removes, replaces, or adds any LMHA agent during the contract period.

E. All deliveries to the Louisville Metro Housing Authority shall, unless otherwise specified in writing, be addressed to:

Mike Lyall
Louisville Metro Housing Authority
420 South Eighth Street
Louisville, KY 40203

F. Any notice to, or demand upon, LMHA shall be sufficiently given if delivered at the address written above (or at such other address as LMHA may, from time to time, designate in writing) or if deposited in the U.S. Mail in a postage prepaid envelope, or if delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.

G. Any communication shall be deemed to have been delivered at the time of receipt indicated by LMHA's time/date stamp or similar device. The preceding sentence notwithstanding, any communication received after 3:00 p.m., Monday through Friday, or on a holiday, shall be considered as having been received on the next business day.

8. JOB OFFICES/TEMPORARY STRUCTURES

A. A job site office is NOT REQUIRED.

B. The Contractor shall provide telephone, toilet, and other facilities for its use, as they deem necessary. Neither the Contractor nor subcontractors shall use LMHA facilities or equipment.

C. Upon completion of the contract work, or when directed by LMHA, the Contractor shall remove all such temporary structures and facilities from the project site and leave the premises in condition equal to, or better than, its condition at the time of contract award. The Contractor shall provide before and after photographs to substantiate its compliance with this requirement.

9. COOPERATION WITH THE LMHA AND LMHA RESIDENTS

A. Should any worker on this project become abusive or offensive to LMHA, LMHA employees, LMHA Residents, or the general public, the Contractor shall immediately remove the worker from the project.

B. Should any LMHA resident become a nuisance, by complaining about or interfering with the work, or by other acts, the Contractor shall immediately notify the LMHA so that steps may be taken to alleviate the problem. In the event the safety of the Contractor's personnel is imminently jeopardized by the action of a resident, or other person, the Contractor should first notify the appropriate authorities (i.e., Police, Fire Dept., etc.) and notify LMHA thereafter.

C. LMHA must notify residents 48 hours prior to performing any work that requires displacement of vehicles, closure of streets, disruption of public services, or interruption of heat, hot water, electricity, etc.

LMHA will provide personnel to deliver such notices and to accompany the Contractor's or subcontractors' personnel to occupied units where residents cannot be present during the work. The Contractor shall, to the maximum extent feasible, notify LMHA's Program Manager at least 96 hours in advance of each such activity so that LMHA may prepare and distribute notices.

10. MATERIALS STORAGE

A. Materials may be stored off-site in certain instances, provided LMHA and HUD requirements are satisfied, and the Contractor enters into an " Agreement to Store Materials Off-Site" (utilizing the LMHA Form 7002).

13. PROGRESS MEETINGS

- A. With the express purpose of expediting the work and providing opportunities for cooperation of affected parties, representatives of the LMHA, the Contractor, and such others as LMHA may deem necessary shall attend progress meetings.
- B. Others, including the Contractor, may suggest or request meetings, but LMHA, alone, shall determine whether, when, and where meetings are appropriate.

14. TEMPORARY UTILITIES

- A. Utilities are not available. Contractor shall be responsible for utilities.

15. SANITARY FACILITIES

- A. The Contractor shall furnish, install, and maintain ample sanitary facilities for workers employed on this project.
- B. The Contractor shall furnish drinking water from an approved safe source, piped or transported so as to remain clean and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains.
- C. The Contractor shall maintain all sanitary facilities in strict accordance with all state and local health regulations and shall remove them from the project site upon completion or at LMHA's direction.

16. PROTECTION OF GROUNDS

- A. As described elsewhere in the Contract Documents.

17. EXPLOSIVES

- A. No explosives shall be used on this project.

18. PARKING

- A. LMHA may designate some parking space for the Contractor's use. Designated parking, if any, may not be adequate for all project vehicles and is not guaranteed under the Contract. The Contractor must submit written requests for designated parking.
- B. Whether or not LMHA provides designated parking space for the Contractor's use, the Contractor shall ensure that no vehicle owned by the Contractor, any subcontractor, any employee of the Contractor or

subcontractor(s), or any other party in the service of any of the above-named parties, is permitted to park in LMHA parking areas or on other portions of LMHA property without LMHA's written consent.

19. TEMPORARY PROTECTION

- A. The Contractor shall at all times protect all work, equipment, and materials and shall comply with all applicable OSHA and General Contractors Association of America safety rules.
- B. The Contractor shall observe all ordinances and police regulations concerning the occupation of, and work in, public spaces and shall save and hold harmless LMHA and LMHA employees from and against all claims, damages, losses, and expenses, including attorneys' fees, arising from or related to accidents to persons or property which may occur in connection with the Contractor's operations.
- C. The Contractor shall furnish, install, and maintain such temporary work as may be required for the protection of its work, the public, and employees in or about the work site, including, but not necessarily limited to, guardrails, fences, and barricades.
- D. As conditions require it, the Contractor shall provide personnel to guard the work after hours, and at other times as necessary, to prevent vandalism, personal injury, damage, etc. Anything that is damaged or defaced because of the Contractor's negligence shall be repaired or replaced by the Contractor at no additional expense to the LMHA.

20. SUPERVISION AND WORKMANSHIP

- A. Throughout the progress of the work the Contractor shall keep on the job a competent superintendent, satisfactory to LMHA. The Contractor shall not change the superintendent without LMHA's consent, unless the Contractor terminates the superintendent's employment. The superintendent shall have authority to act on behalf of the Contractor and instruction, direction, and notices given to or by the superintendent shall be binding upon the Contractor.
- B. The Contractor shall supervise and consult with each subcontractor during the work. The Contractor shall cause each subcontractor to lay-out and execute its work so as not to interfere with, delay, or damage, the work of other individuals or entities working at the project site.
- C. The Contractor shall promptly remove from the premises all work rejected by the LMHA for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to LMHA and shall bear the expense of making good all Work of other Contractors destroyed or damaged by such removal or replacement.

22. CUTTING AND PATCHING

A. Execute all cutting and patching in a neat and workmanlike manner using individuals skilled in the appropriate trades. Patch to match adjacent finishes. Where patching is required, refinish the entire surface of the component being patched.

23. PERMITS AND REGULATORY INSPECTIONS

A. The Contractor shall pay for and obtain from legally authorized agencies all permits and inspections necessary for the completion of work under this contract.

B. All work shall be performed by licensed persons and in accordance with all applicable codes and regulations including, but not necessarily limited to:

1. City and State Building Inspector;
2. National Fire Protection Agency;
3. Kentucky Standards of Safety;
4. Local Insuring Agency;
5. State and Local Plumbing Code;
6. Board of Health; KY Cabinet of Health Services
7. Kentucky State Fire Marshall;
8. National Sanitation Foundation;
9. National and Local Electrical Code;
10. Louisville Metro Air Pollution Control District; and
11. others, as required
12. Metropolitan Sewer District
13. Inspections, Permits, and License

C. This is notice to the Contractor that this project may be subject to Phase I or Phase II, or both, EPA Storm Water Control regulations pursuant to the Clean Water Act (33 U.S. Code 1358) as amended (40 CFR 122.26(b)(14)(x), 33 U.S. Code 1342 (p)(1988), and the Water Resources Development Act of 1992, P.L. 102-580 paragraph 364, 106 Stat. 4797).

D. This is notice to the Contractor that the EPA Storm Water Hotline / Region 4 [(404) 562-9303] is available to assist with questions regarding these requirements. Any and all permits, inspections, fees, etc. required in connection with these requirements shall be the responsibility of the Contractor and shall be acquired at no additional cost to LMHA.

E. The Contractor shall furnish LMHA and consultant with one (1) copy of each required permit.

24. POSTING REQUIREMENTS

A. The Contractor shall maintain a job bulletin board in a location where all project workers will see required postings daily.

B. LMHA will provide the following required postings to the Contractor:

- 1) Davis-Bacon General Wage Decision;
- 2) State and Federal notices to employees;
- 3) EEO notice;
- 4) Workers' Compensation notice;
- 5) State and Federal Safety and Health Protection notices; and
- 6) Contractor's Affirmative Action policy.

25. DRAWINGS AND SPECIFICATIONS

A. The Contract Documents are intended to address all work enumerated under the respective headings. The Contractor shall not take advantage of conflict between, or error in, the Contract Documents. Should any conflict or error be discovered, the Contractor shall immediately request clarification.

B. The Contractor shall not, under any circumstances, scale schematics for the location of equipment or work.

26. COORDINATION OF WORK

A. Owing to the nature of the work, and to prevent confusion and discrepancies, approximate or general dimensions may be indicated in some instances. It is intended that, in some instances, a reasonable limit of variation may be allowed to expedite the making and completion of the work and to serve the best interests of the project as a whole.

B. Other provisions of the Contract further address the Contractor's high duty to coordinate the work to minimize inconvenience to LMHA residents.

28. APPROVALS

A. Final payment shall be released only after LMHA's (and, where necessary, HUD's) written acceptance of all work.

B. The Contractor shall, at no additional cost to LMHA, furnish LMHA with certificates of inspection and approval from the appropriate inspecting agencies. Final payment shall be contingent upon LMHA's receipt of such certifications.

30. INSPECTIONS

- A. Except as the Contract otherwise provides, no work of any kind shall be covered-up prior to testing, examination, and approval.
- B. All installations shall be inspected by the proper authority to insure compliance with all requirements of this Contract.
- C. Where formal inspections (such as punch list or final inspections) by LMHA are required, the Contractor shall provide written notice that such an inspection is needed no less than seven (7) days prior to the date on which such inspection is desired. If HUD inspection is required, the Contractor shall notify LMHA in writing no less than fourteen (14) days in advance.

31. GUARANTEE

- A. Except where the contract documents require a greater guarantee period, the Contractor shall guarantee all work to be free from any defects in material and workmanship for a period of at least one (1) year from the date of acceptance.
- B. The date of acceptance shall be stated in writing by LMHA when it is satisfied that all punch list and final inspection deficiencies have been corrected.
- C. LMHA reserves the right to occupy individual areas at the conclusion of demolition for construction of new facilities.
- D. In the event of the failure of any component or material during the period of this guarantee, the Contractor shall promptly restore such components or materials to the standards set forth by this contract at no additional expense to LMHA within a time frame established by LMHA.

32. SECURITY

- A. The Contractor shall, at all times, protect and secure all work, equipment, and material.
- B. All open conduits and pipes shall be tightly covered and protected against dirt, water, and other injury for the duration of the Contract.
- C. It is solely the Contractor's responsibility to maintain the security of the work.
- D. The Contractor shall, at no additional cost to LMHA, repair or replace – at LMHA's option – damaged, defective, or defaced work, whether or not such condition may impair the structural integrity or utility of the work.

33. ENERGY STANDARDS

A. The Contractor shall comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy plan, issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

34. ENVIRONMENTAL PROTECTION

A. The Contractor shall comply with all applicable standards, orders, or requirements issued under Section 3-6 of the Clean Air Act (42 U.S. Code 1857(h)), Section 508 of the Clean Water Act (33 U.S. Code 1358), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). This provision applies to contracts and subcontracts in excess of \$100,000. Refer to paragraph 22.C, above, for additional information regarding the Clean Water Act.

B. The Contractor shall comply with the standards of OSHA's Health and Safety Partnership Program (HSPP) and shall ensure the application of any and all engineering controls, personal protective equipment, and safety measures necessary to protect the health of employees, LMHA personnel, the general public, and the environment during the removal, installation, or disturbance of any and all mineral fiber and respirable synthetic vitreous fiber (SVF) materials containing fibers characteristically 5 microns, or more, in length with a length to width ratio greater than or equal to 3:1, whether or not such materials, or activities affecting such materials, are regulated by any federal, state, or local agency.

35. SUBMITTALS

A. The Contractor shall submit all required LMHA and HUD forms, certificates, and documentation as directed at the pre-construction conference and as otherwise required under the Contract.

B. The Contractor shall submit additional information, as required by the LMHA, throughout the course of this project.

C. The Contractor shall submit cut-sheets, shop drawings, product data sheets, and other relevant information to the LMHA for review prior to purchase, installation, or use, as may be required by LMHA. No material, equipment, or installation shall be purchased, installed, or used without the prior written approval of the LMHA.

END OF SECTION L

SECTION M

**MBE, FBE & DBE, and SECTION 3 PROGRAMS
CONTRACTUAL REQUIREMENTS, FORMS AND
DOCUMENTS**

**LMHA Minority Business Enterprise (MBE), Female Business
Enterprise (FBE), Disabled Business Enterprise (DBE) and Section 3
Programs**

All bidders must comply with the requirements of LMHA's MBE, FBE and DBE, and Section 3 Programs to be considered responsive.

THE PARTICIPATION PERCENTAGE GOALS FOR THIS PROJECT ARE:

MBE - TWENTY-FIVE PERCENT (25%)

FBE - TEN PERCENT (10%)

DBE - ONE HALF OF ONE PERCENT (.5%)

SECTION 3 REQUIRED NUMERICAL GOALS:

- **AWARD AT LEAST 10% OF THE TOTAL DOLLAR AMOUNT OF THE CONTRACT TO SECTION 3 BUSINESS CONCERNS**
- **HIRING SECTION 3 RESIDENTS IN A NUMBER EQUAL TO AT LEAST 30% OF THE AGGREGATE NUMBER OF NEW HIRES**

I. LMHA Minority Business Enterprise (MBE), Female Business Enterprise (FBE), and Disabled Business Enterprise (DBE) Programs

A. *Generally*

This contract includes provisions regarding **MINORITY BUSINESS ENTERPRISE (MBE), FEMALE BUSINESS ENTERPRISE (FBE), and DISABLED BUSINESS ENTERPRISE (DBE)** solicitation and employment for firms wishing to participate in LMHA federally funded procurement activities that have potential for MBE, FBE, or DBE involvement in accordance with Executive Order 11625.

**FAILURE TO MEET THE MBE, FBE and DBE GOALS MAY HAVE A
SERIOUS IMPACT ON THE EVALUATION OF A BIDDER'S
RESPONSIVENESS!**

B. Definitions

The following definitions are used throughout the bid documents and Contract Documents:

1. **MBE** - Means Minority Business Enterprise. That is, a business which is fifty-one percent (51%), or more, owned by one or more persons who are members of a racial minority ("Racial Minority" is defined below), and in which such persons share economic interests and have proportionate control over management, interest in capital, and interest in earnings (minority/non-minority joint ventures are addressed elsewhere in these documents).
2. **FBE** - Means Female Business Enterprise. That is, a business which is at least fifty-one percent (51%) owned by one or more females, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more females; is managed by, and the daily business operations are controlled by one or more females; and is a domestic corporation with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm or other business.
3. **DBE** - Means Disabled Business Enterprise. That is, a business which is fifty-one percent (51%), or more, owned by one or more disabled individuals, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more disabled individuals; is managed by, and the daily business operations are controlled by one or more disabled individual; and is a domestic corporation with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm or other business.
4. **MBE Certification** -- All MBE, FBE, and DBE firms must be certified through either the Tri-State Minority Supplier Development Council, the Louisville and Jefferson County Human Relations Commission, or MSD's Minority and Woman Business Enterprise Program, or must provide evidence satisfactory to LMHA of minority ownership.
5. **Racial Minority** - Also called "Minority," means any United States Citizen who is:
 - a) **African American** (racial classification 2) - All persons of origins in any black African racial group not of Hispanic origin; or,
 - b) **Hispanic American** (racial classification 3) - All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish descended culture or origin, regardless of race; or,

- c) **Asian American** (racial classification 4) - All persons having origins in any of the Pre-Magellanic peoples of the Far East, Southeast Asia, the Indian Sub-Continent, or the Pacific Islands; or,
 - d) **American Indian or Native Alaskan** (racial classification 5) - All persons having origins in any of the Pre-Colombian peoples of North America, including Alaska, who maintain identifiable tribal affiliations, through membership and participation or community-identification; or,
 - e) **Hasidic Jew** (racial classification 6) - All persons having origins in the Hasidic Jewish culture, who maintain identifiable cultural affiliations, through membership and participation or community-identification.
6. **Disabled Person** - Means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, or has a record of such an impairment, or is regarded as having such an impairment.
7. **Woman** - Means a person born with the physical and genetic characteristics commonly associated with the female gender as currently defined by the professional medical community.

Women and disabled persons are not "Minority" persons, for the purposes of this project, unless they also meet one of the above-indicated definitions of a "Racial Minority."

C. MBE, FBE, and DBE Certification

All MBE, FBE, and DBE firms must be certified through the **Tri-State Minority Supplier Development Council**, 600 W. Main Street, Louisville, Kentucky 40202, (502) 625-0159, or the **Louisville and Jefferson County Human Relations Commission**, 410 West Chestnut Street, Louisville, Kentucky 40202, (502)574-3631; or **MSD's Minority and Woman Business Enterprise Program**, 700 West Liberty Street, Louisville, Kentucky 40202, www.msdlouky.org. Certifications from other agencies will be reviewed on a case by case basis. A copy of the certification must be submitted upon request.

Questions concerning MBE participation may be directed to the Louisville Metro Housing Authority's MBE/Section 3 Coordinator, Phillip Stepteau, at (502) 569-4922 or Stepteau@LMHA1.org.

1. Certification through one or more of the listed agencies indicates that a firm meets or exceeds the certifying agency's requirements for MBE, FBE, or DBE certification, however, it should not be construed as implying LMHA approval of such MBE, FBE, or DBE. MBE, FBE, or DBE certification is not indicative of any qualification to perform the work for which the Bidder has

proposed the MBE firm. It is the Bidder's inherent responsibility to ensure, **prior to submitting a bid**, that **ALL** proposed subcontractors are qualified.

D. MBE, FBE, and DBE Participation in LMHA Contracts

This policy applies to LMHA projects for construction, demolition, renovation, abatement, and similar activities. HUD mandates that the primary procurement responsibility of PHAs is to secure the best goods or services at the best price. However, MBE, FBE, and DBE participation is an integral and highly important part of LMHA's contracting activities. A minimum MBE, FBE, and DBE participation percentage goal has been established for this project and set forth above. The potential for achieving the MBE, FBE, and DBE participation percentage goal may depend upon the relative availability of MBE, FBE, and DBE firms in the categories of work anticipated. The Contract will be awarded to the responsible and responsive bidder who submits the lowest price, provided award serves LMHA's best interests.

1. **IN ORDER TO BE CONSIDERED RESPONSIVE**, a bidder must either meet the goals or provide evidence conclusively demonstrating that it made a strenuous, albeit unsuccessful, good faith effort to meet the goals. **Failure to aggressively respond to these requirements** is grounds for rejection of bid as non-responsive.
2. Law prohibits public housing agencies, including LMHA, from mandating MBE, FBE, or DBE participation. Bidders on LMHA projects are not obligated to use MBE, FBE, or DBE goods or services simply to meet the MBE, FBE, or DBE participation goal if the goods or services are available from non-MBE, non-FBE, or non-DBE sources at lower cost or using the MBE, FBE, or DBE would increase the cost of performance. Likewise, this policy shall not be construed as endorsing the representation of MBE, FBE, or DBE participation, when in fact a substantial portion of the participation proposed to be performed by an MBE, FBE, or DBE will be performed by the Contractor or by a third tier, non-MBE, non-FBE, or non-DBE subcontractor. For example:

If, on the *List of Proposed Subcontractors*, the bidder indicates that an MBE, FBE, or DBE will provide case work and trim carpentry services; and, the MBE, FBE, or DBE intends to, or commonly does, subcontract a substantial portion of its work to third tier non-MBE, non-FBE, or non-DBE subcontractors; such conditions would conflict with the intent of LMHA's MBE, FBE, and DBE Policy and the bidder's MBE, FBE, or DBE participation percentage would be reduced commensurately and its responsiveness reevaluated accordingly. The foregoing statements should not be construed as diminishing LMHA's commitment to MBE, FBE, or DBE participation. LMHA is committed to MBE, FBE, and DBE participation and expects contractors to employ MBE, FBE, and DBE firms to the fullest extent feasible.

E. Calculating MBE Participation

1. General -- An MBE's, FBE's, and DBE's participation in the Contract may count toward the goal to the extent that the MBE, FBE, or DBE performs Contract work with its own forces or through an MBE, FBE, or DBE subcontractor that uses its own forces. Work that an MBE, FBE, or DBE subcontracts to a non-MBE, non-FBE, or non-DBE subcontractor does not count toward the goal. Any contractor, subcontractor, or joint venture, that claims MBE, FBE, or DBE participation may be required, at any time, to produce evidence that the portion of the total contract price claimed was actually awarded to, performed, or supplied by MBE, FBE, or DBE firms.
2. MBE, FBE, and DBE Qualifications -- For their participation to count toward the goal, MBE, FBE, and DBE firms must be currently certified as MBE, FBE, or DBE firms at the time of the bid opening. MBE, FBE, and DBE firms, to participate in the Contract, must meet all the responsiveness and responsibility requirements imposed on other contractors and subcontractors under the Contract.
3. Commercial Utility -- The participation of an MBE, FBE, or DBE may count toward the goal only if the MBE, FBE, or DBE performs a commercially useful function in executing the Contract work.
 - a) An MBE, FBE, or DBE firm's function may be commercially useful if it includes direct, day-to-day responsibility for significant work of the Contract and the MBE, FBE, or DBE actually fulfills its responsibilities by performing, managing, and supervising that work.
 - b) Responsibility for negotiating prices, determining quality and quantities, ordering, installing, and paying for materials and supplies involved in the MBE's, FBE's, or DBE's portion of the Contract work may, also, indicate commercial utility.
 - c) An MBE's, FBE's, or DBE's function is not commercially useful if the firm's actual role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to present the appearance of MBE, FBE, or DBE participation. In determining whether a firm is an extra participant, LMHA may examine similar transactions, contracts, or projects, particularly those in which MBE, FBE, or DBE firms do not participate.
 - d) An MBE, FBE, or DBE that does not perform, or bear and exercise responsibility for, at least 12 percent of the total cost of its Contract work with its own forces, or that subcontracts a greater portion of its Contract work than would be expected under normal industry practice for the type of work involved, is preemptively not performing a commercially useful function. An MBE, FBE, or DBE

may challenge the presumption that it is not performing a commercially useful function. Because no privity can exist between LMHA and a subcontractor, MBE, FBE, and DBE subcontractors must assert such challenges through the prime contractor.

- e) LMHA may evaluate industry practices, the amount and type of work awarded to the MBE, FBE, or DBE, and any other factors LMHA deems appropriate, to determine whether a function is commercially useful.

4. MBE, FBE, or DBE Prime Contractors -- MBE, FBE, or DBE firms are under the same obligations as any other prime contractor with respect to LMHA's MBE, FBE, or DBE goals. To receive MBE, FBE, or DBE participation credit, an MBE, FBE, or DBE prime contractor must perform at least 12% of the Contract work with its own forces. MBE, FBE, or DBE prime contractors may be credited with MBE, FBE, or DBE participation to the extent that they perform the Contract work with their own forces and employ MBE, FBE, or DBE subcontractors pursuant to the provisions of this policy. For example:

If an MBE, FBE, or DBE prime contractor will perform \$12,000-worth of work with its own forces, and the total contract price is \$100,000, MBE, FBE, or DBE participation would be 12%. Thus, if the MBE, FBE, or DBE participation goal was 20%, the MBE, FBE, or DBE prime contractor would be short of the goal and required to either obtain another 8% participation or demonstrate fruitless good faith efforts to obtain another 8% and request a waiver of that portion of the goal.

5. Non-MBE, FBE, or DBE Prime Contractors - may be credited with MBE, FBE, or DBE participation based on the dollar value of that portion of the total contract work subcontracted to MBE, FBE, or DBE firms and performed by such MBE, FBE, or DBE firms using their own forces or through third tier MBE, FBE, or DBE subcontractors that use their own forces. For example:

If a non-MBE, FBE, or DBE prime contractor subcontracts \$15,000-worth of the total contract work to one or more MBE, FBE, or DBE subcontractors, and the total contract price is \$75,000, MBE, FBE, or DBE participation would be 20% ($\$15,000/\$75,000$).

6. MBE, FBE, or DBE Subcontractors -- To receive MBE, FBE, or DBE participation credit, an MBE, FBE, or DBE subcontractor must perform at least 12% of its portion of the Contract work with its own forces. An MBE, FBE, or DBE subcontractor's participation in the Contract counts toward the goal to the extent that the MBE, FBE, or DBE performs Contract work with its own forces and through third-tier MBE, FBE, or DBE subcontractors that use their own forces. Work that an MBE, FBE, or DBE subcontractor subcontracts to a non-MBE, FBE, or DBE subcontractor does not count toward the goal. For example:

If an MBE, FBE, or DBE firm is subcontracted to fabricate and supply equipment for this project, at least 12% of the fabrication must be performed by the MBE, FBE, or DBE firms own forces, in its own facility.

- a) A prime contractor shall receive no credit for the participation of an MBE, FBE, or DBE subcontractor unless the prime contractor, before the start of work, delivers to LMHA a fully executed original counterpart of the agreement between the prime contractor and the MBE, FBE, or DBE subcontractor.
- b) Such agreement must bear the prime contractor's and MBE, FBE, or DBE subcontractor's notarized signatures, must state the price the MBE, FBE, or DBE will receive for its work, and must include a reasonably detailed description of the work the subcontractor will perform.

7. Joint Ventures - Joint ventures between an MBE, FBE, or DBE and a non-MBE, FBE, or DBE, bidding and performing as a joint venture prime contractor or sub-contractor, may count toward the goal to the extent of the dollar value of the Contract work performed with the MBE, FBE, or DBE party's forces. For example:

If the joint venture will perform \$35,000-worth of the total contract work with its joint forces, and the MBE, FBE, or DBE party's forces will perform \$15,000-worth of that work, and the total contract price is \$100,000, MBE, FBE, or DBE participation would be 15% ($\$15,000/\$100,000$).

If, in the preceding example, the joint venture was the prime contractor and employed MBE, FBE, or DBE, FBE, or DBE subcontractors to perform \$10,000-worth of the remaining total contract work, MBE, FBE, or DBE participation would be 25% ($(\$15,000 + \$10,000)/\$100,000$).

- a) A joint venture shall receive no MBE, FBE, or DBE participation credit unless, before the start of work, it delivers to LMHA a fully executed original counterpart of the joint venture agreement.
 - b) Such agreement must bear the notarized signatures of all parties to the agreement, must state the sum each party will receive for its work, and must include a reasonably detailed description of the work each party will perform.
 - c) To be counted at all, the MBE, FBE, or DBE party's portion of the dollar value of the work must be distinct and clearly defined.
8. Materials and Supplies - Any contractor or subcontractor may, under certain conditions, claim MBE, FBE, or DBE participation credit for MBE, FBE, or DBE suppliers who provide materials for the Contract work. MBE, FBE, or DBE supplier participation is based, generally, on the dollar value of the goods purchased from the MBE, FBE, or DBE supplier. For example:

Subject to the conditions following this example, if a non-minority prime contractor purchases \$20,000-worth of supplies from an MBE, FBE, or DBE supplier, and the total contract price is \$100,000, MBE, FBE, or DBE participation would be 20% (\$20,000/\$100,000). Materials and supplies purchased from MBE, FBE, or DBE firms for use in the Contract may count toward the goal as follows:

- a) If the materials or supplies are purchased from an MBE, FBE, or DBE manufacturer, 100 percent of the cost of the materials or supplies may count toward the goal.
 - (1) For the purposes of these provisions, a “manufacturer” is a business entity that operates or maintains a factory or production facility that routinely produces, on its premises and in the normal course of its business, materials, supplies, articles or equipment required under the Contract.
- b) Materials and supplies purchased from MBE, FBE, or DBE firms who are regular retail or wholesale dealers will only be counted toward the goal at 60 percent of their cost.
 - (1) For the purposes of these provisions, a “regular retail or wholesale dealer” is a business entity that:
 - (a) owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles or equipment required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the normal course of business; and
 - (b) is an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the items required under the Contract.
 - (2) A person may be a regular retail or wholesale dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as described above, if the person owns and operates distribution equipment for distribution of such products.
 - (3) Long-term lease agreements by which a regular retail or wholesale dealer supplements its own distribution equipment may be acceptable as to the goal, but ad hoc or contract-by-contract agreements for that purpose are not.
 - (4) Packagers, brokers, manufacturers’ representatives, and other persons who arrange or expedite transactions are not regular

retail or wholesale dealers within the meaning of these provisions. Such persons' or entities' participation shall not count toward the MBE, FBE, or DBE or DBE goal.

9. Fees or commissions -- charged by an MBE, FBE, or DBE that is neither a manufacturer nor a regular retail or wholesale dealer, for assistance in procuring materials or supplies, or for feed or transportation charges for delivering materials or supplies required under the Contract, may count toward the goal, provided LMHA finds such fees or commissions are reasonable and not excessive in comparison to fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves shall count toward the goal under these circumstances, unless they qualify under one of the other provisions of this subsection.
10. Professional Services -- Fees or commissions charged by an MBE, FBE, or DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Contract, may count toward the goal, if LMHA finds them reasonable and not excessive in comparison to fees customarily allowed for similar services.
11. Any contractor, subcontractor, or joint venture that claims MBE, FBE, or DBE participation may, at any time, be required to produce evidence that the portion of the total contract price claimed was actually awarded to, and performed or supplied, by MBE, FBE, or DBE firms.

F. Required Forms

Bidders must submit the following two (2) forms, among others, as a part of the bid proposal, regarding proposed employment of MBE, FBE, or DBE firms on this project:

1. *Schedule of Minority Business Participation*
 - a) The Bidder shall list, on this form, all MBE, FBE, or DBE firms proposed to perform as prime contractors or subcontractors for this project; the type of work to be performed; the anticipated start and completion dates for the work to be performed; and the agreed upon price for the work.
 - b) The Bidder, by completing this form, represents that, if awarded this contract, it will enter into formal contracts (provided each MBE, FBE, or DBE is accepted, in writing, by LMHA), in the amounts indicated, with the MBE, FBE, or DBE firms listed on this form.
2. *Schedule of MBE, FBE, or DBE Unavailability*
 - a) In the event the Bidder is unable to achieve the MBE, FBE, or DBE participation percentage goal, the Bidder shall list on this form all MBE,

FBE, or DBE firms contacted and/or considered, but not proposed to participate in this project, and the reasons they are not proposed to participate.

FAILURE TO SATISFY THE MBE, FBE, or DBE PARTICIPATION PERCENTAGE GOALS MAY HAVE A SIGNIFICANT ADVERSE IMPACT ON A BIDDER'S RESPONSIVENESS!

G. Evidence of Responsiveness

As evidence that the Bidder has made a significant good faith effort to involve MBE, FBE, or DBE firms in this project, the Contractor, upon request, shall make available to the Louisville Metro Housing Authority such documentation as is described below.

Bidders that fail to meet MBE, FBE, or DBE goals and fail to demonstrate sufficient good faith efforts to merit a waiver, may be required to forfeit their bid guaranty as agreed liquidated damages.

H. Waiver of MBE, FBE, or DBE Goals

Minority Business Enterprise participation is a priority objective of this agency and LMHA's MBE, FBE, and DBE policy applies to all construction and abatement contracts. If, because of extreme circumstances, a bidder cannot meet the MBE, FBE, or DBE participation percentage goal, LMHA may grant a full or partial waiver of the goal. LMHA will, however, grant a waiver of the MBE, FBE, or DBE participation percentage goal only upon receipt of persuasive evidence that a bidder has made diligent, albeit ultimately unsuccessful, efforts to meet the MBE, FBE, or DBE participation percentage goal (as further explained below).

1. **Bidders must make every reasonable effort to meet the MBE, FBE, or DBE goals.**

Limited or merely formalistic efforts are not considered "good faith" efforts. The bidder must demonstrate that, given all relevant circumstances, it actively and aggressively endeavored to meet the MBE, FBE, or DBE goals.

2. **In the event a bidder finds that it cannot fully satisfy the MBE, FBE, or DBE goals of this solicitation, the bidder must submit a written request for a full or partial waiver of the goals and receive approval prior to submission of bid. All request for waivers for MBE, FBE, and DBE must be submitted with the "2nd Day Submission" documents after the bid opening.**

The "MBE, FBE and DBE Waiver Request Information Sheet" can be found on Page 16 of this Section.

IF THE BIDDER WILL NOT USE ANY SUBCONTRACTORS OR HAS MET THE FULL MBE, FBE, AND DBE GOALS, IT IS NOT NECESSARY TO REQUEST A WAIVER.

- a) The written request for a waiver must explain how the bidder views and evaluates the subcontractable components of a project and why the bidder was unable to attain the MBE, FBE, or DBE participation percentage goal. The request must also include detailed narrative statements describing the bidder's "good faith" efforts to secure MBE, FBE, and DBE participation. If bidder has requested such waiver from LMHA within the last five (5) years, submit copies of all waiver requests.
3. Examples of "good faith efforts" to attain the MBE, FBE, or DBE goal include, but are not necessarily limited to:
- a) **Attending scheduled meetings**, regarding the project.
 - b) **Providing written notice**, (preferably certified mail) to a reasonable number of MBE, FBE, and DBE firms requesting bids. *A reasonable number means at least as many MBE, FBE, or DBE firms as non-MBE, FBE, or DBE firms, in each trade category, must be contacted.* Copies of certified letters sent to MBE, FBE, or DBE firms requesting bids, and original, signed, receipts, or copies of telegrams soliciting bids from MBE, FBE, or DBE firms, indicating the date of delivery, would be considered evidence of such efforts.
 - c) **Allowing sufficient time** (five working days, or more, as time permits) **for MBE, FBE, and DBE firms to respond** to a written notice. *Sufficient time means initiating contact with MBE, FBE, or DBE firms at least as far in advance of the bid date as contact is initiated with non-MBE, FBE, or DBE firms.* Original responses from MBE, FBE, or DBE firms indicating the reasons why they do not wish to participate in this project and bids received from MBE, FBE, or DBE firms on those firm's letterhead or standard bid forms would be considered evidence of such efforts.
 - d) **Following up** written notification by **telephone or other means**. Date-stamped copies of telephone conversation records and faxed letters would be considered evidence of such efforts.
 - e) **Contacting MBE, FBE, and DBE assistance agencies** and organizations (see Section J of Official Bid Package for lists) and the LMHA's MBE/Section 3 Coordinator at (502) 569-4922, for assistance in locating qualified MBE, FBE, or DBE firms. Date-stamped copies of telephone conversation records and faxed or mailed letters would be considered evidence of such efforts.
 - f) **Selecting portions of the work to be performed by MBE, FBE, and DBE firms** in order to increase the likelihood of meeting the MBE, FBE, or DBE goals. Documentation demonstrating that extra effort was made to solicit MBE, FBE, or DBE bids for categories of work in which MBE, FBE, or DBE firms are particularly well

represented in the geographical area of the project would be considered evidence of such efforts.

- g) **Providing MBE, FBE, and DBE firms with adequate information about the project** when requesting quotations (i.e., identifying potential subtrades involved in the project and identifying a potential dollar range for those subtrades). Copies of certified letters sent to MBE, FBE, and DBE firms, and original, signed, receipts, date-stamped copies of telephone records and faxed or mailed follow-up letters, or copies of telegrams sent to MBE, FBE, and DBE firms, would be considered evidence of such efforts.
 - h) **Advertising in general circulation media (e.g., Courier-Journal), and media aimed at minorities (e.g., Louisville Defender)**, at least 20 days before bids are due. Or, if 20 days are not available, publication for a shorter, but maximum available, period is acceptable. Copies of legal advertisements published as an attempt to obtain MBE, FBE, and DBE involvement would be considered evidence of such efforts.
 - i) **Making efforts to assist MBE, FBE, or DBE firms** in obtaining bonding, credit, or insurance. Date-stamped copies of telephone conversation records and faxed or mailed letters to MBE, FBE, or DBE firms and/or bondsmen, creditors, or insurers would be considered evidence of such efforts.
 - j) **Making efforts to meet and negotiate** with potential MBE, FBE, and DBE Bidders prior to the bid opening. Copies of certified letters sent to MBE, FBE, and DBE firms and original, signed, receipts, date-stamped copies of telephone records and faxed or mailed follow-up letters, or copies of telegrams sent to MBE, FBE, and DBE firms, would be considered evidence of such efforts.
 - k) **Efforts made by the Bidder to expand its search** for MBE, FBE, and DBE firms, beyond the usual geographic boundaries. Documentation demonstrating that such efforts were made would be considered evidence of such efforts.
4. LMHA reserves the right to examine the Bidder's bid preparation materials, including all requests for bids the Bidder issued to potential subcontractors, the Bidder's bid calculation work sheets, and the Bidder's telephone records, notes, and any other information LMHA believes may be helpful in verifying the Bidder's assertions.
5. The bidder's **delivery of a request** for waiver **does not**, in and of itself, **ensure** that such a **request will be granted**.
- a) A full or partial waiver may be granted only after the Louisville Metro Housing Authority has thoroughly reviewed the project's MBE, FBE, or DBE participation potential. Documentation supporting a request

for waiver, if such evidence exists, may be presented to the Louisville Metro Housing Authority's Executive Director for a final decision.

- b) If a waiver is granted, and there are no other impediments to the award of the contract, the contract award process may proceed.
- c) If a waiver is not granted, or if no request for waiver is received, and the bid is otherwise acceptable, the Louisville Metro Housing Authority may require the Bidder to satisfy the total MBE, FBE, and DBE goals at no additional cost to the Louisville Metro Housing Authority or may deem the Bidder non-responsive.

I. Replacing MBE, FBE, or DBE Subcontractors

- 1. Any contractor who proposes to replace a proposed or accepted MBE, FBE, or DBE subcontractor must maintain the MBE, FBE, or DBE participation percentage that existed prior to the replacement of that subcontractor, or, if possible, achieve an even greater MBE, FBE, or DBE participation percentage. If the contractor finds it cannot satisfy these requirements, it must submit a request for waiver of the MBE, FBE, or DBE participation percentage goal, as prescribed above.
- 2. LMHA reserves the right to conduct compliance reviews on minority and non-minority contractors that utilize MBE, FBE, or DBE subcontractors, or perform as joint ventures. Contractors shall maintain records of all MBE, FBE, or DBE participation for three (3) years following completion of the project. Failure on the part of the contractor to comply with these requirements could result in the withholding of payment, termination of the Contractor's right to proceed with the work, legal fines, imprisonment, or all of the above.

J. Assistance to MBE, FBE, and DBE firms

The Louisville Metro Housing Authority actively works to assist minority vendors and contractors/subcontractors. LMHA is committed to providing equal opportunities for Minority Business Enterprises (MBE, FBE, and DBE firms).

Such opportunities are advertised through newsletters and newspapers, including minority newspapers, minority purchasing councils, and the Department of Housing and Urban Development.

When requested, LMHA will provide special assistance, to the fullest extent possible, to MBE, FBE, and DBE firms, by providing instruction on the preparation of bids, MBE, FBE, and DBE policy, and any other requirements related to LMHA's MBE, FBE, and DBE program, in connection with activities including but not necessarily limited to:

- 1. Architectural, Engineering, and similar Professional Services contracts;
- 2. Construction and Maintenance contracts;
- 3. Purchase Contracts; and,

**MBE, SECTION 3 AND EEO
CONTRACT REQUIREMENTS
FORMS AND DOCUMENTS**

4. Bank Deposits.

MBE, FBE, or DBE firms, and others, seeking assistance in these areas should first contact:

1. Tri-State Minority Supplier Development Council, 600 West Main Street, Louisville, KY 40202.
Contact: (502) 625-0159
2. Kentucky Cabinet for Economic Development, Department of Existing Business & Industry, Minority Business Division, 2201 Capital Plaza Tower, Frankfort, KY 40601.
Contact: (502) 564-2064
3. Louisville and Jefferson County Human Relations Commission, 410 West Chestnut Street, Suite 300A, Louisville, KY 40202.
Contact: (502) 574-3631

NOTE: The following forms on pages 15-22 shall be completely filled out and submitted with the bid.

SCHEDULE OF MBE, FBE, AND DBE PARTICIPATION

(Name of Bidder)

For each MBE, FBE, or DBE firm proposed to participate in this project, **list the firm's name, business address, category of work, percentage of total bid to be performed by the firm, and the firm's Federal Tax ID number in the space provided below.** Additional sheets may be attached if necessary.

The combined total of MBE participation proposed is _____ % of the total bid amount.
The combined total of FBE participation proposed is _____ % of the total bid amount.
The combined total of DBE participation proposed is _____ % of the total bid amount.

In addition to completion of this form, a Bidder who has met the MBE, FBE, and DBE goals must submit a copy of the signed sub-bid from each MBE, FBE, and DBE subcontractor listed with its bid.

The bidder, if successful, agrees to enter into a formal contract with each of the above referenced firms, in the amounts indicated, provided those firms are acceptable to the Louisville Metro Housing Authority.

NOTE: Failure to complete and submit THIS form or comply with directions therein is ground for bid rejection.

MBE, FBE AND DBE WAIVER REQUEST INFORMATION SHEET

Contractor's Name: _____

Business Address, City, State and Zip Code:

Telephone Number: _____

Contract Person: _____

Project Name and Proposal Number:

WAVIER REQUESTED FOR: (fill in as needed for any that apply)

MBE: _____ **FBE:** _____ **DBE:** _____
% Requested: _____ **% Requested:** _____ **% Requested:** _____

NOTE: The "MBE, FBE and/or DBE waiver percentages" requested, when added with the "MBE, FBE and/ or DBE percentages" proposed on Page 15, must add up to the percentage needed for each category (MBE is 25%; FBE is 10%; and DBE is 0.5%).

STEPS TAKEN TO MEET GOALS: (must choose one for respond for each "step"):

		YES	NO
1	Provide written notice to potential bidders		
2	Allowed sufficient time to respond		
3	Follow-up written notification to potential bidders		
4	Contacting MBE, FBE, and DBE Agencies		
5	Selecting portions of work to be performed by MBE, FBE and DBE		
6	Advertising in general circulation media		
7	Marking efforts to meet and negotiate with potential MBE, FBE and DBE bidders		

PROVIDE A WRITTEN NARRATIVE OF THE "GOOD FAITH EFFORTS" TAKEN AND RESULTS: (Use Additional Sheets if Necessary):

LIST OF PROPOSED SUBCONTRACTORS

The following list of proposed subcontractors is required to be submitted with each bidder's proposal, in accordance with the requirements of Section C of this solicitation. All subcontractors are subject to the approval of LMHA. **PROPOSED SUBCONTRACTORS AND SUBCONTRACT AMOUNTS SHALL NOT BE CHANGED, NOR SHALL ANY ADDITIONAL SUBCONTRACTORS BE EMPLOYED, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE LOUISVILLE METRO HOUSING AUTHORITY.**

<u>NAME OF SUBCONTRACTOR</u>	<u>CATEGORY OF WORK</u>	<u>\$ Amount</u>
1. _____		
2. _____		
3. _____		
4. _____		
5. _____		
6. _____		

(Employer ID numbers must be provided upon request)

Use Additional Sheets If Necessary

**THIS FORM MUST BE COMPLETED AND SUBMITTED WITH
THE OFFICIAL BID PACKAGE.**

NOTE: WITHIN TWO WEEKS OF CONTRACT EXECUTION, THE GENERAL CONTRACTOR SHALL SUBMIT, FOR THIS CONTRACT, COPIES OF ALL SUBCONTRACTOR CONTRACTS OR WRITTEN AGREEMENTS TO THE LOUISVILLE METRO HOUSING AUTHORITY

NOTE: If third tier subcontracts are intended, the information on the following page must be provided for each proposed subcontractor.

Instructions for Completing EMPLOYMENT DEMOGRAPHICS Form

1. **Duty to Submit Form** -- Every bidder shall complete the *Employment Demographics* form (hereafter, the Form). Every bidder shall ensure that each of its sub-bidders also completes the Form. The Bidder shall submit fully executed Forms for itself and each sub-bidder, with its bid, in the package labeled "Supplemental Bid Information."
2. **Space Constraints/Additional Forms** -- If the space provided on a single Form is insufficient to list every employee (see definition below) of the bidder or sub-bidder completing the Form (hereafter, the Entity), such Entity shall use additional Forms. Said Entity shall, however, ensure that each separate Form is dated, signed, and notarized. Each Official Bid Package contains one (1) blank copy of the Form. From that, the Bidder shall make as many copies as needed to ensure compliance with the preceding requirements.
3. **Completing the Form** -- The Form is divided into six numbered columns. Write the appropriate name and check the appropriate box at the top of the Form, then complete each column as follows:

Columns 1 and 2 -- Identify, by name, each and every employee, officer, principal, and agent of the Entity. Identify every such person (hereafter, the employee), whether or not intended to perform work under or related to this Contract. Be careful to list each employee by last name first. List only proper, legal names, do not list nicknames. Do not list names of persons the Entity employs as independent contractors. If the employee routinely works less than 37 and 1/2 hours per week, write the letter "P" in the left margin adjacent to the employee's name.

Column 3 -- State the employee's job title (e.g., secretary, laborer, carpenter, CEO). Use the job titles the Entity actually, routinely uses to describe the employee.

Column 4 -- State the date upon which the Entity hired the employee. If the employee has left the Entity's employ in the past and returned to work for the Entity again, state the most recent date of hire.

Column 5 -- Describe the nature of the work the employee routinely performs for the Entity. For example, if the employee's job title is "Laborer," the employee's work may be described as "performs unskilled physical labor." Or, a "Secretary" might be described as doing "filing, typing, etc." Use additional lines if necessary to provide a clear description of an employee's duties.

Column 6 -- State the employee's race. Use the racial classifications provided in page 2, Section M. If you write "other" or a similar classification in Column 6, attach a signed statement explaining in detail exactly what is meant by such description. Attach a separate signed statement for each employee so described, tailoring each such statement to the employee to whom it refers.

4. Each Form shall be signed and dated by an authorized officer of the Entity and shall be notarized.

AGREEMENT TO NOTIFY LMHA OF JOB OPENINGS

(This form to be completed and submitted by prime contractor and all subcontractors.)

By my signature below, _____ (hereafter "the Company"), agrees to the
(Company's Name)
following conditions:

1. The Company shall, if awarded the contract for which this Bid is offered, give LMHA notice of any and all job openings that may arise at the Company during the course of that contract.
2. Such notice shall be in writing and mailed, first class, to LMHA via the U.S. Postal Service within two business days after such opening arises. The notice shall describe the minimum qualifications and requirements of the job, the nature of the work, the expected pay rate or range, the place and manner of submitting applications, the name, address and telephone number of the person to contact to obtain an application or additional information, and the date by which applications must be submitted.
3. LMHA will notify its residents of such job openings and encourage qualified residents to submit applications for employment.
4. The Company will, if it receives an application from a qualified LMHA resident, give that application and applicant the same opportunity and consideration for the job as would be given any other, similarly qualified applicant and, if such applicant is the most qualified applicant and there is no bar to employing the applicant, the Company will hire the applicant for the job if it hires anyone for the job.

Date: _____

By: _____
(Authorized Officer's Signature)

In witness whereof, I hereunto set my hand and official seal:

(Notary's Signature)

(Notary's printed name)

My commission expires _____.

**AFFIX
NOTARY'S
SEAL**

**STATEMENT OF INTENT TO PERFORM AS A
MINORITY BUSINESS ENTERPRISE CONTRACTOR/SUBCONTRACTOR**

(Separate form required for each MBE, FBE, and DBE prime or sub-bidder)

Name of Prime Bidder: _____

Name of MBE firm completing this form: _____

The undersigned wishes to perform work in connection with the above referenced project as:

Individual Corporation Partnership Joint Venture

The undersigned hereby confirms its status as a Minority Business Enterprise as defined by LMHA and that **a copy of the certification from the agency specified in Section C of this solicitation, or other evidence, is attached hereto.**

The undersigned intends to perform the following work in connection with this project (specify, in detail, the work to be performed):

Bid amount to be entered by sub-contractor \$ _____

The undersigned MBE projects its start and completion dates for the work as follows:

Project Start: _____ Project Completion: _____

BY: _____
(Signature of MBE's Principal) (Name and Title)

THIS FORM MUST BE COMPLETED, and included in this *Supplemental Bid Information* package, by each and every MBE contractor or subcontractor proposed to participate in this project.

The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

AFFIDAVIT OF MINORITY BUSINESS ENTERPRISE
(Separate form required for each MBE, FBE, and DBE proposed)

State of _____ County of _____

I hereby declare and affirm that _____ is a Minority
(Bidder's printed company name)

Business Enterprise (MBE), as defined by LMHA in the bid solicitation and that I am an officer of the above referenced MBE firm, and that I am authorized to provide information required by LMHA to support that firm's representation that it is a Minority Business Enterprise.

I do solemnly declare and affirm, under the penalties of perjury, that the foregoing is true and correct, and that I am authorized, on behalf of the above named firm, to make this affidavit.

(Signature of Affiant)

(Printed name and title of Affiant)

STATE OF KENTUCKY, COUNTY OF JEFFERSON, CITY OF LOUISVILLE

On this _____ day of _____, 20____,

_____, the undersigned officer, personally appeared before me,
(Printed name of Affiant)

known to me to be the person described in the foregoing Affidavit, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal:

(Notary's Signature)

(Notary's printed name)

My commission expires _____.

**AFFIX
NOTARY'S
SEAL**

THIS FORM MUST BE COMPLETED, and included in this *Supplemental Bid Information* package, by each and every minority contractor or subcontractor proposed to participate in this project.

The penalty for making false statements in offers (10 years imprisonment and/or \$10,000 fine) is prescribed in 18 U.S.C. 1001.

II. SECTION 3 PROGRAM REQUIREMENTS

A. Paragraph 40.(f) of Section I, *General Conditions* is replaced with the following:

The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u - Section 3) is to ensure that employment and other economic opportunities shall be to the greatest extent feasible and directed to low and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low income persons.

1. Definitions of specific terms are as follows:

a) *New Hires*: Full time employees for permanent, temporary or seasonal employment opportunities.

b) *Section 3 Business Concern*: A business concern:

- That is 51% or more owned Section 3 residents; or,
- Whose permanent, full time employees include persons, at least 30% 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,
- That provides evidence of a commitment to subcontracts in excess of 25% of the dollar award of all subcontract to be awarded to business concerns that meet the qualifications set forth in paragraph (1) or (2) above.

c) *Section 3 Resident*:

- A public housing resident; or,
- An individual who resides in the metropolitan statistical area and who is a low-income person (families, including single persons, whose incomes do not exceed 80% of the median family income) or very low-income person (families, including single persons, whose incomes do not exceed 50% of the median family income).

d) *Subcontractor*: Any entity (other than a person who is an employee of the Contractor) that has a contract with the Contractor to undertake a portion of the Contractor's obligation for the performance of work.

2. Contractor's may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth for providing training, employment, and contracting opportunities to Section 3 residents and business concerns as follows:
 - a) Awarding **at least 10%** of the total dollar amount of the Contract to Section 3 business concerns; and
 - b) Hiring Section 3 residents in a number equal to **at least 30%** of the aggregate number of new hires.
3. Contractor's shall provide training and employment opportunities to Section 3 residents in the following order of priority:
 - a) Residents of the housing development or developments for which the Section 3 covered assistance is expended;
 - b) Residents of other housing developments managed by the Louisville Metro Housing Authority;
 - c) Participants in HUD YouthBuild programs in the metropolitan statistical area; and
 - d) Other Section 3 residents of the metropolitan statistical area.
4. Contractor's shall award to Section 3 business concerns in the following order of priority:
 - a) Business concerns that are 51% or more owned by residents of the housing development or development for which the Section 3 covered assistance expended, or whose full, permanent work force includes 30% of these persons as employees;
 - b) Business concerns that are 51% or more owned by residents of other Louisville Metro Housing Authority developments, or whose full time permanent workforce includes 30% of those persons as employees;
 - c) HUD YouthBuild programs being carried out within the metropolitan statistical area; and
 - d) Business concerns that are 51% or more owned by Section 3 residents, or whose permanent, full time workforce includes no less than 30% Section 3 residents, or that subcontract in excess of 25% of the total amount of subcontracts to business concerns in (1) and (2) above.

5. A contractor that has not met the numerical goals set forth has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section.

B. Paragraph 40. (g) of Section I, *General Conditions* is replaced with the following:

Employment Demographics Reporting Requirements -- The Contractor and each subcontractor shall complete and submit "Employment Demographics" forms once every month, or more frequently if LMHA so chooses, during the course of the contract.

In completing the forms, the Contractor and each subcontractor shall clearly identify persons newly employed since the last form was submitted (hereafter "New Hires"). The Contractor or subcontractor shall provide the address and telephone number of each New Hire, and shall state whether each New Hire is a Section 3 Resident. The Contractor shall collect the forms and deliver them to LMHA by the seventh calendar day of each such month. LMHA will provide the Contractor with proper, blank forms at the pre-construction conference, from which the Contractor shall make and distribute copies for its own use and its subcontractors' use. The Contractor's failure to submit a monthly Employment Demographics form, or that of any subcontractor, is ground for termination, for default, of the Contractor's right to proceed with the work.

C. Paragraph 40. (h) of Section I, *General Conditions* is replaced with the following:

Notice of Job Openings -- The Contractor shall notify LMHA of any and all job openings that arise in the Contractor's company during the course of the Contract. Such notice shall be in writing and mailed, first class, to LMHA via the U.S. Postal Service within two business days after such opening arises. The notice shall describe the minimum qualifications and requirements of the job, the nature of the work, the expected pay rate or range, the place and manner of submitting applications, the name, address and telephone number of the person to contact to obtain an application or additional information, and the date by which applications must be submitted. LMHA will notify its residents of such job openings and encourage qualified residents to submit applications for employment. The Contractor shall, if it receives an application from a qualified LMHA resident, give that application and applicant the same opportunity and consideration for the job as would be given any other, similarly qualified applicant and, if such applicant is the most qualified applicant and there is no bar to employing the applicant, the Contractor shall hire the applicant for the job if it hires anyone for the job. The Contractor's right to proceed with the work may be terminated, for default, upon failure to perform this obligation.

END OF SECTION M