



SOMERVILLE HOUSING AUTHORITY

30 Memorial Road, Somerville, MA 02145

Telephone (617) 625-1152

Bid Documents

**Laundry Equipment Lease and Maintenance Contract
at various Somerville Housing Developments
in Somerville, Massachusetts**

Specification prepared by
Somerville Housing Authority
Purchasing Manager

June 2017

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ADVERTISEMENT

The Somerville Housing Authority invites sealed bids for Laundry Equipment Lease and Maintenance, in various State and Federally aided elderly housing developments owned and operated by the Somerville Housing Authority in Somerville, Massachusetts, in accordance with the documents prepared by the Somerville Housing Authority's Purchasing Manager.

Contract term is 5 years Bids and are subject to the provisions of M.G.L. c.30B, inclusive.

General Bids will be received until 11:00 A.M., July 6, 2017 and publicly opened forthwith, at Somerville Housing Authority, Modernization Bldg., 30R Memorial Road, Somerville, MA 01245.

Bid forms and Contract Documents will be available for pick-up at the Somerville Housing Authority, Administration Offices, 30 Memorial Road, Somerville, MA 02145 after 10:00 A.M. on June 19, 2017 or you may downloading them from our web site www.sha-web.org under our opportunities tab. There will be no charge for these documents. If downloaded, you must contact Anthony Crespo, at tonyc@sha-web.org and leave a contact email to receive changes, or updates.

Bids can be mailed, or dropped off to Somerville Housing Authority, Attn.: Anthony Crespo, Laundry Equipment Lease 2017, 30 Memorial Road, Somerville, MA 01245 and must be received by the time and date specified.

A walk through is scheduled for June 21, 2017 at 10:00 a.m. Please contact Anthony Crespo at 617/625-1152 Extension 336 if you plan on attending.

INSTRUCTIONS TO BIDDERS

ARTICLE 1 - BIDDER'S REPRESENTATION

- 1.1 Each Bidder (hereinafter called the "**Bidder**") by making a bid (hereinafter called "**bid**") represents that:
1. The Bidder has read and understands the Contract Documents and the bid is made in accordance therewith.
 2. The Bidder has visited the site and is familiar with the local conditions under which the Work has to be performed.
- 1.2 Failure to so examine the Contract Documents and site will not relieve any Bidder from any obligation under the bid as submitted.

ARTICLE 2 - REQUESTS FOR INTERPRETATION

- 2.1 Bidders requiring clarification or interpretation of the Contract Documents shall make a written request to the housing authority. The housing authority will answer such requests if received seven (7) calendar days before the date for receipt of the bids.
- 2.2 Interpretation, correction, or change in the Contract Documents will be made by written Addendum and will become part of the Contract Documents. The Housing Authority will not be held accountable for any oral interpretations, corrections, or changes.
- 2.3 Addenda will be mailed by the housing authority by U.S Postal Service, certificate of mailing, to every individual or firm on record as having taken a set of Contract Documents.
- 2.4 Copies of addenda will be made available for inspection at the locations listed in the Advertisement where Contract Documents are on file.

ARTICLE 3 - PREPARATION AND SUBMISSION OF BIDS

- 3.1 Bid shall be submitted on the "**Form for Bid**" furnished at no cost by the Housing Authority. Additional forms are available at the location listed in the Advertisement.
- 3.2 All entries on the bid form shall be made by typewriter or in ink.
- 3.3 Where so indicated on the bid form, sums shall be expressed in both words and figures. Where there is a discrepancy between the bid sum expressed in words and the bid sum expressed in figures, the words shall control.
- 3.4 The General Bid shall be enclosed in a sealed envelop with the following plainly marked on the outside:
- **Bid P-LAUN-72017: SHA Laundry Equipment Lease and Maintenance Bid**
 - **Somerville Housing Authority, Purchasing Department**
 - **Bidder's Name, Business Address, Contact Person, and Phone Number**
- 3.5 Date and time for receipt of bids is set forth in the Advertisement.
- 3.6 Timely delivery of a bid to the location designated shall be the full responsibility of the Bidder.

ARTICLE 4 - WITHDRAWAL OF BIDS

- 4.1 **Before Opening of Bids**
- 4.1.1 Any bid may be withdrawn prior to the time designated for receipt of bids upon written request. Withdrawal of bids must be confirmed over the Bidder's signature by written notice post-marked or sent by facsimile on or before the date and time set for receipt of bids.
- 4.1.2 Withdrawn bids may be resubmitted up to the time designated for the receipt of bids.

4.2 After Opening of Bids

4.2.1 Bidders may withdraw a bid, without penalty, any time up to the time of Award as defined in paragraph 5.1, and upon demonstrating, to the satisfaction of the Housing Authority, that a bona fide clerical error was made during the preparation of the bid.

ARTICLE 5 - CONTRACT AWARD

5.1 **Award** means the determination and selection of the bidder that is responsible and eligible and whose bid represents the highest percentage to the Somerville Housing Authority, the Owner.

5.2 As used herein, the term highest paying responsive and eligible bidder shall mean the Bidder whose bid is the highest paid percentage commission of those Bidders meeting the requirements of the bid documents. The "Bid Documents" as that term is used herein shall include the Advertisement, Instructions to Bidders, Form-for-Bid, Specifications, and all forms included in this bid package.

5.3 The Somerville Housing Authority reserves the right to waive any informality or to reject any or all bids if it is in the public interest to do so.

5.4 The Housing Authority reserves the right to reject any Bid if it determines that such Bid does not represent the Bid of a person competent to perform the work as specified or if is in the best interest of the Housing Authority.

5.5 The Housing Authority will award the contract within thirty days, Saturdays, Sundays, and legal holidays excluded after the opening of bids.

5.6 The award of this Contract is subject to the approval of the Somerville Housing Board of Directors. Contracts without Somerville Housing Board of Directors approval shall not be considered valid.

ARTICLE 6 – FORMS REQUIRED FOR CONTRACT APPROVAL

Upon award, the Bidder shall complete the following forms to ensure prompt contract validation. The Owner will provide these forms to the Contractor, and three (3) originals must be submitted.

1. Signed Contract.
2. Insurance Certificates with coverage for general liability, vehicle liability and workers' compensation with limits acceptable to the SHA or required by statute.
3. Incomplete or unacceptable submissions of the forms as required above will delay the validation of the Service Contract.

END OF INSTRUCTIONS TO BIDDERS

FORM FOR BID

TO THE AWARDING AUTHORITY:

A. The undersigned proposes to furnish all labor and materials required for The Somerville Housing Authority Laundry Equipment, Service, and Maintenance Contract, in various housing developments for the Somerville Housing Authority in Somerville, Massachusetts, in accordance with the documents prepared by the Somerville Housing Authority's Purchasing Manager for the contract price specified below.

B. The proposed contract price for payment of a fixed percentage of gross monthly collections for the length of this

Five (5) Year contract is _____ percent a month _____ .
Amount in writing

C. The undersigned agrees that, if selected as a contractor/vendor will within five days after presentation of a contract by the housing authority, Saturday, Sunday or Legal Holiday excluded, execute a contract and furnish certificate of insurance satisfactory to the awarding authority in accordance with the terms and conditions of this bid.

D. The undersigned hereby certifies that they are able to furnish labor that can work in harmony with all the other elements of labor employed or to be employed on the Work and that they will comply fully with all laws and regulations applicable to awards made subject to M.G.L. c.30B.

The undersigned further certifies under the penalties of perjury that this bid is in all respects bona fide, fair, and made without collusion or fraud with any other person. The undersigned further certifies under the penalty of perjury that the undersigned is not debarred from doing public construction work in the Commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any other rule or regulation promulgated thereunder. As used in this certification the word "person" shall mean natural person, joint venture, partnership, corporation, or other business or legal entity.

Name of Bidder

By:

Signature + Title of person signing Bid

Business Address

Date:

City and State

Note: If the bidder is a corporation, indicate state of incorporation under signature, and affix corporate seal; if a partnership, give full names and residential addresses of general partners if different from business address.

CERTIFICATE OF VOTE OF AUTHORIZATION

_____ 2017

I hereby certify that a meeting of the Board of Directors of the:

Name of Corporation

duly called and held at _____ on the _____ day of _____, 2017,
City or Town

at which a quorum was present and acting, it was voted that _____,
Name of Corporate Officer

of the _____, be and hereby is authorized to execute and deliver for
Name of Corporation

and on behalf of the Corporation a Contract with the Somerville Housing Authority, for work to be done at State/Federally-Aided Housing Project No. P-LAUN-72017 in the City/Town of Somerville, and to act as Principal to execute Bonds in connection therewith, which Contract and Bonds were presented to and made a part of the records of said meeting.

I further certify that _____ is duly qualified and acting
Name of Corporate Officer

_____ of the Corporation and that
Title

said vote has not been repealed, rescinded or amended

A true copy of the record,

ATTEST:

(CORPORATE SEAL)

Subscribed And Sworn To This _____ day of _____, before me, the undersigned Notary Public, personally appeared _____, and proved to me, through satisfactory evidence of identification, which was _____, that he/she is the person whose name is signed on the foregoing certificate, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires: _____

CONTRACT FOR LAUNDRY EQUIPMENT LEASE\MAINTENANCE

This Agreement, made this _____ day of _____, 2017, by and between the Somerville Housing Authority (SHA) hereinafter called the "Owner", _____

Witnesseth, that the Owner and the Contractor, for the consideration hereinunder named, agree as follows:

Article 1 - Scope of Work

The Contractor shall perform all the Work required by the Contract Documents prepared the by Purchasing Agent for the Somerville Housing Authority identified as Project No. P-LAUN-72017 "Laundry Equipment Lease and Maintenance Contract at Various Somerville Housing Authority Developments, dated May, 2017." The work includes but is not limited to providing, delivering, servicing and maintaining equipment. The Contractor shall provide and deliver ("put in place") new equipment to various locations throughout Somerville, MA and shall maintain the equipment for the life of the contract

- Twenty-two (22) white Commercial grade, minimum 3.00 cu ft. and w/min 700rpm, stainless steel tub, Top loading energy efficient, coin operated washing machines; Speed queen SWNLC2 or equal delivered at the locations specified in location
- Nine (9) white Commercial grade front loading, minimum 2.8 cu ft and w/min 1000 rpm , energy efficient, ADA compliant, coin operated washing machines; Speed queen SFNNCFSP or Equal delivered at the locations specified in location
- Twenty (20) white commercial grade, minimum 7 cu ft.,18lb capacity, energy efficient, coin operated Electric dryers with five heat cycle selection; Speed queen SDELCRGS or equal delivered at the locations specified in location
- Ten (10) white commercial grade, minimum 7 cu ft., energy efficient, coin operated gas dryers with four settings speed queen SDGLCRG or equal delivered at the locations specified in location
- (1) white commercial grade, front-control, energy star rated, coin operated electric dryer with speed queen or equal delivered at the locations specified in location

Article 2 - Term of Contract

The Contractor shall commence work under this Contract on the day indicated on the "Notice to Proceed" form. This contract shall become effective upon validation by SHA Board of Directors, and shall automatically terminate five (5) years from its effective date.

Article 3 - Suspension and Termination

The awarding authority may terminate this Contract for cause or without cause without penalty by giving written notice to the other party at least Thirty, (30) calendar days prior to the effective date of termination in the Notice.

Article 4 - Contract Sum

The proposed contract price is payment of a fixed percentage rate of _____ % of gross monthly collections for the length of this **five (5) year** contract as provided by the Contractor in its Form for Bid attached hereto.

Article 5 - Insurance Requirements

The Contractor shall provide insurance coverage general liability, vehicle liability, and workers' compensation in amounts acceptable to the housing authority or required by statute.

CONTRACTORS COMMERCIAL GENERAL LIABILITY

1. Provide the following minimum coverage with respect to the operations performed by any employee or supplier:

Bodily Injury &	\$1,000,000. each occurrence
Property Damage	\$1,000,000. general aggregate
Products & Completed Operations	\$1,000,000. aggregate
Personal & Advertising Injury	\$1,000,000. each occurrence

VEHICLE LIABILITY

1. Provide the following minimum coverage with respect to the operations of any employee, including coverage for owned, non-owned, and hired vehicles.

Bodily Injury and	\$1,000,000. each person
Property Damage	\$1,000,000. each accident

WORKER'S COMPENSATION

1. Provide the following coverage in accordance with M.G.L.c. 149 ss34A and c. 152 as amended.

Worker's Compensation Coverage A	Provide Statutory Minimum
Employer's Liability Coverage B	\$500,000 each accident \$500,000 disease per employee \$500,000 disease policy

Article 6 - Conflict of Interest

The Contractor covenants, that (1) presently, there is no financial interest and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement or which would violate M.G.L. c.268A, as amended; (2) in the performance of this Contract, no person having any such interest shall be employed the Contractor; and (3) no partner or employee of the firm is related by blood or marriage to any Board Member or employee of the Awarding Authority.

Article 7 - The Contract Documents

The following, together with this Agreement form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein: Invitation to Bid, the Bidding Documents, the Contractor's Bid Submission, and, any amendments or addenda issued prior to award and any modification agreed to after the award.

Laundry Equipment/Maintenance

No contract amendments shall be made except in writing upon the express agreement of the parties, approved by SHA Board of Directors and in accordance with the provisions of M.G.L. c.30B.

Article 8 - REAP Certification

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, I certify under the penalties of perjury that to the best of his/her knowledge and belief I am in compliance with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Article 9 - Certification of Non-Collusion

The undersigned certifies under penalties of perjury that their bid/proposal has been made in and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the work "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Article 10 - Worker documentation certification

In accordance with Executive Order 481 the undersigned further certifies under the penalties of perjury that the Contractor shall not knowingly use undocumented workers in connection with the performance of this contract; that pursuant to federal requirements, the Contractor shall verify the immigration status of all workers assigned to such contract without engaging in unlawful discrimination; and the it shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). The Contractor understands and agrees that breach of any of these terms during the contract period may be regarded as a material breach, subjecting the Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

Article 11 - Validation

This Contract will not be valid until signed by the SHA Executive Director or his/her designee.

In Witness Whereof, the Parties Hereto Cause This Instrument to be Executed Under Seal.

CONTRACTOR

AWARDING AUTHORITY

Company

Somerville Housing Authority
30 Memorial Road, Somerville, MA 02152

Name

Joseph Macaluso, *Executive Director*

Title

Attest

Address

Witness

**If a corporation, attach a notarized copy of the corporate vote authorizing signatory to sign Contract.*

SPECIFICATIONS

1. Equipment

- All equipment must be factory new, not reconditioned or remanufactured.
- Twenty-two (22) white Commercial grade, minimum 3.00 cu ft. and w/min 700rpm, stainless steel tub, Top loading energy efficient, coin operated washing machines; Speed queen SWNLC2 or equal delivered at the locations specified in location
- Nine (9) white Commercial grade front loading, minimum 2.8 cu ft and w/min 1000 rpm , energy efficient, coin operated washing machines; Speed queen SFNNCFSP or Equal delivered at the locations specified in location
- Twenty (20) white commercial grade, minimum 7 cu ft., 18lb capacity, energy efficient, coin operated Electric dryers with five heat cycle selection; Speed queen SDELCRGS or equal delivered at the locations specified in location
- Ten (10) commercial grade, minimum 7 cu ft., energy efficient, coin operated gas dryers with four settings speed queen SDGLCRG or equal delivered at the locations specified in location
- One (1) Commercial grade, energy star rated, coin operated electric dryer with four settings speed queen xxx or equal delivered at the locations specified in location

2. Price of operations on machines

- A fixed price of no more than One U.S. (\$1.00) Dollar throughout the term of the contract shall apply.
- Dryer default drying time is 45 minutes with 12 minute top off at \$.25
- At least one set per building shall be ADA compliant.

3. Maintenance of equipment

- The awarding contractor must supply signage (signs must be professional and business acceptable to The SHA) in each laundry room with instructions of use of equipment and a toll free telephone number for maintenance on equipment. Repairs must be made on site, within twenty-four hour of a service call being placed at no cost to the Somerville Housing Authority, Somerville Housing Authorities workers or Somerville Housing Authority's residents. If a machine is taken off site for repair, an equal replacement shall be temporarily put in its place. Temporally replacement shall not to exceed 30 days.

4. Equipment Replacement

- In the event of equipment failure, or if any one piece of equipment is called for service more than seven times within any one calendar year, or is recognized by the Somerville Housing Authority as being faulty, the faulty equipment shall be replaced with a NEW not reconditioned or remanufactured piece of equipment. This item is to be the same make and model of the existing item, to keep uniformity, unless otherwise requested by an Authorized Somerville Housing Authority Employee. Replacement shall be at no cost to the Somerville Housing Authority, Somerville Housing Authorities workers or Somerville Housing Authorities residents

5. Payment of Commission and Recording of Transactions

- Payment of the contracted gross percentage, of the coins (currency) collected by the contractor from the equipment, shall be made on a monthly basis prior to the 15th of every month to the SHA Finance Department by Company check or certified bank check and shall be accompanied with a record showing the amount collected and paid by development. Somerville Housing Authority is located at 30 Memorial Rd, Somerville, MA 02145. All payments shall be made to Somerville Housing Authority.
- Check must be accompanied by a form indicating the period in which the monies are collected, the amount collected from each development, the amount owed to the SHA by development and a total of all monies owed to the SHA. The contractor will be responsible for e-mailing a record of amounts collected monthly. Such record must be e-mailed to two SHA employees and should be in an excel format. It should indicate at minimum building, date collected, amount collected, amount withheld for payment.
- Coin collection is required at minimum two times a month

6. Contractor Experience

- The awarded contractor must have been in the laundry services and maintenance business for at least five (5) years and have had provided satisfactory services for another Housing Authority within the state of Massachusetts of similar size. Minimum size of authority is Fourteen hundred units. These references shall be provided at the request of the SHA.

7. Subcontracting work

- Vendor shall not subcontract the work

8. Venting of Dryers

- Ventilation conduits are to be examined by the contractor prior to the installation of dryers. If there is inadequate ductwork or if it is in poor condition, the contractor shall repair or replace to complete installation of dryers and insure proper ventilation. The vendor shall replace or maintain the integrity of the hoses throughout the length of the contract to insure proper ventilation. Ventilation hoses are to be installed, cleaned out, or replaced once a year, throughout the contract by contractor.

9. Hoses of washer

- All hoses, including draining hoses are to be new. All water feed hoses to be Braided Stainless Steel, installed and maintained throughout the contract by contractor.

10. Lint filter

- Screwed in lint filters shall be cleaned by the vendor at minimum every six months or as per manufacturer's recommendation.

11. Service provided by SHA

- The Somerville Housing Authority will provide all electric, gas and water to the equipment at its own expense during the term of the contract.

12. Additional Equipment, Supports and special condition/s

- Contractor shall provide any braces, or bases, needed.
- Machine bases are required at several locations. Vendor shall provide at no additional cost.
- Warren Ave location front loaders will need to be on tracks bolted to the floor.

13. Delivery of Equipment

- Delivery of equipment shall be coordinated with the designated Somerville Housing Authority Employee. Contractor may be asked to deliver equipment to each location on different dates. Equipment will be “put in place” and tested.

14. Removal of Equipment

- At the conclusion of this contract, it will be the responsibility of the awarded contractor to remove all equipment, debris, and supplies. The removal of the equipment within this contract will commence within Forty-eight hours (48) of an Authorized Somerville Housing Authority Employee's request for removal. Such request shall be in writing. After attempting to contact the contractor to remove his property the contractor does not comply, The Somerville Housing Authority reserves the right to dispose of such property and to bill the contractor for any expenses incurred including but not limited to legal fees, contracted removal fees and disposal fees. Removal shall be at no cost to the Somerville Housing Authority, Somerville Housing Authorities workers or Somerville Housing Authorities residents

Location, Type Chart & Amounts

SHA Sites	Building Name	Washers Top Load	Washers Front Load	Dryers Elec.	Dryers Gas
32 Jacques Street	Corbett Aot. 32	3			3
125 Jacques Street	Corbett Apt. 125	3			3
75 Myrtle Street	Bryant Manor	3	2	5	
27 College Ave.	Ciampa Manor	2	1	3	
114 Highland Ave.	Highland Gardens	2	1	3	
13-25 Warren Ave.	Properzi Manor	2	2		4
15 Weston Ave.	Weston Manor	2	1	3	
268 Washington Street	Hagan Manor	2	1	3	
252 Medford Street	Brady Towers	3	1	4	0

DIVISION 1

Laundry Equipment Lease and Maintenance

1. SCOPE OF WORK

- A. The work of this contract shall include, but not necessarily be limited to, the provision of all labor, materials, tools, equipment, and transportation required to establish a program of preventative maintenance, including all service and repairs for Laundry Services located at the Somerville Housing Authority properties as scheduled hereinafter.
- B. The term of this contract shall be for **1825** calendar days.
- C. Before submitting bid, inspect the sites and make a survey of existing services and conditions that may be encountered during the term of this Contract. Failure to do so shall not relieve responsibility for full adherence to the provisions herein.

2. CONTRACTOR QUALIFICATIONS

- D. The Contractor shall maintain a regular maintenance facility within a 75-mile radius of the Somerville.
- E. The Contractor shall demonstrate that he has had at least five years of successful experience.
- F. FEES, PERMITS AND CODES**
- G. The Contractor shall secure all permits and pay all fees relating to the work of this contract.
- H. All work performed under this contract shall conform to all applicable federal, state, regional and local laws, codes, ordinances and regulations.
- I. The Contractor shall immediately notify the Somerville Housing Authority of any changes in applicable federal, state, regional, and local laws, codes, ordinances, and regulations that occur during the duration of this Contract and indicate how such changes affect the systems covered under this Contract.

3. WORKING HOURS

- J. Work shall be scheduled between 8:30 A.M. and 4:00 P.M., Monday through Friday, excluding SHA holidays.
- K. If any work needs to take place outside the hours listed above, written approval shall be obtained from the Owner. In the case of emergency repairs, verbal approval will be acceptable.

4. COMPENSATION

When work is performed outside the normal working hours solely for the convenience of the Contractor, no additional compensation will be provided.

5. ACCESS TO RECORDS

The Contractor shall provide, when requested, all records and documents directly relating to labor and materials expended in the performance of work for which the Contractor is eligible for extra compensation.

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
 - (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA .

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

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

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

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

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

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

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

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

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

22. Procurement of Recovered Materials

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

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A

- (ii) trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
- (iii) A training/trainee program that has received prior approval by HUD.

- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
 - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.