



**NEW YORK CITY HOUSING AUTHORITY**  
**REQUEST FOR QUALIFICATIONS**  
**FOR CARPENTRY SERVICES**

<b>Event</b>	<b>Date</b>
<b>Public Advertisement and Open Enrollment</b>	Ongoing beginning December 1 2022
<b>Information Session December 1</b>	December 1 2022 at 11:00AM
<b>Information Session January 5</b>	January 5, 2023 at 11:00AM
<b>Information Session February 2</b>	February 2, 2023 at 11:00AM
<b>Information Session March 2</b>	March 2, 2023 at 11:00AM
<b>Information Session April 6</b>	April 6, 2023 at 11:00AM
<b>Information Session May 4</b>	May 4, 2023 at 11:00AM
<b>Qualification Announcement</b>	Ongoing beginning December 15, 2022

**NEW YORK CITY HOUSING AUTHORITY'S COORDINATOR**

The New York City Housing Authority's coordinator ("NYCHA's Coordinator") for ALL matters concerning the Carpentry Request for Qualifications ("RFQ") is:

Joan Akers  
New York City Housing Authority  
Supply Management & Procurement Department  
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References in this RFQ to NYCHA's Coordinator shall include his/her designee.

This RFQ is available only online, for free, through NYCHA's Website. Instructions can be found at:

<https://www1.nyc.gov/site/nycha/business/nycha-pql.page>

you



Access to Information Sessions, which will be held virtually via MICROSOFT TEAMS meetings, on the 1<sup>st</sup> Thursday of every month, can be found below and be utilized for each meeting.

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**NEW YORK CITY  
HOUSING AUTHORITY  
REQUEST FOR QUALIFICATIONS  
FOR  
CARPENTRY SERVICES**

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## Request for Qualifications Overview and Summary

### 1. RFQ Summary

#### *About NYCHA*

The New York City Housing Authority (NYCHA), the largest public housing authority in North America, was created in 1935 to provide decent, affordable housing for low- and moderate-income New Yorkers. NYCHA is home to roughly 1 in 15 New Yorkers across over 177,000 apartments within 335 housing developments. NYCHA serves over 350,000 residents through the conventional public housing program (Section 9), over 20,000 residents at developments that have been converted to PACT/RAD, and over 75,000 families through federal rent subsidies (the Section 8 Leased Housing Program). In addition, NYCHA connects residents to opportunities in financial empowerment, business development, career advancement, and educational programs.

#### *The Carpentry Pre-Qualified List*

The New York City Housing Authority (NYCHA) intends to establish a Pre-Qualified List (PQL) for the assessment, supply, installation, repair, and maintenance of Carpentry Services (see the “Description of Services” on p. 3). All vendors who pre-qualify according to the requirements listed in this Request for Qualifications (RFQ) will be placed on the Carpentry Services list and will then be able to respond to solicitations off the PQL.

#### *About the Pre-Qualification Process*

- This RFQ will support vendors to become **pre-qualified to bid on project-specific solicitations for Carpentry Services with the subject line: “Carpentry Services RFQ Application”**

**Submission/{ENTER VENDOR NAME HERE}.” Hard copy applications will not be accepted.**

- Applications will be reviewed by NYCHA on a rolling basis. NYCHA encourages any vendor who is interested in bidding for a Carpentry Services contract to submit a response to this RFQ a minimum of **15 days prior to the bid submission date.**
- NYCHA will review and evaluate each application for the Carpentry Services PQL. Pre-qualification requirements are outlined in p. 4-6.
- Only applications that are **complete and submitted with proper supporting documentation will be eligible for consideration** pursuant to this RFQ. Please carefully review the entire RFQ to ensure you have answered all questions and compiled requested supporting documentation.
- NYCHA reserves the right to request clarification on the vendor’s application. Vendors will be notified by NYCHA and upon request will be able to submit clarifications and additional information after the initial submission. However, a vendor will not be placed on the PQL until all requirements have been met.
- Vendors will be **notified in email of NYCHA’s response to their applications via a letter of acceptance or a letter of rejection** to the PQL.

## Request for Qualifications Overview and Summary

### **2. Bidding Opportunities & Priorities at NYCHA**

NYCHA's goal is to award contracts to vendors of all sizes and classes through the PQL. NYCHA reserves the right to procure Carpentry Services from sources other than the PQL.

Carpentry procurement awards will span various procurement thresholds and methods at NYCHA, including micro purchases, small purchases, sealed bids, and request for proposals. Bidding for individual contracts will follow the below guidelines and preferences.

#### ***Borough Selection***

Vendors who apply to the RFQ for Carpentry Services shall specify boroughs in which they are interested in conducting Carpentry Services for NYCHA. From those applications, NYCHA will create borough-specific PQLs for the Bronx, Brooklyn, Manhattan, Queens and Staten Island and will solicit vendors according to the selections they have indicated. Once vendors are placed on a specific PQL, they will be notified about solicitations for those boroughs and be able to bid on the work.

#### ***Preferences for S3BCs and M/WBEs***

To fulfill its diversity initiatives, NYCHA aims to increase the participation of Minority and Women-Owned Business Enterprises (M/WBE) and Section 3 Business Concerns (S3BC) via contractual awards. NYCHA follows an "S3BC and M/WBE First Policy" for all micro and small purchases. Consistent with this policy, NYCHA reserves the right to solicit small purchases from pre-qualified vendors who are registered as S3BCs and/or M/WBEs. **Note:** NYCHA currently accepts NYC's M/WBE certification administered through NYC Small Business Services. To qualify as an M/WBE for the purposes of this RFQ, a vendor must be certified through this program. For information or to become certified, please visit the [NYC Small Business Services: M/WBE Certification](#) page. Nothing in this preference shall be construed to require the contracting or subcontracting of a S3BC or M/WBE. S3BCs and M/WBEs are not exempt from meeting the specifications of this RFQ and any Carpentry contract.

## **Request for Qualifications Overview and Summary**

### **3. Description of Services**

NYCHA is seeking vendors who are skilled in the field of carpentry services to perform related work across NYCHA developments city-wide. The work may include providing all labor, materials, equipment.

List of carpentry related items performed at NYCHA include but are not limited to:

- Replace/install Kitchen cabinets and all associated components.
- Replace/install Door frames, doors and all associated hardware, including but not limited to wood doors, metal doors and Kalamein doors.
- Install acoustical ceiling grid and tiles.
- Install wood and metal framing, including but not limited to installing Gypsum wall board, plywood and cement board.
- Build and install concrete forms.
- Replace/install windows and all associated components including sealant.
- Erect wood framed and metal pipe scaffolding.
- Install tub enclosures
- Fabricate and install closet shelves and poles.

**Specific timeframes and additional specifications for each project will be outlined in solicitations. Additional licensing, experience and certification may be required.**

## Request for Qualifications Overview and Summary

### 4. Requirements

Each applicant must demonstrate the following minimum and additional requirements to be accepted to NYCHA's Carpentry Services PQL. Verifiable proof of **these requirements must also be submitted in the form of supporting documentation** noted below. See p. 7-17 to complete the RFQ application and for further details. Actual bid documents may contain additional minimum qualifications that are specific to the scope of work for that solicitation. Vendors who do not meet all the requirements will not be included on the PQL.

Requirements	RFQ Section	
Minimum Requirements		
Licenses and Certifications		
<p>Copies of the required certification and license held by the firm and employees must be provided with their application.</p> <ol style="list-style-type: none"><li>1. New York City Department of Buildings General Contractors License (a non-registered tracking number only is not acceptable). Copy of front and back must be submitted at the time of application</li><li>2. U.S. EPA RRP Certification for Firm (40 CFR 745.89)</li><li>3. U.S. EPA RRP Certification for employees (40 CFR 745.90)</li></ol> <p>Other certifications and training may be required as outlined with their future bid submission.</p>	"License Information" (p. 9)	



## Request for Qualifications Overview and Summary

### 4. Requirements

Requirement	Supporting Documentation	RFQ Section
<b>Minimum Requirements</b>		
<b>Staffing Plan</b>		
<p>Vendors must demonstrate that they employ sufficient and qualified staff members to complete Carpentry services outlined in this RFQ:</p> <ul style="list-style-type: none"> <li>• At least two full-time employees</li> <li>• One employee shall be a supervisor or foreman who will supervise on-site project work</li> <li>• One employee may be a tradesman or technical staff member.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>An organizational staffing plan</b> for the employees that would conduct work relevant to the services described in this RFQ, detailing staff position, years of experience, and any applicable licenses or certifications held by each staff person. Clearly indicate the titles of any supervisors or foremen.</li> <li>• <b>A signed statement of confirmation</b> confirming that the vendor will provide a list of names, resumes or a document detailing past experiences, and licenses for each employee the vendor plans to have work on NYCHA projects.</li> </ul>	<p>“Staffing Plan” (p. 12)</p>
<b>Business Experience</b>		
<p><u>Business incorporation for the past five years:</u> The business must be registered under the name listed in the vendor’s application and in operation in its current form for a minimum of five years.</p>	<ul style="list-style-type: none"> <li>• <b>Proof of business registration</b> might include certificates or articles of formation or organization, or other company formation documentation.</li> </ul>	<p>“Business Experience” (p. 13-14)</p>
<p><u>Five (5) years of experience providing Carpentry services:</u> The vendor must have five (5) years of experience providing Carpentry services aligned with “Description of Services” on p. 3.</p>	<ul style="list-style-type: none"> <li>• A <b>list of at least three past and/or current projects</b> demonstrating a minimum of five years providing Carpentry services.</li> <li>• A <b>list of client references</b> for a minimum of three projects the vendor has provided (<b>Note:</b> one reference per project).</li> </ul>	<p>“Business Experience” (p. 13-14)</p>

## Request for Qualifications Overview and Summary

### 4. Requirements

Requirement	Supporting Documentation	RFQ Section
<b>Additional Requirements</b>		
<b>Proof of Address</b>		
All applicants must provide proof of the business address filled out in the “Contact Information” section.	<ul style="list-style-type: none"> <li><b>Proof of business address</b> submitted in an attachment to the pre-qualification application. <b>Note:</b> If applicable, proof of address may also be submitted on the same documentation for which the applicant is attaching proof of business incorporation</li> </ul>	“Contact Information” (p. 7)
<b>Responsibility Check</b>		
All applicants must file in PASSPort, as indicated in this RFQ, prior to application submission.	<ul style="list-style-type: none"> <li>Email proof of PASSPort enrollment from the Mayor’s Office of Contract Services (MOCS). Submit as an attachment to the pre-qualification application.</li> </ul>	“Responsibility Check” (p. 15)
<b>Submission Statement Certification</b>		
Submission statement certification in this RFQ must be completed by an officer from the applicant firm and submitted along with the vendor’s application.	<ul style="list-style-type: none"> <li>Signed and Notarized</li> </ul>	“Submission Statement” (p. 15)
<b>Confirmation of Terms and Conditions</b>		
Statement of confirmation in this RFQ must be signed by the applicant, indicating that they agree to abide by NYCHA’s terms and conditions.	<ul style="list-style-type: none"> <li>Signed</li> </ul>	“Terms and Conditions” (p. 16)
<b>Proof of M/WBE and Section 3</b>		
<b>Only required for contractors who are certified as M/WBE or S3BC, as applicable.</b>	<ul style="list-style-type: none"> <li>Vendors who indicate they are M/WBE certified by the NYC Department of Small Business Services must attach a <b>copy of their M/WBE certification.</b></li> </ul>	“Minority and Women-Owned Business Certification and Section 3 Business Concern Information” (p. 10-11)

**Application Contact Information and Business Profile**

**5. Contact Information (NOTE: Proof of business address must be submitted with this application.)**

Please detail your business contact information below:

DBA or Trade Name (if any): \_\_\_\_\_

Business Address: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_

Delivery Address (if different): \_\_\_\_\_

Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_ Website: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Please print the name of the person completing this application: \_\_\_\_\_ Title: \_\_\_\_\_ Date Completed: \_\_\_\_\_

## **Application Contact Information and Business Profile**

### **6. Borough Selection**

NYCHA will create borough-specific PQLs for each of the boroughs and solicit bids for Carpentry services procurements.

Please indicate below the boroughs in which you would be interested in conducting Carpentry Services for NYCHA. If you do not select any borough below, your application will be considered for evaluation for each borough-specific PQL.

Check ***all*** that apply:

The Bronx

Brooklyn

Manhattan

Queens and Staten Island

**Application Contact Information and Business Profile**

**7. License and Certificate Information (NOTE: copies of U.S. EPA RRP Certifications and NYC General Contractors License must be submitted with this application.)**

Vendors must obtain and submit the following license and certifications as outlined below. To become pre-qualified for Carpentry Services, the U.S. EPA RRP certification for the company and at least one designated employee as well as NYC, General Contractors License, are required. (Note: Copy of the required license must be provided and must detail the name of licensee, license number, and expiration date of license.

**Attachments:** Please check each applicable box for the licenses and Certificate that you are attaching as supporting documentation, along with this application that is required.

- U.S. EPA RRP certification pursuant to 40 CFR Part 745.89: This certification attests that a firm is to conduct lead-based paint renovation, repair, and painting activities. **Copy of the vendor’s certification must be submitted at the same time the pre-qualification application is submitted.**
  
- U.S. EPA RRP certification, pursuant to 40 CFR Part 745.90: This certification attests that employees have successfully completed the U.S. EPA accredited course per 40 CFR Part 745.225. **Copy of the vendor’s employee certifications must be submitted at the same time the pre-qualification application is submitted.**
  
- NYC Department of Buildings General Contractors License ( A non-registered tracking number only is NOT acceptable) Proof of the license will be required at the time of applicable bid submission as well.

**Firm Name** \_\_\_\_\_ **License Number** \_\_\_\_\_

NOTE: Copy of License front and back is required at this time and at time of bid solicitation.

At time of bid solicitations additional experience, licensing and certification may be required.

## **Application Contact Information and Business Profile**

### **8. Minority and Women-Owned Businesses Certification and Section 3 Business Concern Information**

#### ***Minority and Women-Owned Businesses***

For purposes of this RFQ, an M/WBE business is a NYC Department of Small Business Services (SBS) certified minority and women-owned business enterprise. An MBE is a SBS-certified minority-owned business enterprise, and a WBE is a SBS-certified women-owned business enterprise. For complete definitions of these businesses or to receive information about how to become certified, please view the [NYC Small Business Services: M/WBE Certification page](#).

1. Is this business certified by the NYC Department of Small Business Services (SBS) under any of the following programs? **If yes, attach copies of all such certifications as supporting documentation, along with this RFQ.**

- Minority-owned Business Enterprise (MBE) Yes  No
- Women-owned Business Enterprise (WBE) Yes  No

2. Do 51% or more of the individuals who own or control the business belong to any of the following groups? *(Please check all that apply)*

- Asian Indian = all persons having origins in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, The Maldives Islands, or Nepal.
- Asian Pacific = all persons having origins in any of the peoples of the Far East, Southeast Asia, or The Pacific Islands. This area includes, for example, China, Japan, Korea, The Philippine Islands, and Samoa.
- Black
- Hispanic = all persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race.
- Native American = all persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
- Women

(Continued on next page)

**(Note: Copy of M/WBE certifications must be submitted with this application, if applicable.)**

## Application Contact Information and Business Profile

### 8. Minority and Women-Owned Business Certification and Section 3 Business Concern Information

(Continued from previous page)

#### *Section 3 Business Concerns (S3BC)*

Section 3 is the legal basis for providing jobs for residents and awarding contracts to businesses in areas receiving certain types of HUD financial assistance. This policy was developed to ensure that employment and other economic opportunities created by Federal financial assistance for housing and community development programs are, where possible, directed toward low- and very low-income persons, particularly those who are recipients of governmental housing assistance. For a complete definition of S3BC, please view the [U.S. Department of Urban and Housing Development's Section 3 page](#).

- Are you a Section 3 Business Concern (S3BC)? Your business must be registered on either [NYCHA's list of S3BC firms](#) or the [HUD Section 3 Opportunity Portal](#) for NYCHA to consider you an S3BC. You must satisfy at least one of the criteria below, documented within the last 6 months:
  - Is your business at least 51% owned and controlled by low- or very low-income persons? Yes  No
  - Were over 75% of the labor hours performed by the business over the prior three-month performed by Section 3 workers? Yes  No
  - Is the business at least 51% owned and controlled by current public housing residents or residents who currently live in Section-8 assisted housing? Yes  No 
    - If yes, please list the name of the NYCHA public housing development \_\_\_\_\_

**Note: NYCHA will verify proof of registration as a S3BC by reviewing NYCHA's list of S3BC firms and the HUD Section 3 Opportunity Portal. No documentation required at this time.**

## **Applicant Staffing, Experience, and Business Standing**

### **9. Staffing Plan**

Vendors must demonstrate that they employ **sufficient and qualified staff members** to complete Carpentry Services outlined in this RFQ. The following criteria must be met:

- Vendor must **employ a total of at least two employees**, one of which shall be a supervisor or foreman who will be made available to supervise all project work on-site at NYCHA, and one employee may be a tradesman or technical staff member.

Experience must be verifiable. Proof of adequate and qualified labor force shall be provided as supporting documentation to this RFQ by the following items:

- **An organizational staffing plan** for the employees that would conduct Carpentry Services. The staffing plan shall detail staff position, years of experience, and any applicable licenses held by the staff person. For every staff member who is a supervisor or a foreman, their title should be clearly indicated. This individual must be a site safety coordinator, or provide a qualified person.

Please confirm through the following statement of confirmation that you will provide a list of names and licenses for each staff person as required on each solicitation resulting from the PQL.

#### ***Statement of Confirmation***

I confirm that I will be required to provide a list of names that includes each employee that will be performing Carpentry Services, supporting documentation and proof of required licenses for each of the employees as part of the bid submission.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**(NOTE: A staffing plan must be submitted with this application and must include the name, title, years of experience, and certifications held by AT LEAST ONE supervisor and ONE technical staff member.)**



## **Applicant Staffing, Experience, and Business Standing**

### **10. Business Experience**

#### *Years in Business*

Applicants must provide proof that the business operating in its current form and under the name listed has been registered as a business for a minimum of five (5) years. **Supporting documentation might include certificates or articles of formation or organization, or other company formation documentation.**

How many years has this business operated in its current form, and using the business name provided in this application? \_\_\_\_\_ years (use the nearest whole number)

#### *Five Years of Experience Providing Carpentry Services*

Vendors applying to the Carpentry RFQ must have a minimum of five years of experience providing Carpentry Services aligned with “Description of Services” on p. 3. **All required information can be filled out in the table on the following page.**

- Proof of experience must be provided in the form of a list of **at least three** past and/or current projects the company has managed. Contracts must demonstrate a combined total of a **minimum of five years** of experience providing Carpentry services. (**Note:** Information to be filled out in the table on p. 14).

Example:

Carpentry Project 1 – April 2018 – April 2020 = 2 years

Carpentry Project 2 – January 2020 – June 2020 = 6 months

Carpentry Project 3 – February 2021 – February 2022 = 1 year

**Total:** 3.5 years of cumulative experience

- Additionally, a list of client references must be provided for a **minimum of three projects** the vendor has provided (**Note:** this includes any current work). **Any client reference should be part of the related project information filled out in the table on p. 14.** (**Note: one reference per project**)

**NOTE: Certificates or articles of formation or organization, or other company formation documents MUST be submitted with this application.**

**Applicant Staffing, Experience, and Business Standing**

**10. Business Experience**

*Current/Completed Projects*

Applicants must provide information on **at least three** current or completed Carpentry Services contracts on the following chart. Contracts must demonstrate a combined total of a minimum of Five years of experience providing Carpentry Services. Attach additional sheets as needed.

	<b>Client Company / Agency / Authority and Project Name</b>	<b>Prime Contractor or Subcontractor?</b>	<b>Contract Value (\$)</b>	<b>Scope of Work &amp; Project Start and End Dates</b>	<b>Client Reference Contact Name and Title</b>	<b>Reference Contact Telephone # and E-mail</b>
1						
2						
3						
4						
5						

**Additional Requirements**

**11. Responsibility Check (NOTE: Proof of PASSPort enrollment must be submitted with this application.)**

All applicants must submit **proof of PASSPort enrollment from the Mayor’s Office of Contract Services (MOCS)**. Upon award of a contract, the winning vendor will undergo a Vendor Name Check as part of the responsibility review (see “Additional Requirements: Compliance with Laws and Business Integrity” below).

**12. Submission Statement**

The following certification must be completed by an officer of the applicant firm.

A materially false statement or omission made in connection with this application is sufficient cause for denial of the application or revocation of a prior approval thereby precluding the business applicant from performing work for NYCHA either as prime contractor or subcontractor for a period of one year. In addition, such false submission may subject the person and/or entity making the false statement to criminal charges, including New York State Penal Law section 175.35 (offering a false statement for filing).

I, \_\_\_\_\_, being duly sworn, state that I am \_\_\_\_\_ of \_\_\_\_\_,  
(Name, Print) (Title) (Business Applicant Name)

and that I have read and understood the questions contained in this application. I certify that to the best of my knowledge the information given in the response to each question and the appendices is full, complete, and truthful. I acknowledge that NYCHA may, by means it deems appropriate, determine the accuracy and truthfulness of the statements made in this application. I recognize that all the information submitted is for the express purpose of inducing NYCHA to pre-qualify a vendor and does not assure that the applicant will be deemed qualified. I authorize NYCHA to contact any entity named in the application for purposes of verifying the information supplied by the applicant.

\_\_\_\_\_  
(Signature) (Date)

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public) (Corporate Seal / If Applicable)

## **Additional Requirements**

### **13. Terms and Conditions**

NYCHA's general terms and conditions for the Carpentry Services RFQ can be found in the appendix. Solicitation documentation may contain additional terms and conditions specific to each solicitation. Please review and sign the Statement of Confirmation below to be considered for the Carpentry Services PQL.

#### ***Statement of Confirmation***

I confirm that I have read and understood NYCHA's general terms and conditions provided as part of this RFQ for Carpentry Services. I agree to these terms and conditions, as written, with no exceptions.

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(Signature)

(Date)

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## Terms and Conditions

### SPECIAL NOTICES AND CONDITIONS

#### 1. FUNDING SOURCE

This Contract is (X) Federally, n/a State, and/or (n/a) City funded.

#### 2. BID BOND REQUIREMENTS

Bidders are reminded that when their base bid exceeds \$150,000.00, as set forth in Section 6 of the Instructions to Bidders; it must be accompanied by bid security. Bidders failing to submit bid security as instructed in Section 6 of the Instructions to Bidders, when required, will be deemed non-responsive and will be ineligible for award of the Contract.

#### 3. SECTION 3 HIRING PLAN

Bidders are reminded of their obligation to submit with their proposal, in accordance with Section 48 of the General Conditions, a completed Section 3 Affirmative Action Plan, also known as a "SECTION 3 HIRING PLAN." Bidders failing to submit the SECTION 3 HIRING PLAN will be deemed non-responsive and will be ineligible for award of the Contract.

Please note that for the purposes of this Requirements Contract, Section 48A of the General Conditions shall not apply.

#### 4. PASSPORT

PASSPort is an on-line disclosure system used by the Mayor's Office of Contract Services that replaces the paper-based VENDEX system. Information regarding PASSPort is accessible at: <https://www1.nyc.gov/site/mocs/systems/passport-frequently-asked-questions.page> (last accessed on October 2, 2018). The bidder must create a PASSPort account and file all required disclosures. If the bidder omits any answer or provides a partial answer to any of the required disclosures, the Authority will consider said disclosures to be incomplete. The bidder must keep its PASSPort account and disclosures up-to-date for at least 180 calendar days following the opening of the bids and the information disclosed by the bidder in its PASSPort account may be relied on by the Authority in determining the responsibility of the bidder. The bidder can create a PASSPort profile and/or login to PASSPort at: <https://www1.nyc.gov/site/mocs/systems/about-go-to-passport.page> (last accessed on October 2, 2018).

#### 5. REQUIRED AFFIDAVITS, CERTIFICATIONS AND LICENSES

Bidders are reminded to submit with their proposal all affidavits, certifications and copies of trade licenses as may be required by the Authority in the Form of Proposal. Bidders failing to submit requested documents will be deemed non-responsive and ineligible for award of the Contract.

#### 6. PERFORMANCE AND PAYMENT BONDS

Please note that as per Sections 6 and 10 of the Instructions to Bidders, the successful bidder will be required to provide one hundred percent (100%) Performance and Payment Bonds when the Contract exceeds \$100,000.00. A successful bidder failing to submit Performance and Payment Bonds in accordance with Sections 6 and 10 of the Instructions to Bidders and as further instructed herein, will be deemed non-responsive and ineligible for award of the Contract.

#### 7. INSURANCE GENERALLY

The successful bidder shall not receive award of this Contract until it has obtained insurance in accordance with the timeframes and requirements of Section 18 of the General Conditions of this Contract, and until such insurance has received the requisite Authority approvals.

#### 8. FORMATION OF CONTRACT & INCORPORATION OF CONTRACT DOCUMENTS

By submitting a signed proposal to the Authority in the form of the Proposal included herein, or via the Authority's approved electronic Procurement System, the bidder makes an offer to the Authority, binding upon the bidder, to perform the services set forth in the Contract. The bidder's offer shall be binding upon the Authority only after the Authority has accepted the bidder's offer by mailing or delivering to the bidder a letter of award, signed by a duly authorized officer of the Authority and such acceptance shall be valid only to the extent indicated in such letter of award.

The Contract shall include, in addition to such bidder's proposal, these Special Notices & Conditions, the Instructions to Bidders, the General Conditions

(except insofar as they may be expressly amended herein), the Specifications, the Drawings and Plans (if any) and all other documents incorporated by reference in Section 1 of the General Conditions.

Bidders are cautioned to read all documents carefully before formulating and submitting a bid.

## **9. TAX EXEMPTION AND CHARGES**

NYCHA has tax-exempt status and accordingly, will not pay any type of tax from which it is exempt in any form, including, without limitation, New York State sales and use tax. The Cost Proposal must be net of any such taxes. Additionally, NYCHA will not pay any interest, finance charge, late charge or penalty with respect to any payments under any Contract it may enter into as a result of this Solicitation.

## **10. TERM OF CONTRACT**

This Contract shall terminate Two (2) Years after the commencement date specified in the Authority's Notification to Proceed unless earlier terminated in accordance with the General Conditions. The Authority, in its sole discretion, shall have the option to extend the Term of this Contract for One (1) Year.

Notwithstanding the above, the Contractor shall honor any work authorizations issued by the Authority under this requirements Contract subject to the following conditions:

1. When any portion of the total dollar value of this Contract remains unexpended at the end of the term of the Contract, the Authority may, at its sole discretion, elect to issue an authorization to the Contractor beyond the term of the Contract and the Contractor shall honor such authorization. In such event the term of this Contract shall be deemed extended until the earlier of (i) an additional six (6) months, or (ii) the expenditure of the unexpended portion of the total dollar value of the Contract, or (iii) the award by the Authority of a subsequent requirement contract for the types of work items covered by this Contract.
2. The dollar value of the work covered by such authorizations may total, in the aggregate, up to fifty percent (50%) in excess of the total dollar value of this Contract. The Contractor shall not be required to perform such additional work under this Contract if the total dollar value of the work previously performed, when added to the dollar value of any work authorizations issued hereunder, is one hundred and fifty percent (150%) of the total dollar value of this Contract.

## **11. PREVAILING WAGES**

Please see the attached schedule for applicable prevailing wage rates.

## **12. THE AUTHORITY**

The terms the "Authority," the "Housing Authority," "N.Y.C.H.A.," and "NYCHA," whenever used in the Contract mean, in each case, the New York City Housing Authority.

## **13. ADMINISTERING DEPARTMENT**

The Administering Department for this Contract is

\_\_\_\_\_.

## **14. FEE FOR BID DOCUMENTS**

Bidders requesting hard copies of the Bid packages will be charged \$25.00 each; this payment is non-refundable. Payment must be in the form of a either a certified check or postal money order only, made payable to the New York City Housing Authority. A receipt will be issued for your records.

Please note that only original bid documents will be considered during the competitive bid process. Unauthorized copies of bid documents will be deemed non-responsive.

## **INSTRUCTIONS TO BIDDERS**

### **SECTION 1 - SUBMISSION OF PROPOSALS**

(a) Bidders will be furnished on request with a copy of the Contract Documents, and four copies of the Form of Proposal. FOR BIDDERS WISHING TO SUBMIT A PROPOSAL IN HARD COPY RATHER THAN THROUGH THE AUTHORITY'S PRESCRIBED ELECTRONIC PROCUREMENT SYSTEM, THREE COPIES OF THE FORM OF PROPOSAL EACH COMPLETELY FILLED OUT AND EXECUTED AS INDICATED THEREON SHALL BE SUBMITTED TO THE AUTHORITY AS AND FOR THE BIDDER'S PROPOSAL FOR THE CONTRACT. Each proposal must be filled out in blue or black ink or typed.

(b) For bidders submitting their proposal in hard



copy, the three executed copies of the Form of Proposal must be enclosed in a sealed opaque envelope, plainly marked on the outside with the name and address of the Contractor, the RFQ number, the Description of the Work, and the name of the Development, as follows: "Bid Proposals for Contract No. \_\_\_\_\_ for \_\_\_\_\_ at \_\_\_\_\_." If printed bid envelopes are furnished to bidders by the Authority, such envelopes may be used by bidders to safeguard against the possibility of inadvertent premature opening. The proposals must be verified by oath in writing by the party or parties making it, that the several matters stated therein are in all respects true.

(c) Documents submitted to the Authority may be subject to disclosure under the New York State Freedom of Information Law ("FOIL"), N.Y. Pub. Off. Law Sections 85-90. It is the bidder's responsibility to designate those portions of its proposal, if any, the bidder claims should be exempt from disclosure under FOIL. To the extent the law permits, the Authority will use reasonable efforts to hold the designated portions of the proposal in confidence.

## **SECTION 2 - EXAMINATION OF SITE; EXAMINATION OF CONTRACT DOCUMENTS BY BIDDER**

(a) Each bidder must visit and carefully examine the work site to become fully acquainted with existing conditions and the nature of the work to be done and must make such investigations as are necessary and required to fully understand the cost, facilities, difficulties and restrictions involved in the execution of the work. All measurements, layouts and the exact conditions of the work must be verified by each bidder.

(b) If the bidder's examination reveals that site conditions differ from those set forth in any Contract Document, the bidder must promptly so notify the Authority in writing, prior to the bid opening. Except for Conditions that are not discoverable upon a careful examination of the site, if site conditions differ from conditions as shown in any Contract Document, and the bidder has not so notified the Authority, the bidder shall be deemed to have agreed to perform the Contract under existing conditions without claim for any extra compensation, but the Authority shall not thereby have waived any right that the Authority may have to a credit.

(c) Each bidder will be conclusively presumed to have knowledge of any and all conditions in, on, about, below or above the work site that may in any way relate to or affect the cost or the performance of the Contract work and that were observed by the bidder or should have been observed by a reasonably prudent bidder.

(d) Before bidding, bidders must examine carefully all of the Contract Documents, including the specifications, any drawings, and all instructions. If the bidder finds any inconsistency, ambiguity, omission or error in the specifications, drawings, instructions, or any other Contract Document, or if the bidder is in doubt as to the meaning of any term or condition of the Contract, the bidder must promptly so notify the Authority, in writing, prior to the bid opening. The failure of the bidder to notify the Authority, prior to the bid opening of any inconsistency, ambiguity, omission or error that the bidder actually found, or that should have been discovered by a reasonably prudent bidder, will preclude acceptance of the bidder's claim for a bid release or for extra compensation based upon any such inconsistency, ambiguity, omission or error.

(e) If the Authority receives a notification from a bidder of a differing site condition or an inconsistency, ambiguity, omission or error in the Contract Documents, the Authority will, as it deems necessary or desirable, issue a written interpretation or correction to the Contract Documents as an addendum to the Contract Documents, and any such addendum will be sent by mail or delivered to each person that received a copy of the original Contract Documents, as reflected in the records of the Authority, and any such addendum will also be available at the place where the Contract Documents are available for inspection by prospective bidders. Upon such mailing or delivery, such addendum shall become part of the Contract Documents and shall be binding on all bidders, whether or not they have had actual notice of such addendum.

## **SECTION 3 - INTERPRETATIONS AND ADDENDA**

No interpretation given as to the meaning of any of the Contract Documents shall be binding in any way or effective to modify any of the provisions of the Contract Documents, unless and until such interpretation is issued in writing by the Authority to all bidders and is expressly denominated as an addendum to the Contract.

## **SECTION 4 - INCORPORATION OF CONTRACT DOCUMENTS**

By submission of this proposal the bidder represents to having received and examined the latest Edition of the Instructions to Bidders, the latest Edition of the General Conditions, the Specifications the Plans and Drawings, if any, and all amendments and addenda, if any, for the Work of the Contract for which this proposal is tendered as if the same were physically attached thereto at the time of submission of the proposal. Further, by such submission the bidder makes each and every representation and warranty to be made by the Contractor as set forth in the Contract Documents. All such documents are hereby incorporated by reference and made part of this proposal. In the event such documents are not included herewith, it is the responsibility of the bidder to secure copies of all these documents from the Authority prior to the submission of his/her proposal.

## **SECTION 5 - BIDDERS' QUALIFICATIONS**

- (a) In order to qualify as a Contractor satisfactory to the Authority, each bidder, in addition to the other requirements herein provided, must be prepared, upon demand of the Authority, to prove to the satisfaction of the Authority that the bidder has the skill and experience, as well as the necessary facilities and ample financial resources, to do the Work in a satisfactory manner and within the time specified.
- (b) A "responsive" bid is one that conforms in all respects to the requirements of this solicitation. A "responsible" contractor is one that has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public funds. Authority Standard Procedure 002:94:1 sets forth some, but not all, of the factors that the Authority may take into account in determining whether a bid is responsive or whether a contractor is responsible. Copies of this Standard Procedure may be picked up from the Administering Department at the address located in the Special Notices & Conditions.
- (c) The bidder must be prepared to prove to the satisfaction of the Authority the possession of net liquid assets available for the proposed Contract in an amount equal to 15% of the bid up to \$100,000.00 and 7.5% of the amount over \$100,000.00.
- (d) Each bidder must comply within 10 days with all requests for information or to appear for examination, and must actively cooperate with the Authority in its efforts to determine whether the bidder is qualified to receive an award under all of the requirements hereof. Any request for such information from a bidder shall not be construed as an acceptance of such bidder's proposal. Failure to submit such proof within this period, or within any extensions thereof, will be deemed a default, entitling the Authority to exercise its remedies, as described more fully in Section 9 (d) below, and permitting an award to another bidder or the solicitation of new bids.
- (e) If more than one bid submitted by a bidder is under consideration by the Authority for award, and the Authority determines that the bidder is able to meet the qualifications for the award of some, but not all, of the contracts on which it has bid, the Authority will determine which bid or bids should be rejected for failure to meet such qualifications. The Authority may also take into consideration contracts already awarded to the bidder and the extent of their completion as affecting the bidder's qualifications for the award of additional contracts.
- (f) Upon the Authority's request, a bidder that is a corporation or unincorporated association must submit to the Authority a certificate evidencing the fact that it is authorized to do business in the State of New York. A bidder conducting business under an assumed name must submit to the Authority, upon the Authority's request, a County Clerk's certificate evidencing the filing with such Clerk of a certificate to conduct business under such assumed name. A bidder conducting business as a partnership must submit to the Authority, upon the Authority's request, a County Clerk's certificate evidencing the filing with such Clerk of a certificate of partnership.

## **SECTION 6 - BID SECURITY**

### **(a) BIDS \$150,000 OR LESS**

Unless otherwise provided, all references in the contract documents to bid security or Performance and Payment Bonds are inapplicable where the bidder's Proposal for the work of the Contract is \$150,000 or less. No bid security or Performance and Payment Bonds will be required in such case.

### **(b) BIDS OVER \$150,000**

Where the Contract for which a proposal is submitted exceeds \$150,000, bid security and Performance and Payment Bonds will be required. Bid security shall be delivered with the proposal or submitted no later than the time fixed for the opening of bids.

### **(c) AGGREGATE BIDS**

Bid Security and Performance and Payment Bonds will also be required where the proposal for the work of the Contract involves more than one base bid or is a combined base bid comprising a number of base bids aggregating, more than \$150,000. In such event, the sum of the base bids or the amount of the combined bid, whichever is greater, shall determine the amount of the bid security.

### **(d) AMOUNT OF BID SECURITY**

Bid Security shall be in the form of either a certified check made out to the Housing Authority for five percent (5%) of the amount of the proposal or a bid bond, which shall be in the form prescribed by the Authority and which shall insure the Authority to the extent of ten (10%) of the amount of the proposals for State Funded Contracts, or five percent (5%) of the amount of the proposals for all other contracts. Such Bid Guarantee, in the form prescribed by the Authority, shall be submitted by the bidder to the Authority prior to the bid opening, and the bidder's failure to do so may result in a determination by the Authority that the bidder is non-responsive and ineligible for award of the Contract.

### **(e) RETURN OF BID SECURITY**

Subject to Authority's right to retain the Bid Guarantee as provided in the Contract, the Authority will not return the Bid Guarantee to bidders until after the Contract has been awarded.

## **SECTION 7 - RECEIPT AND MODIFICATION OF PROPOSALS; OPENING OF PROPOSALS**

An officer of the Authority will decide when the bid due date has arrived, and no proposal received thereafter will be considered. Proposals received prior to the time of physical opening of Proposals will be securely kept unopened. The officer whose duty it is to open them will decide when to open the bids.

## **SECTION 8 - WITHDRAWAL OF PROPOSALS**

- (a) Each bid/proposal constitutes a binding offer by the bidder to perform the Contract at the bid price. No bids/proposals may be withdrawn within a period

of 120 days after the date of opening of the bids. This 120-day period, as it applies to a particular bidder, shall be extended, day for day, by the period of any delay caused by or attributable to, the bidder, including, without limitation, (i) any delays resulting from the Authority's investigation of an (unsuccessful) request by the bidder for a bid release; and (ii) any delays by the bidder in submitting the insurance, performance bonds, or payment bonds required by the Contract or in providing any information requested by the Authority.

**(b)** After the opening of bids, requests for the withdrawal of a bid can be made by the Contractor on the grounds that there was an arithmetic or clerical error in the bid submitted. A bidder seeking a bid release must submit a written, dated and signed request for release from the bid ("Release Request") to the Department of the Authority that issued the solicitation of the bids (the "Originating Division"). The bidder's signature on the Release Request must be duly acknowledged and witnessed by a notary public. The Release Request must set forth the reasons for the release and should be accompanied by any supporting documentation. Any additional information reasonably requested by the Originating Division must be submitted within the time period reasonably established by the Originating Division in order to expedite consideration of the Release Request. Failure of a bidder to comply with a request for information within the specified time period may result in a resolution of the Release Request without the consideration of any information subsequently submitted by the bidder in an untimely manner. Requests for withdrawal may be granted by the Authority in any case where the Authority deems the claim of mistake is justified or where the grant of such request is otherwise in the best interest of the Authority.

**(c)** In the case of a bidder's first Release Request in any twelve-month period, no administrative charge shall be imposed. If the Release Request is granted, the bidder will be advised in writing that if a second request for release is made within twelve months after the date on which the first request was received by the Authority, the bidder may, in the discretion of the Director/Program Administrator of the Originating Division, be disqualified from bidding on any Authority contract for up to a maximum of one year after the second Release Request is received by the Authority. In the case of the bidder's second Release Request in any twelve month period, whether or not such Release Request is granted, the Director/Program Administrator of the Originating Division may disqualify the bidder for up to a maximum of one year from the date the second Release Request is received by the Authority, and may impose an administrative charge of up to \$500.00 against the bidder.

**(d)** A bidder submitting a Release Request may be deemed to have made a second Request Release for the purposes of Section 8 (c) above if it is a successor, assignee, subsidiary or affiliate of a previously released bidder; or if any of the bidders officers, directors, partners shareholders, joint venture participants, principals or other persons substantially involved in its contracting activities was also an officer, director, partner, shareholder, joint venture participant, principal or other person substantially involved in the contracting activities of the previously released bidder; or if it was organized or established or operates in a manner designed to evade the purpose of this Section 8, any Authority procedure, or any other law, rule, regulation or Authority procedure relating to the procurement or performance of a contract. In addition, in determining the number and timing of Release Requests submitted by a bidder, the Authority will consider Release Requests submitted by the bidder to any construction manager performing construction management services for the Authority.

## **SECTION 9 - AWARD OF CONTRACT; REJECTION OF PROPOSALS**

**(a)** The Contract will be awarded, to the lowest responsible bidder complying with the conditions of the Contract Documents, provided the Proposal is reasonable and it is to the interest of the Authority to accept it. The bidder to whom the award is made will be notified at the earliest possible date of the acceptance of the Proposal. The Authority, however, reserves the right to reject any and all Proposals for any reason or to waive any informality in Proposals received whenever such rejection or waiver is in the interest of the Authority. The Authority may but need not consider any Proposal on which there is an alteration of or departure from the Contract Documents.

**(b)** Prior to award of the Contract the successful bidder will be notified in writing that its proposal is being considered for an award of the Contract and directed to submit evidence of insurance coverage as called for in Sections 17 and 18 of the General Conditions, and, if required by the Contract Documents, performance and payment bonds as called for in Section 10 of the Instructions to Bidders. The insurance and bonds (if required) shall be submitted within fifteen (15) working days of notification. Bidders are advised that such notification does not constitute an award of the Contract and that award of the Contract remains subject to the Authority's rights to reject the bidder's proposal, at its lawful discretion, and the satisfaction of all of the Authority's required conditions for award of the Contract.

**(c)** By submitting a bid the bidder represents that it will cooperate with the Authority. Cooperation includes providing to the Authority in a timely manner any information or documentation requested by the Authority (including, without limitation, the Statement of Contractor's Qualification for Consideration of Award and the Section 3 Hiring Summary), any form which may be requested on behalf of any agency funding any part of the Work, or any evidence relating to the obligations of others interested in the progress of the Work (such as insurance companies, sureties and subcontractors). The bidder agrees that cooperation may include providing to the Authority in a timely manner information or documentation related to bidder's organization or to its obligations under this Contract. This representation shall survive the expiration of the bid and, as to the bidder awarded the Contract, this representation shall be incorporated into the Contract and survive the termination of the Contract.

**(d)** The bidder agrees that if at any time it fails to abide strictly by the terms of the representation set forth in Section 9 (c) the Authority may find the bidder in breach of such representation. The bidder acknowledges and consents to the Authority's prompt use of any one or more of its several different types of remedy in the event of such breach or in the event the bidder fails to supply required bonds in accordance with Section 10. One remedy may be payment by the bidder to the Authority upon demand of an amount of money that may be as much as the difference between the bidder's bid price and the price at which the Contract is awarded. The bidder agrees that the Authority may collect such an amount from any monies due the bidder by the Authority under the Contract or any other contract. Another remedy may be the collection by the Authority of all sums due under any applicable bid bond or other sums securing the bid. In addition to, and not in limitation of, all other remedies available to the Authority, the Authority may treat the bidder as if it has sought a second bid release within a twelve month period and may disqualify the bidder for up to a maximum of one year and impose an administrative charge of up to \$500.00 against the bidder.

## **SECTION 10 - PERFORMANCE AND PAYMENT BONDS**

**(a)** In the event performance and payments bonds are to be furnished as heretofore provided, the successful bidder shall, within fifteen (15) working days after written notification from the Authority that its proposal is being considered for an award of the Contract, deliver to the Authority an executed bond in an

amount equal to one hundred percent (100%) of the Contract Price to secure the faithful performance of the Contract and an executed bond in an amount equal to one hundred percent (100%) of the Contract Price as security for the payment of all persons performing labor or furnishing materials in connection with this Contract, prepared on the forms of bonds authorized by the Authority, and having as surety thereunder such surety company or companies as are approved by the Authority. The surety company that issues performance and payment bonds must be included on the current list of the Treasury Department and authorized to do business in the State of New York where an Authority Contract is funded by federal money ONLY. For all other Authority Contracts, unless otherwise specified, the surety company needs only to be authorized to do business in the State of New York.

(b) A notified bidder who fails to supply the required bonds within fifteen (15) working days of notification, or such extended period as the Authority may grant (based on reasons determined adequate by the Authority), shall be deemed non-responsive, and the Authority may either award the Contract to the next lowest responsible bidder or re-advertise for bids, and may charge against the bidder the difference between the amount of the bid and the amount for which a Contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid guaranty. In the recovering of such difference, the Authority may proceed against the surety on the bid bond or on the bidder's check as the case may be, or take such other action as it sees fit.

## **SECTION 11 - UNIT PRICES**

In the event that the Contract's pricing is based upon unit prices ("**Unit Prices**"), bidders shall quote Unit Prices for all items set forth in the Form of Proposal for which the bidder is required to provide a Unit Price quote. Where the Form of Proposal contains Unit Prices as that have been established by the Authority therein, the Bidder shall quote a multiplier to be applied to the established Unit Prices and the Unit Prices shall be as modified by the bidder's multiplier. In submitting its bid/proposal, the successful bidder agrees to be bound, as applicable, to (a) all of the bidder's quoted Unit Prices set forth in the bidder's bid/proposal or, (b) all Unit Prices established by the Authority in the Form of Proposal, as modified by the bidder's multiplier set forth in the bidder's bid/proposal. Provided, however, that the Authority may reject any quoted Unit Prices or multiplier or, by agreement with the lowest responsive, responsible bidder, may modify the same downward.

## **SECTION 12 - EQUAL EMPLOYMENT OPPORTUNITY - AFFIRMATIVE ACTION**

It is the policy of the Authority, pursuant to Presidential Executive Order 11246 as amended, to prohibit discrimination in employment because of race, color, religion, sex, or national origin in all aspects of its operations, and to promote the full realization of equal employment opportunity for all qualified persons by means of a continuing program of compliance through affirmative actions.

Affirmative Action means that the contractor and subcontractor must do more than merely support non-discrimination. It means taking positive steps to recruit, employ and develop qualified or qualifiable candidates, including minority group members and women, in all job categories of work and advancement.

### **(a) PRE-AWARD PROCESS**

Prior to the award of the Contract to the successful bidder, such bidder must go through a pre-award process and provide the Authority's Department of Equal Opportunity its practices and policy relating to the extension of equal employment opportunity to all persons without regard to race, religion, color, national origin, sex, marital status, disability, age, military status or sexual orientation.

The successful bidder shall be required to provide the specific steps under way for providing members of minority groups and women with equal opportunity in training, apprenticeship programs, journeyman recruitment and all other aspects of employment. The result shall be to assure that to the extent feasible there are minority group members and women employed person in all trades and all phases of the Contract, as well as in the company.

### **(b) AFFIRMATIVE ACTION PLAN**

The Contractor will provide a plan that includes the Contractor's analysis of employment of the work force for the Contract and sets forth goals for employment of minorities and women by the Contractor and subcontractors insofar as they can be projected. The plan shall also contain an acceptable Equal Opportunity Statement of Policy.

### **(c) SPECIFIC STEPS FOR AFFIRMATIVE ACTION**

Examples of affirmative action steps that a prospective contractor, and subcontractor, is expected to pursue shall include but not be limited to the following:

1. Develop and subscribe to an Equal Employment Opportunity Program.
2. Notify and thoroughly inform all responsible employees (e.g., foreperson and other supervisory personnel) that the firm is an EQUAL OPPORTUNITY EMPLOYER and that they are required to comply with the firm's policies concerning Equal Employment Opportunity.
3. Designate an officer or top-level representative of the firm as Equal Employment Opportunity Compliance Officer, whose responsibilities will include:
  - a. Consulting with union officials and/or industry representatives and reviewing bargaining agreements in order to ensure equal employment opportunity.
  - b. Cooperating with civil rights groups, community organizations and other interested sources in order to include the recruitment of minority group workers and women for apprentice and journeyman entrance into employment and into the various craft unions under contract with the firm and its subcontractors.
  - c. Providing liaison with the NYCHA Department of Equal Opportunity, reporting on the firm's progress, etc.

4. Notify sources of recruitment in writing that the firm is an Equal Opportunity Employer and solicits referral of qualified candidates including minority group applicants and women for all jobs, including blue collar and white collar classifications.
5. Promote apprenticeship and trainee programs as a member of a joint apprenticeship committee or as an individual, and request the building trades to give public notice that apprenticeship programs are open to everyone. Copies of such notices shall be submitted to the Authority's Department of Equal Opportunity as an example of the company's affirmative action compliance program.
6. Advertise for personnel in all categories through media most likely to reach minority groups and women or other local publications, radio, etc. and submit to the Department of Equal Opportunity copies of advertising or news releases used to accomplish this.
7. Hire minority group members and women from other sources in the event that the unions with whom the prime contractor has collective bargaining agreements are unable or unwilling to supply them.

**(d) SUBCONTRACTORS**

1. Encourage the solicitation of bids to include, but not be limited to:
  - a. Minority Group Subcontractors
  - b. Women Subcontractors
  - c. Subcontractors who have substantial minority group and female representation among their employees and
  - d. Minority group and women vendors
2. The Contractor shall submit to the Authority written evidence or other proof that shows the Contractor solicited bids from minority subcontractors and gave such minority subcontractors an equal opportunity to submit proposals, and that such proposals have been given consideration for award.

**(e) MONTHLY EQUAL OPPORTUNITY CONTRACTOR REPORT**

Submit to the Authority's Department of Equal Opportunity monthly reports on Form 036.001A, Monthly Equal Opportunity Contractor Report, indicating the composition of all on-site workers, including those of subcontractors by name, race, sex, and ethnic classification. The forms may be secured from the Department of Equal Opportunity and are to be promptly submitted directly to this office at the end of each month during the performance of the contract. In addition, copies of these reports must be attached to the Requisition for Payment.

**(f) POSTERS**

Post the provisions of the Equal Opportunity clauses of Executive Order No. 11246 as amended or equivalent posters required by the New York City Housing Authority or other agency of appropriate jurisdiction, in conspicuous places available to all employees and applicants for employment.

**SECTION 13 - EQUAL EMPLOYMENT OPPORTUNITY - AFFIRMATIVE ACTION FOR FEDERALLY FUNDED CONTRACTS**

**(a) NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade

Electricians	9% - 10.2%
Carpenters	27.6% - 32%
Steamfitters	12.2% - 13.5%
Metal Lathers	24.6% - 25.6%
Painters	22.8% - 26%
Operating Engineers	25.6% - 26%
Plumbers	12% - 14.5%
Iron Workers (Structural)	25.9% - 32%
Elevator Constructors	5.5% - 6.5%
Bricklayers	13.4% - 15.5%
Asbestos Workers	22.8% - 28%
Roofers	6.3% - 7.5%
Iron Workers (Ornamental)	22.4% - 23%

Cement Masons	23% - 27%
Glaziers	16% - 20%
Plasterers	15.8% - 18%
Teamsters	22% - 22.5%
Boilermakers	13% - 15.5%

The Ranges for all trades not included in the above listing: 16.4% - 17.5%

Goals for female participation

Goals for Women apply nationwide

**GOALS AND TIMETABLES**

Since Mar. 31, 1981 the goal has remained 6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractors goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is New York, New York.

**(b) STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
  - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic Origin);
  - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with the Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractors or Subcontractors failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female

utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women, shall excuse the Contractors obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractors employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all forepersons, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractors obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractors efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractors employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Forepersons, etc. prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractors recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractors workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classification, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractors obligations under these specifications are being carried out.

- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet, and necessary changing facilities, shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implemented regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, Social Security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under Public Works Employment Act of 1977 and the Community Development Block Grant Program).

## **SECTION 14 - VARIOUS BIDDER REPRESENTATIONS AND CERTIFICATIONS**

### **I. CONTINGENT FEE REPRESENTATION AND AGREEMENT**

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder

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

"Improper influence" means any influence that induces or tends

to induce an Authority employee or officer to give consideration or to act regarding an Authority contract on any basis other than the merits of the matter.

(b) By submitting a bid, the bidder represents and certifies, except for full-time bona fide employees working solely for the bidder, the bidder:



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

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

(c) If the bidder is unable to make the representations above, the bidder shall make an immediate and full written disclosure to the Authority.

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

## II. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (applicable to contracts exceeding \$100,000)

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

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

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

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

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

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

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

## III. ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATION

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

(a) Result in an unfair competitive advantage to the bidder; or,

(b) Impair the bidder's objectivity in performing the contract work.

In the absence of any actual or apparent conflict, the bidder certifies, by submission of its bid, that to the best of their knowledge and belief, no actual or apparent conflict of interest exists with regard to the possible performance of this procurement.

## SECTION 15 - PROTESTS

(a) Any actual or prospective bidder or contractor may protest the solicitation of bids or the award of a contract on the

grounds that the Authority has substantially failed to follow the standards set forth in the Authority's procurement policies and related procedures. Protesters may file a protest with respect to any phase of the solicitation or award, including, without limitation, bid solicitation; determination by the Authority of bidder responsibility or bid responsiveness; and contract award. If the protest is made by a potential bidder or proposer that has not submitted a bid or proposal, the protest shall be limited to a challenge of the notice procedures followed by the Authority. This right to protest shall not apply to protest regarding the denial of a request for a release from bid.

**(b)** The Authority may make a determination that bids or proposals received are non-responsive or that the lowest bidder is non-responsible. Upon making a determination of non-responsibility with respect to the low bidder, the Authority shall notify the affected bidder in writing of that determination.

The notification shall state the reasons upon which the determination is based. In addition, the notification shall advise the bidder of the time period within which a formal written protest (the "Protest") may be filed and of the requirements for filing such Protest, as set forth in Section 15(c) below. The Authority is not required to provide written notice of determinations of non-responsiveness.

**(c)** To expedite handling of Protest, a protester shall address its envelope to the Director/Program Administrator of The Originating Division, and such envelope be labeled "Protest". The Protest should include, without limitation, the following information:

1. the name, address and telephone number of the protester;
2. appropriate identification of the procurement, including the solicitation or RFQ number;
3. a statement of the reasons for the Protest;
4. supporting exhibits and documentary evidence to substantiate any arguments; and
5. the form of relief requested.

**(d)** Protests must be filed within seven calendar days after the protester discovers or should have discovered the facts giving rise to Protest. In furtherance and not in limitation of the foregoing, (i) any Protest against a determination of non-responsibility must be filed within seven calendar days after the protester receives the notice of determination referred to in Section 15(b) above, (ii) any Protest against a determination of non-responsiveness must be filed within seven calendar days after the protester learns that its bid or proposal has been deemed non-responsive, (iii) any Protest against a solicitation must be filed before the due date for receipt of the bids or proposals in response to such solicitation, and (iv) any Protest against award of a contract must be filed within seven calendar days after contract award. A Protest is considered filed when such Protest is received by the Director/Program Administrator of the Originating Division. Protests received after the seven day period shall not be considered unless the Director/Program Administrator of the Originating Division determines, in his/her sole discretion that good cause is shown for considering the late Protest.

**(e)** Any additional information reasonably requested by the Originating Division must be submitted within the time period reasonably established by the Originating Division in order to expedite consideration of the Protest. Failure of a protester to comply with a request for information within the specified time period may result in a resolution of the Protest without consideration of any information subsequently submitted by the protester in an untimely manner.

**(f)** The Director/Program Administrator of the Originating

Division (or his/her designee) shall make decision on a Protest as expeditiously as possible after the Originating Division has received all relevant information requested of the protester. The Director/Program Administrator of the Originating Division (or his/her designee) may, in his/her sole discretion, meet with the protester and any other affected party to discuss the Protest. If a Protest is granted (i.e., sustained in favor of the protester), the Authority shall so notify the protester in writing and the solicitation or award shall be canceled or revised to comply with the Protest decision.

1. If the contract has already been awarded, the contract may be terminated for the convenience of the Authority, and the contract may be awarded to the protester or to the next eligible bidder, the Authority shall so notify the protester in writing and the solicitation or award shall be canceled or revised to comply with the Protest decision.

2. If the contract has not been awarded, the contract may be awarded to the protester or to the next eligible bidder or proposer (whichever is appropriate in light of the Protest decision) or the procurement may be resolicited; provided, however, that if the Authority determines that based on compelling circumstances (e.g., a condition of emergency or serious disruption of the Authority's operations or if the contract has already been completed), either of those actions would not be in the best interest of the Authority, the Authority may let the award stand and the Authority shall pay the successful protester the reasonable costs incurred by the protester in connection with preparing and submitting its bid or proposal, along with the reasonable costs of filing and pursuing the Protest. Anticipated profit or damages for lost business opportunities of the protester shall not be paid by the Authority. If a Protest is denied, the Authority shall send to the protester a written decision stating the reason(s) for the denial of the Protest. If the decision involves a determination of non-responsibility, the Authority shall also inform the protester of its right to request reconsideration of the decision in the manner set forth in Section 15 (g) below.

(g) The protester may make a written request for reconsideration of a Director's/Program Administrator's decision regarding non-responsibility (but not of a Director's/Program Administrator's decision regarding non-responsiveness), which must be filed by the protester not later than five calendar days after the protesters receipt of such decision. The request for reconsideration shall be considered by the Deputy General Manager to whom the Director/Program Administrator of the Originating Division reports (or such Deputy General Manager's designee) or, in the case of Originating Divisions that do not report to a Deputy General Manager, by the General Manager (or the General Manager's designee); provided that neither the Director/Program Administrator of the Originating Division nor anyone who reports to him/her may serve as a designee considering the request for reconsideration of such Director's/Program Administrator's decision. The protester shall address its envelope to the General Manager or the Deputy General Manager to whom the Director/Program Administrator reports, as the case may be, and such envelope should be labeled "Request for Reconsideration." The request for reconsideration shall contain a statement of the factual and legal grounds upon which reversal or modification is deemed warranted specifying any errors of fact or law made or information not previously considered that should have been considered. Supporting documentation should be included.

(h) The General Manager or the Deputy General Manager to whom the Director/Program Administrator reports, as the case may be, or his/her respective designee may, in his/her sole discretion; (i) meet with the protester and, if invited, a representative of the Originating Division to discuss the request for reconsideration, and/or (ii) hold a hearing, at which witnesses may be called and facts presented (at any such meeting or hearing, the Authority, the

protester and any other affected party invited to the hearing may be represented by an attorney or other representative). The General Manager, or the Deputy General Manager, to whom the Director/Program Administrator reports or his/her respective designee, shall make a written decision with respect to the merits of the request for reconsideration as expeditiously as possible. The decision of the General Manager or the Deputy General Manager to whom the Director/Program Administrator reports, or his/her designee, with respect to a protester's request for reconsideration shall be final.

## **SECTION 16 - RECEIPT OF NOTICES**

All notices required to be filed, or sent pursuant to Sections 8 and 15 of these Instructions to Bidders shall be in writing and must be delivered by hand or sent by registered or certified mail, return receipt requested, or overnight mail service that provides a receipt to the sender. Receipt of notices by the party to whom transmitted shall be deemed to have occurred: (1) upon receipt, if hand delivered, (2) when mailed, upon receipt, as evidenced by the required receipt, or five calendar days from the date of mailing, whichever is earlier, or (3) the next business day after transmittal by Federal Express, Express Mail or other overnight delivery service that provides a receipt to the sender.

## **SECTION 17 - ADDITIONAL CLAUSES FOR STATE FUNDED CONTRACTS**

- (a) For State Funded Contracts, any attached Appendices A and B are a part of the contract.
- (b) In case of conflict between appendices and clauses contained elsewhere in the contract, the requirements of the appendices shall govern.
- (c) The successful bidder shall be requested to completely fill out the forms in Appendices A and B.

## **SECTION 18 - PROJECT LABOR AGREEMENT AND LETTERS OF ASSENT**

- (a) The bidder must submit Letters of Assent ("**Letters of Assent**") to the Authority, in the form attached to the PLA as **Exhibit A**. The Letters of Assent must be signed by the bidder and each proposed subcontractor identified in the Sealed Subcontractor List, if applicable, or identified in the bidder's bid (the "**Proposed Subcontractors**"). The bidder must submit to the Authority, along with its bid, a Letter of Assent signed by the bidder and each Proposed Subcontractor required to be identified in the Sealed Subcontractor List. With respect to Proposed Subcontractors identified in the bidder's bid but not required to be identified in the Sealed Subcontractor List, the Bidder must submit to the Authority, along with its bid, either (1) the signed Letters of Assent signed by each such Proposed Subcontractors or (2), if not all of Letters of Assent signed by such Proposed Subcontractors are submitted with the bidder's bid, a Letter of Assent Certification (the "**Letter of Assent Certification**") signed by the bidder certifying that it will obtain and submit to the Authority signed Letters of Assent from all Proposed Subcontractors no later than five business days after notification from the Authority that it is being considered for an award of the Contract, as required by subsection (b) of this section below. The Letter of Assent Certification must be in the form attached to the Notice of PLA and must identify by name all Proposed Subcontractors for whom the bidder has not submitted to the Authority signed Letters of Assent with its bid. If the bidder is awarded the Contract, the PLA shall be binding on the bidder and each of the bidder's subcontractors approved by the Authority.
- (b) If the bidder does not submit to the Authority, along with its Bid, signed Letters of Assent to the Authority for any of the Proposed Subcontractors not required to be identified in the Sealed Subcontractor List, but submits a Letter of Assent Certification in accordance with the requirements of subsection (a) of this section above, the bidder may be notified in writing (or by e-mail) that its bid is being considered for an award of the Contract. If so notified, the Authority shall direct the bidder to submit, no later than five business days after receipt of notification, all outstanding Letters of Assent signed by the Proposed Subcontractors that were not required to be submitted with the bidder's bid. If a notified bidder fails to provide such signed Letters of Assent no later than five business days after receipt of notification, the Authority may either award the Contract to the next lowest responsive, responsible bidder or re-advertise for bids, and, in addition to other remedies at the Authority's disposal, may charge against the bidder the difference between the amount of the bid and the amount for which a Contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid guaranty. In the recovering of such difference, the Authority may proceed against the surety on the bid bond or on the bidder's check as the case may be, or take such other action as it sees fit. Bidders are therefore strongly advised to submit all required signed Letters of Assent to the Authority with their bids to avoid the Authority's exercise of the remedies described in this subsection (b).
- (c) If the bidder's bid is \$250,000 or less, and notwithstanding anything to the contrary herein, the PLA shall not apply to the Contract and all provisions applicable to the PLA in the Contract shall be deemed null and void.

## **GENERAL CONDITIONS**

### **SECTION 1 - DEFINITION OF TERMS**

Whenever used in this Contract:

- (a) The term "Authority" means New York City Housing Authority, or any representative of the Authority acting within the scope of the particular powers and duties vested in him.
- (b) The term "Contractor" means the bidder for the contract whose bid is accepted by the Authority.
- (c) (i) The term "Contract" or "Contract Documents" means and includes:
1. Advertisement or solicitation for bids
  2. Instructions to Bidders
  3. Contractor's Proposal as accepted by the Authority
  4. The General Conditions
  5. The Specifications
  6. The drawing and plans, if any
  7. The Letter of Award
  8. The Acceptance of Proposal
  9. All Notices to Proceed
  10. Amendments, Addenda and revisions to any of the foregoing
  11. Performance and payment bonds, if required
  12. All documents incorporated by reference
- (ii) If the Contract is awarded at a price greater than \$250,000, the definition of "Contract" or "Contract Documents" shall further mean and include the Project Labor Agreement by and among the Authority, the Building and Construction Trades Council of Greater New York and Vicinity, and the signatory local unions and contractors (the "**PLA**").
- (d) The term "Work" means the work and materials specified and the obligations imposed upon the Contractor under the Contract.
- (e) The term "Project" means the Projects involved to the Contract.
- (f) The terms "furnish", "install", "provide", "execute", "perform", or words of like import shall include the obligation to supply all materials, equipment, labor and all other things necessary to complete the installation or execution of work referred to, unless otherwise expressly stated.

## **SECTION 2 - PERFORMANCE**

The Contractor shall perform the Work in strict conformity with the Contract Documents and in a good, substantial and workmanlike manner to the satisfaction of the Authority and shall furnish at his/her own cost and expense all labor, materials, plant, equipment, tools, requisite insurance, and all taxes thereon, which are necessary in connection with the Work or incidental thereto, all for the sum as accepted by the Authority.

The Contractor shall perform on the site, and with its own organization, Work of a value equivalent to at least thirty-five percent (35%) of the total amount of Work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this Contract, if the Contractor requests a reduction and the Authority determines that such reduction would be in its best interests.

## **SECTION 3 - CONTRACT DRAWINGS**

Unless otherwise specified in the Special Notice to Contractors, there are no contract drawings to this Contract. If plans and drawings are specified or incorporated by reference, they are intended to be co-extensive with the Contract Documents, including the Specifications, so that any matter or thing contained in or shown by any of them shall be of the same effect as if contained in or shown by all.

## **SECTION 4 - AMENDMENTS AND ADDENDA**

The Amendments and Addenda, if any, to the Contract Documents, are for the purpose of varying, modifying, rescinding, or adding to the portions of the Contract Documents to which they pertain and should be read together with them. In the event of any inconsistency or conflict between any Contract Documents or any portion thereof and any Amendment or Addendum, the Amendment or Addendum shall prevail. Where an Amendment or Addendum modifies a portion of a paragraph or a section, the remainder of the paragraph or section shall remain in force unless otherwise stated in the Amendment or Addendum.

## **SECTION 5 - PARTIAL PAYMENTS**

(a) Prior to the submission of the first requisition for a partial payment, the Contractor, if required, shall present to the Authority, for the Authority's approval, a schedule showing the breakdown of the Contract price which must contain the amount estimated for each part of the Work, and in addition, a quantity survey for each such part of the Work. The values employed in making the schedule will be used only for determining the size of the partial payments and to supply labor statistical information required by the Authority, and will not be considered as fixing a basis for additions to or deductions from the Contract Price. Notwithstanding the foregoing, In the event that the Contract's pricing is based upon a factor/multiplier, the basis for the Contractor's pricing shall be as set

forth within the Form of Proposal and/or Contract Specifications.

(b) Progress payments, irrespective of whether the Contract is lump sum, unit price, or factor/multiplier will be made as the Work progresses in accordance with this section. Within 30 calendar days from when the Work for which the Contractor seeks a progress payment was performed (the "**Progressed Work**"), but not more often than once per month, the Contractor shall submit to NYCHA an application for such progress payment that must cover the Progressed Work and include: (1) the requested payment amount; (2) all certificates and documents on the forms acceptable to, and in accordance with the rules of, the Authority and as required by the Contract Documents; (3) all *Contractor Daily Sign-In Sheets* and all payrolls records required pursuant to these General Conditions, evidencing the Contractor's compliance with prevailing wage requirements with respect to the Progressed Work covered by the progress payment application, if not previously submitted, as the Contracting Officer will not approve any progress payment application until the Contractor has submitted such Daily Sign-In Sheets and payroll records; and (4) proof satisfactory to the Authority that the Contractor is meeting his/her obligations to subcontractors, suppliers of material and workers, if requested by the Contracting Officer. Unless allowed by the Authority, such progress payments shall not exceed the ratio to the total compensation hereunder that the portion of the Progressed Work done bears to the entire Work.

(c) An application for progress payments shall not include requests for payment (1) on account of changes in the Work which have not been properly authorized by a change order in accordance with the Contract Documents, or (2) of amounts the Contractor does not intend to pay a subcontractor or supplier because of a dispute or other reason.

(d) If a progress payment is requested on the basis of materials or equipment not incorporated into the Progressed Work but delivered and suitably stored at the site or at another location agreed to in writing, the progress payment application shall be accompanied by such bills of sale, data and other procedures substantiating the Contractor's title to such materials or equipment or otherwise protecting the Contractor's interest. Payment on account of such materials or equipment will not (1) include any amount for the Contractor's overhead or profit, (2) relieve the Contractor of its obligation to protect and install such materials or equipment in accordance with the requirements of the Contract and to restore damaged or defective Work, or (3) relieve the Contractor of any risk of loss for such materials or equipment or obligations with respect thereto as provided for in the Contract Documents.

(e) The Contracting Officer or his or her designee will, within seven calendar days after receipt of an application for a progress payment, either indicate a recommendation for payment or deny the application. If payment is recommended and the application is approved, the Contractor will be notified by the Authority that the application has been approved and will be provided with a copy of the Authority's payment requisition for the Contractor's signature. The date that the Contractor is notified of the progress payment approval is referred to herein as the "Approval Date." Upon notification of the progress payment approval, the Contractor must then submit the signed payment requisition along with an original invoice to the Authority's Accounts Payable Division ("**Accounts Payable**"). Such original invoice must be printed on the Contractor's company letterhead and have an original signature. The signed payment requisition and original invoice shall be submitted by the Contractor directly to Accounts Payable at:

New York City Housing Authority  
Accounts Payable  
P.O. Box 3636  
Church Street Station  
New York, NY 10008

Payment will be made to the Contractor within 21 calendar days of the Approval Date (the "**Payment Date**") provided that Accounts Payable receives the Contractor's signed payment requisition and original invoice, satisfactory to Accounts Payable (a "**Satisfactory Requisition and Invoice**"), at least seven calendar days prior to the Payment Date. If the Satisfactory Requisition and Invoice is not received at least seven calendar days prior to the Payment Date, payment will be made within seven calendar days after receipt thereof by Accounts Payable.

(f) If the application for a progress payment is denied, the application shall be returned to the Contractor indicating the Authority's reasons for refusing to recommend payment which may include, but not be limited to, the Authority's exercise of its right to withhold payment as provided for in the Contract Documents. If denied, the Contractor may make the necessary corrections, to the extent that corrections can be made, and resubmit the application to the Authority within 30 calendar days from the Contractor's receipt of the returned application, in which case the time and procedures for review, denial, approval, and payment, as applicable, as set forth in this subsection (f) of this section and in subsection (e) of this section above, shall apply to the resubmitted application. No such progress payments, however, will be made after the time fixed for the completion of the Work, or the time to which the completion may be extended under the terms of this Contract, until the full and final completion of all Work herein agreed upon, unless the Authority, in its discretion, directs otherwise.

(g) The Contracting Officer's or his or her designee's recommendation of any progress payment requested in an application shall not constitute a representation that (1) exhaustive or continuous on-site inspections have been made to check the quality or quantity of the Work, (2) an examination has been made to ascertain how or for what purpose the Contractor has used payments previously paid on account of the Work, or (3) the Contractor's construction means, methods, techniques, sequences or procedures have been reviewed. Furthermore, any recommendation of a progress payment shall not constitute a waiver of the Authority's rights and remedies under the Contractor Documents or otherwise including, but not limited to, the right to withhold payments to the Contractor.

(h) In making such partial payments the Authority may retain ten percent (10%) of the estimated amount until the final completion and acceptance of all work

covered by the Contract except that this may be reduced to five percent (5%) after satisfactory performance of 50% of the work. If performance and payment bonds in the full amount of the Contract Price have been furnished by the Contractor, the retention shall be five percent (5%) throughout.

(i) The Contractor agrees to accept payments under the Contract (progress, final, or otherwise) from the Authority by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(j) Prior to the first payment made under the Contract, the Contractor shall designate one account on the books of a financial institution or other authorized payment agent and shall complete and submit to Accounts Payable the "AP Supplier Maintenance Request Form" with a voided check.

(k) The credit of a payment by the Authority to the account on the books of the financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the Authority for the payment under the Contract.

(l) The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

(m) The Authority may waive the requirements of this section for payments in the following circumstances: (1) for individuals or classes of individuals for whom compliance imposes a hardship; or (2) in other circumstances as may be necessary in the best interest of the Authority.

## **SECTION 6 - FINAL PAYMENT**

(a) Within thirty (30) days after the issuance of the Certificate of Final Acceptance hereinafter provided for, the Authority, subject to all contract provisions, shall pay to the Contractor, by check or otherwise, all sums remaining unpaid and due it under the Contract.

(b) The Final Payment shall not become due until the Contractor shall deliver to the Authority all releases required by the Authority from all liens, claims and demands arising out of any Work done pursuant to the Contract.

(c) The acceptance by the Contractor of the Final Payment, or any part thereof, shall be and shall operate as a release of the Authority from all claims and all liability to the Contractor for all things done or furnished in connection with the Work and for every act, omission and neglect of the Authority and others relating to or arising out of this Work, excepting only claims expressly reserved by the Contractor in writing at the time final payment is made.

(d) No Interest to be Paid. The Contractor agrees that no interest shall be due and payable from the Authority on any retained amounts or on any other sums deducted and withheld from the partial payments or the Final Payment or for failure to make any partial payments or the Final Payment on the date when any such payments may be due.

## **SECTION 7 - AUTHORITY'S RIGHT TO WITHHOLD MONEY OUT OF PAYMENTS; LIENS**

(a) If the Work is not performed in strict accordance with the Contract, or if the work of any other contract between the Contractor herein and the Authority is not performed in strict accordance with its terms, or if the Authority has a claim against the contractor herein for any other reason whatsoever, or if any claim, just or unjust (including claims for wrongful death and for injuries to person or property), which arises out of the performance of the Work is made against the Authority, the Authority shall have the right to withhold out of any payment, final or otherwise, such sums as the Authority may deem ample to protect it against delays or loss or to assure the payment of such claims on this, or any other open contract which the Contractor has with the Authority.

(b) In the event that wages have been paid at a rate less than the prevailing wage, the Authority shall also have the right to withhold from the Contractor out of any payment, final or otherwise, on this, or any other open contract that the Contractor has with the Authority, so much as may be necessary to pay to laborers, mechanics, architects draftsmen, engineers and technical workers, and other workers employed on the Work, the difference between the sums such persons should have received as wages and the amounts they actually received, and to pay such sums over to such persons. All such payments shall be deemed to be payments for the Contractor's account. In addition, the Contractor shall be required to pay for the cost of any investigation conducted by or on the behalf of the Authority that discovers a failure to pay prevailing wages by the Contractor or its subcontractors. If the Authority discovers such a failure, the Contractor shall submit a certified check to the Authority for the administrative cost of the investigation, as such cost has been assessed by the Authority. The certified check shall be submitted to:

New York City Housing Authority  
Revenue and Receivables Division  
90 Church Street, 6th Floor  
New York, NY 10007

The Authority shall continue to withhold funds from payments due to the Contractor until the certified check for such cost is received.

(c) The foregoing provisions shall be construed solely for the benefit of the Authority and shall not be construed to require the Authority to determine or adjust any claims or disputes between the Contractor and any other person or persons.

(d) Deductions for Defective Work as an Alternative to Requiring Corrections. If the Authority deems it inexpedient to require the Contractor to correct Work damaged or not done in accordance with the Contract, an equitable deduction from the Contract Price shall be made by agreement between the Contractor and

the Authority. In the event of the failure of the said parties to reach an agreement, the amount to be so deducted shall be settled in accordance with the procedure hereinafter provided for the settlement of disputes. Until such settlement, the Authority may withhold such sum as it deems just and reasonable from monies, if any, due the Contractor on this, or any other open contract which the Contractor has with the Authority.

(e) Liens as Bar to Payment. The Contractor shall not, at any time, suffer or permit any lien, attachment, or other encumbrance, under the law of this State or otherwise, by any person or persons whomsoever, to remain on file with the Authority against any money due or to become due for any Work done or materials furnished under the Contract, or by reason of any other claims or demand against the Contractor. Such lien, attachment, or other encumbrance, until it is removed, shall preclude any payment and any and all claims or demand for any payment whatsoever under and by virtue of the Contract.

#### **SECTION 8 - MODIFICATIONS OF COMPENSATION; CHANGES IN THE WORK**

(a) The Authority, without invalidating this Contract or any bonds or security furnished thereunder, and without notice to the sureties, if any, may, at any time after the acceptance of the Contractor's Proposal, make changes by altering or changing the Work or by ordering Extra Work, or by omitting or reducing the Work in part, or, upon five (5) days' notice to the Contractor, in whole, the Contract Price being adjusted as hereinafter provided. Such alterations, changes, extra work, reductions or omissions may be ordered by the Authority solely by written order. When Work is omitted or reduced, in whole or in part, no right to compensation or damages for any loss or cost, including loss of profit, or for any claim or cause of action, shall accrue to the Contractor for any Work so omitted or reduced, except that the Authority will pay, subject to the provisions of this Contract, for all Work actually performed.

(b) For changes resulting in Extra Work, the contract price shall be adjusted by such of the three following methods as the Authority selects:

1. Where unit prices have been established in the Contract, such unit prices may be used as a basis for computing the additions to be made; or
2. The Authority and the Contractor may agree upon unit prices or a lump sum therefor; or
3. The Contract Price may be adjusted in accordance with the following:

a. The Contractor shall submit an accurate current account of the actual direct and necessary production cost of the Extra Work itself, with substantiating documentation, subject to audit, as may be required by the Authority, consisting of and limited to the following: labor and items incidental to labor, including Social Security and unemployment insurance; other insurance required by reason of the performance of the extra work; necessary materials, rental value of plant and equipment.

b. All other items shall be considered as overhead and not as cost including, but not limited to, supervision, superintendents, timekeepers, clerks, security personnel, small tools, incidental job burdens and general office expense. To the cost calculated as aforesaid shall be added: ten percent (10%) as compensation to the Contractor for overhead and all other costs and ten percent (10%) of the resulting amount as profit.

(c) Where such Extra Work is performed through one or more subcontractors, there shall be added to the extra cost to the contractor of such work computed as above (including any overhead and profit allowed by the contractor to the subcontractor, not exceeding the percentage above prescribed for the contractor), six percent (6%) of such extra cost of the work involved in the change.

(d) For changes resulting in omitted or reduced work, any of the methods set forth in the preceding paragraph (b) shall be utilized in calculating a credit to the Authority.

#### **SECTION 9 - DIFFERING SITE CONDITIONS**

(a) The Contractor shall promptly, and before such conditions are disturbed, notify the Authority in writing of (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract. The Authority shall promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

(b) No claim of the Contractor under this provision shall be allowed unless the Contractor has given the notice required in (a) above.

#### **SECTION 10 - EXTRA OR OMITTED WORK**

(a) Extra Work is work required by the Authority which in its judgment is in addition to that required by the Contract in its present form. Except in an emergency, written orders must be received by the Contractor prior to the commencement of Extra Work and must expressly and unmistakably indicate the intention of the Authority to treat the Work described therein as Extra Work. The provisions of this Contract relating generally to Work and its performance shall apply to any Extra Work required and to the performance thereof except to the extent that the parties hereto may expressly provide otherwise in connection with any particular item of Extra work.

(b) The Contractor shall, immediately upon receipt of a written order of the Authority, proceed to comply with such written order as regards to any changes involving Extra Work or Work omitted or reduced, regardless of whether or not the adjustment in the Contract Price by reason thereof has been agreed upon.

#### **SECTION 11 - TIME OF ESSENCE**

Inasmuch as the provisions hereof relating to the time of performance and completion of the Work are for the purpose of enabling the Authority to administer



public property efficiently and economically and in accordance with a predetermined program, all such time limits are of the essence of this Contract.

#### **SECTION 12 - TIME FOR COMMENCEMENT AND NOTIFICATION TO PROCEED**

The Contractor shall commence the Work on the date specified in the written notification from the Authority to proceed and shall complete the Work within the time period specified. This notification will be made, in general, no more than thirty (30) calendar days from the date of the Award of the Contract.

#### **SECTION 13 - TIME FOR COMPLETION**

The Contractor agrees to complete the Work within the time specified in the Special Notices & Conditions or applicable Notice to Proceed.

#### **SECTION 14 - DELAYS IN PERFORMANCE; EXTENSIONS OF TIME**

In the event completion of the Work is necessarily delayed beyond the time for the completion of the Work or the particular portion thereof affected, on account of unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to acts or omissions of the Authority, its officers, agents, or employees, whether occurring before or after the acceptance of the Contractor's Proposal, or of any Contractor of the Authority engaged in operations upon the project or third persons, or because of any act of God, strike, embargo upon shipments, insurrection, act of the public enemy, governmental action, unusually severe weather, fire, flood or delays of subcontractors due to such causes, the time for completion shall be extended by a period of time corresponding to the delay, provided that within twenty (20) days from the beginning of such delay the Contractor notifies the Authority of the causes of the delay.

The Authority's determination whether an extension of time is justified and how long the period of extension should be, shall be conclusive and binding upon the Contractor. Except as otherwise provided in this Contract, the Contractor expressly agrees to make no claim or maintain any action against the Authority for damages for suspension of or delay in the performance of this Contract occasioned by delays to or interruptions of the work, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance.

#### **SECTION 15 - SUSPENSION OF WORK**

The Authority may order the Contractor to suspend the Work for the Authority's convenience for such period of time it may deem appropriate, provided that where such suspension is for an unreasonable period of time an adjustment shall be made for any increase in the cost of performance of this Contract caused thereby. However, no adjustment shall be made where the work is suspended or delayed by any other cause, including the fault, negligence or improper performance of the Contractor or of any other contractor.

#### **SECTION 16 - RISKS; INDEMNIFICATION**

**(a) Generally.** The Contractor shall at all times be liable for, and indemnify and save harmless the Authority, its members, officers, agents and employees against and from any and all claim or damage arising from, upon or by reason of the breach by the Contractor of any covenants herein contained.

**(b) Loss or Damage to the Work.** All loss or damage to the Work howsoever caused, prior to the issuance of the Certificate of Final Acceptance, or to any equipment or materials used, installed or received by the Contractor, whether by fire, flood, vandalism or any other casualty or happening, shall be assumed and be borne by the Contractor, excepting any loss or damage caused by the willful negligence of the Authority subsequent to the award of the Contract. In the event of such loss or damage, the Contractor shall forthwith repair, replace, and make good the Work without cost to the Authority.

**(c) Indemnification.** If any person sustains injury or death, or loss or damage to property occurs, resulting directly or indirectly from the Work of the Contractor, or his subcontractors, in their performance of this Contract, or from the Contractor's failure to comply with any of the provisions of this Contract or of law, or for any other reason whatsoever, the Contractor, to the fullest extent permitted by applicable law, shall indemnify and hold the Authority harmless from any and all claims and judgments for damages and from costs and expenses to which the Authority may be subjected or which it may suffer or incur by reason thereof.

**(d)** The Contractor shall assume the risk of loss, damage, injury or delay due to the fault, acts, or omissions of other contractors, or their subcontractors, saving only the right to extensions of time as herein provided, and to any cause of action against other contractors or their parties. The acts or omissions of other contractors shall not be deemed to be the acts or omissions of the Authority and the Authority shall not be responsible, liable, or answerable in any way to the Contractor by reason of such acts or omissions. In the event of liability, loss, injury, delay or damage to the Work of this Contractor by reason of acts or omissions of other contractors or their subcontractors, this Contractor shall forthwith replace, repair, and make good the Work and all damage and loss thereto without cost to the Authority.

**(e)** All loss or damages arising out of the nature of the Work to be done under the Contract, or for any unforeseen obstructions except as otherwise provided in the Contract, or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, shall be sustained by the Contractor.

**(f) Risks Unaffected by Certain Acts.** The coverage of any insurance which the Authority or the Contractor may have obtained under the provisions of the Contract or otherwise shall not be deemed to limit the Contractor's liability under this section.

**(g) Contractor to Defend.** With respect to any claim made or suit brought against the Authority by any person arising out of, or resulting from, or in

connection with any of the above risks assumed by the Contractor, the Contractor shall negotiate the settlement thereof or defend the same at his own cost and expense, and pay all costs, expenses and judgments recovered against the Authority, its members, officers, agents and employees.

## **SECTION 17 - INTENTIONALLY OMITTED**

## **SECTION 18 - TYPES AND AMOUNTS OF INSURANCE REQUIRED**

- (a) It is understood that, for any and all purposes, all personnel assigned by the Contractor to perform work under the Contract are deemed to be employees, Contractors or Subcontractors of the Contractor, and not of the Authority.
- (b) The Contractor shall maintain, and shall cause each Subcontractor of the Contractor to maintain, for the duration of this Contract and any extensions thereof, insurance as specified in Attachment A hereto, "New York City Housing Authority Insurance Requirements Matrix." Contractors and/or Subcontractors providing operations, multiple products, and/or services for the Authority, must comply with all applicable insurance requirements imposed by the Authority. (See Attachment A, New York City Housing Authority Insurance Requirements Matrix.) In addition, within 15 days after the Contractor receives such a request from the Authority, and before commencing work, the Contractor's New York State licensed insurance broker(s) shall register with the Authority and shall enter all indicated insurance coverage information into the Authority's designated web based portal. The broker(s) shall warrant that the information entered is accurate, complete and compliant with the applicable Authority requirements. The Contractor's licensed broker(s) shall disclose all large deductibles, self insured retentions, material exclusions, multiple line policy aggregates and any other provisions that materially limit, reduce or aggregate coverage. All insurance policies providing coverage to the Authority, its members, employees, agents, investors, partners and/or representatives under this Contract shall be primary to any other insurance policies providing coverage to these entities. The Contractor shall provide a list of all Subcontractors and shall provide proof of coverage for each Subcontractor to the Contractor's licensed New York State broker(s) for review and confirmation of compliance with NYCHA's insurance and risk management requirements. The Contractor shall maintain a current list of its Subcontractors under the Contract and proof of insurance coverage for these Subcontractors. Such proof should be submitted within two business days after request to an authorized Authority representative. The Contractor, solely, shall be responsible to confirm that its Subcontractors secure and maintain compliant coverage for the duration of the Work and for any additional period stipulated by the Authority. Failure to maintain required insurance coverage, for the duration of the Contract and any extension thereof, shall be deemed a breach of Contract. Upon determination of a breach of this Contract, the Authority may, at its sole discretion, discontinue payment under the subject contract or any other contract with the Contractor. The Authority will require the Contractor to remedy any non-compliant gap in coverage for this Contract at the sole expense of the Contractor. The Authority may further require the Contractor to provide an irrevocable letter of credit, drawn on a federally-chartered bank, acceptable to the Authority, in the amount of the ultimate projected loss and loss expense not covered due to any gap, inadequacy or interruption in insurance coverage.
- (c) See Attachment A, New York City Housing Authority Insurance Requirements Matrix, which summarizes the insurance requirements by type of work (commodity categories). Insurance coverage requirements for the Contractor and any Subcontractors are based on the Authority's assessment of exposures included in the scope

of work. To use the Matrix, identify the commodity category based on the work scope for this agreement and its associated Insurance Template Code to determine the applicable insurance requirements. In addition, there may be multiple requirements depending upon the scope of work performed under the contract. Outlined below are the most common insurance requirements.

1. Workers' Compensation and Employer's Liability Insurance. The Contractor shall obtain, and shall cause its Subcontractors to obtain, Worker's Compensation Insurance, including occupational disease, for all employees, as prescribed by the applicable statute, and Employer's Liability Insurance: (a) unlimited in the State of New York or \$1,000,000 for other States; and (b) \$1,000,000 for those specific categories not covered by New York State Workers' Compensation Law.

2. Commercial General Liability Insurance. The Contractor shall carry Commercial General Liability insurance, written on an occurrence basis and must include Personal Injury, Bodily Injury, Property Damage, Broad Form Contractual Liability and Products/Completed Operations coverage. Minimum acceptable annual limits are as articulated in Attachment A, New York City Housing Authority Insurance Requirements Matrix.

General Liability Insurance must provide unlimited defense and indemnification of the New York City Housing Authority and other parties listed above. This insurance shall cover the use of all equipment, hoists, and off road vehicles not covered by Automobile Liability.

3. Automobile Liability Insurance. The Contractor shall secure and maintain Automobile Liability Insurance for all owned, non-owned and hired motor vehicles operated in connection with the work to be performed under this Contract. This requirement must also be met by all Subcontractors, delivery services, as well as their employees. Limits and terms shall be as stipulated in Attachment A, New York City Housing Authority Insurance Requirements Matrix. Coverage shall apply to bodily injury and property damage and as required by law shall provide Personal Injury Protection and Uninsured Motorist coverage. The policy shall protect the Authority as well as the Contractor against loss arising from the operation and use of land motor vehicles, other equipment licensed for use over the road, as well as the loading and unloading of vehicles on or near Authority property.

4. Owner's and Contractor's Protective Liability Insurance. The Contractor working on construction related contracts shall provide Owner's and Contractor's Protective Liability Insurance for all bids equal to or exceeding \$100,000 (&quot;OCP&quot;). Such insurance policy shall be issued with the New York City Housing Authority et al., as the sole Named Insured and shall contain from inception to expiration of the Agreement, by endorsement or in the body of the policy, the following provisions in substance:

- a. The presence of engineers or inspectors of the Authority on the Work Site shall not invalidate the policy of insurance.
- b. The policy shall not be invalidated by reason of any violation of any of the terms of any policy issued by the insurance company to the Contractor.

5. Environmental Impairment Liability:

The Contractor shall obtain and shall cause its Subcontractors to obtain Contractor Pollution Legal Liability Insurance coverage for Contracts and Subcontracts that may involve the removal of any hazardous waste as defined under the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. (&quot;RCRA&quot;), CERCLA and the Clean Water Act and (any subsequent amendments thereto) or state or city environmental

statutes, or the removal of any contaminated material. Such insurance must cover the specific type(s) of hazardous material(s) or pollutant(s) being removed from the site. Contractor Pollution Legal Liability Insurance coverage shall be purchased with minimum limits and terms as stipulated in Attachment A, New York City Housing Authority Insurance Requirements Matrix. The Contractor and/or its Subcontractors, as the case may be, shall use its best efforts or their best efforts to obtain such insurance on an occurrence basis. In the event that such insurance is not available on an occurrence basis, the Contractor and/or its Subcontractors shall maintain such insurance in effect throughout the term of the Contract for an additional period of not less than three years after the completion of the work or the termination of the Contract, the latter of the two. In the event that the term of the Contract is extended one or more times, the Contractor, and/or its Subcontractor, shall maintain the coverage for a period of any such extension(s). The Contractor's obligation to maintain Contractor Pollution Legal Liability Insurance policy for the additional three-year period shall survive the expiration of the Contract or the termination of such Contract by either party for any reason.

a. Where applicable, the Contractor shall secure and maintain coverage for Pollution, Hazardous Materials or Hazardous Biological Matter including but not limited to Chemicals, Lead Based Paint, Asbestos, Mold, Bacterial Matter, Biomedical Waste (including but not limited to Testing and Abatement). Under Contracts for the abatement and/or testing of hazardous materials the Contractor must obtain and cause its Subcontractors (i.e. professional testing firms, architectural firms and engineering firms) to obtain Environmental Impairment Liability insurance in compliance with the limits terms and conditions stated in Attachment A, New York City Housing Authority Insurance Requirements Matrix.

6. Professional Liability Insurance. The Contractor shall secure and maintain Professional Liability Insurance when indicated in the Attachment A, New York City Housing Authority Insurance Requirements Matrix. The Authority will accept claims made policy format for Professional Liability coverage. All claims made coverage must maintain a retroactive date equal to or earlier than the first date of all services and operations performed for the Authority under the Contract. Coverage must be maintained for a period of not less than three years from the date of completion and acceptance of the final work under this Contract. Tail coverage for an additional three years shall be maintained to accommodate reporting of claims.

(d) All policies of insurance must be written on an occurrence basis, except for Environmental Impairment and Professional Liability Insurance, and must be issued by companies licensed and/or admitted, or authorized to do business, in the State of New York, having a profitability rating of at least "A" (Excellent) and a financial size class of "VII," as indicated by the most recent A.M. Best publication. All policies (except Professional Liability and Statutory Workers' Compensation) must be endorsed:

1. to name the Authority et al. as an additional insured;
2. to allow severability of interests and rights of cross-claim; and
3. to warrant that such insurance as afforded by the policy shall not be cancelled, non-renewed, or have coverage materially reduced or restricted, without at least 30 calendar days advance written notice to the Authority. Written notification may be express mailed to the Authority at:

New  
York City Housing Authority  
90  
Church Street, 6th Floor  
New

York, NY 10007-2919

Attn:

Risk Management Department

Note: The Contractor shall be responsible for obtaining and maintaining, at its sole cost and expense, and for causing its Subcontractors to obtain and maintain, at their sole cost and expense, insurance covering their respective personal property while upon Authority premises or in Authority vehicles during the term of the Contract. Except for the intentional wrongful acts of the Authority, the Authority shall have no responsibility for loss of, damage to, or theft of the Contractor's or its Subcontractors' personal property.

- (e) Prior to the commencement of Work under this Contract. The Contractor shall secure from all its Subcontractors proof of compliant insurance. The Contractor shall provide to the Authority or their designated representative, on demand satisfactory certificates of insurance, and/or certified copies of the insurance policies, evidencing that such insurance is in effect. If requested, certified copies of insurance policies must be sent to:

New York City Housing Authority

90 Church Street, 6th Floor

New York, NY 10007-2919

Attn: Risk Management Department

When required, Certificates of Insurance should be issued showing the certificate holder as the above.

- (f) Insurance coverage in the amounts provided for herein shall not limit the Contractor's liability and shall not relieve the Contractor from any liability that might exceed such amounts, nor shall the Authority be precluded by such insurance coverage from taking other actions that may be available to the Authority under any other provisions of the Contract or otherwise.
- (g) The insurance policy(ies) set forth in Attachment A must not exclude any operation within the scope of the Work to be provided under the Contract.

## SECTION 19 - SURETIES

In the event this Contract requires the Contractor to furnish Performance and Payment Bonds, such bonds shall be in the form prescribed by the Authority and shall be deemed to include the performance of all the Contractor's obligations under the guarantees by the Contractor or subcontractors contained in the Contract Documents.

## SECTION 20 - DEFAULTS

- (a) The Authority shall have the right to declare the Contractor in default on the whole or any part of the work if:
1. The Contractor shall fail to begin the Work to be done under the Contract on the date of award or the date otherwise specified in writing by the Authority, or if the Work shall be abandoned by the Contractor, or
  2. The Contract shall be assigned or the Work sublet by the Contractor otherwise than as permitted by the Contract, or
  3. The Contractor has unnecessarily or unreasonably delayed the Work or any part thereof, or has persistently or repeatedly refused or failed to supply enough properly skilled workers or proper materials, or
  4. The Contractor has failed to make prompt payment to subcontractors, suppliers of materials, or other creditors; or has failed to display the prevailing wage poster, to provide a copy of the prevailing wage schedule when requested, to complete the Development Log or to submit the *Contractor Daily Sign-In Sheets* in compliance with the requirements of Section 43 of the General Conditions, below; or has failed to observe or perform the provisions of any term whatsoever of the Contract, or
  5. The Contractor shall become bankrupt or insolvent, or makes an assignment for the benefit of creditors, or its affairs are placed in the hands of

a receiver or trustee.

(b) Upon declaration of default in writing to the Contractor, the Contractor shall not begin or shall discontinue or not resume the work. In such event, the Authority may take over the Work and prosecute the same to completion as agent for and at the expense of the Contractor, either directly or through other contractors, with or without public advertisement, or by calling upon the surety or sureties, if any, to complete the Contract as provided for in the Performance Bond, and the Contractor and sureties shall be liable to the Authority for any loss, damage, extra cost, or detriment to the Authority thereby. The Authority may take immediate possession of and utilize in completing the Work all materials and equipment provided for the Work. The Authority may also adopt and enforce any subcontracts which may have been let for any part of the Work. The Authority's certificate as to the excess cost and excess time, if any, of completing the Work, and the amount of damage suffered, shall be binding and conclusive upon the Contractor and his sureties.

(c) The right to declare the Contractor in default for any of the grounds specified or referred to in Section 20(a) of the General Conditions shall be exercised by the Authority by sending the Contractor a written notice setting forth the ground or grounds upon which such default is declared (the "Notice of Default").

(d) The Authority's determination that the Contractor is in default shall be conclusive, final and binding on the parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract. If the Contractor protests the Authority's determination, the Contractor may commence a lawsuit in a court of competent jurisdiction of the State of New York under Article 78 of the New York Civil Practice Law and Rules.

## **SECTION 21 - RIGHTS AND REMEDIES OF CONTRACTOR**

The Contractor agrees that money damages are adequate compensation for any breach of the Contract which may be committed by the Authority, and that no default, act or omission of the Authority shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind it or (unless the Authority shall so direct in writing) to suspend or abandon performance. The Contractor hereby waives any and all rights and remedies to which he might otherwise be or become entitled because of any wrongful act or omission of the Authority, saving only the right to money damages.

## **SECTION 22 - DISPUTES AS TO THE WORK**

A fundamental intent of the Contract is that all Work required by the Authority shall be promptly performed in accordance with its directions and to its satisfaction, but without prejudice to the rights of either party as to the proper determination of questions relating to compensation, damages, or other money payments or deductions from payments as provided in this Contract. The Contractor shall, under no circumstances, cause any delay of the Work during any dispute as to the Work or compensation or the meaning of the specifications or plans or drawings, or because of any dissatisfaction with any decision of the Authority, but shall proceed with the Work promptly, as directed.

## **SECTION 23 - CLAIMS**

(a) If the Contractor claims that any instructions of the Authority, by drawings or otherwise, involve Extra Work entailing extra cost, or claims compensation for any damages sustained by reason of any act or omission of the Authority, or of any other persons, or for any other reason whatsoever, the Contractor shall, within twenty (20) days after such claim shall have arisen, file with the Authority written notice of intention to make a claim for such extra cost or damages, stating in such notice the nature and amount of the extra cost or damages sustained and the basis of the Claim against the Authority. If the Authority shall deem it necessary for proper decision, upon any notice filed hereunder, to require additional data, depositions or verified statements, the Contractor must furnish the same within twenty (20) days after written demand therefor upon him/her.

(b) The filing by the Contractor of a notice of claim and the compliance by the Contractor with the demand, if any, for additional data, depositions or verified statements, both within the time limited herein, shall be a condition precedent to the settlement of any claim or to the Contractor's right to resort to any proceeding or action to recover thereon, and failure to do so shall be deemed to be a conclusive and binding determination on the Contractor's part that he/she has no claim against the Authority for compensation for Extra Work or for compensation for damages, as the cause may be, and shall be deemed a waiver by the Contractor of all claims for additional compensation or for damages.

(c) The Authority shall have the right at any time that a claim is made or a lawsuit is brought by the Contractor on any account to audit the books and records of the Contractor with respect to all matters relating to the subject matter of the claim or lawsuit.

## **SECTION 24 - USE AND CARE OF PREMISES; PARKING**

(a) The Contractor shall confine his apparatus, storage of materials, and operations to the limits indicated by law, ordinances, permits, and rules and regulations, and in accordance with the directions of the Authority. The Contractor shall not unreasonably encumber the premises with his materials. The Contractor shall maintain the premises in a neat and orderly condition and shall from time to time remove all plant, surplus materials, false work, and temporary structures of every nature resulting from his/her or his/her Subcontractor's work. The Contractor and all Subcontractors must collect daily their accumulated rubbish and leave it where designated by the Authority for prompt removal. The Contractor shall assume the entire risk of loss or damage to any materials or equipment stored in any location made available at the development by the Authority.

(b) The Contractor and its Subcontractors, if any, shall not park their vehicles or otherwise use any parking spaces, grass or gravel areas, or anything of similar nature to park their vehicles, on Authority property. Vehicles parked in unauthorized areas shall be towed at the Contractor or Subcontractor's sole expense.

## **SECTION 25 - PRECAUTIONS TO BE TAKEN; CLEAN AIR AND WATER**

- (a) The Contractor shall perform the Work with all due care and proper precaution, and in such manner as will afford the greatest protection to persons and property on or off the site of the project. The Contractor shall provide all the protection necessary for all materials and Work, whether in progress or completed, and whether incorporated in the project or not, against injury from any cause, and shall place and maintain all necessary and proper guards, lights, and other protective devices for the prevention of accidents and for the protection of workers and the public, and shall post danger signs warning against the hazards created by operations under the Contract. The Contractor shall observe all laws and regulations of the municipality in relation to obstructing the streets, keeping open passageways, and protecting the same where they are exposed and would be dangerous to the public.
- (b) The Contractor at his own cost and expense shall make such arrangements as may be necessary or required to protect the Work from the time it is commenced until the Certificate of Final Acceptance is issued or until the Authority shall otherwise direct.
- (c) In the event the work of the Contract is at a Federally-aided project, the Contractor shall comply with all the requirements of the Clean Air Act, as amended (42 U.S.C. Section 1857 et. seq.); the Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et. seq.) and Executive Order 11738.

## **SECTION 26 - PERMITS AND INSPECTION FEES**

The Authority will arrange for the issuance by the proper governmental agency of all permits necessary for the performance of the Work without cost to the Contractor. The Contractor shall cooperate with the Authority in obtaining such permits, and it shall be the duty of the Contractor, prior to the commencement of the Work, to attend at the office of the issuing department or agency and receive all such permits on behalf of the Authority. All fees required to be paid by the Contractor or any Subcontractor for a license to practice their respective trades shall not be included under the heading of permits and must be obtained at the Contractor's expense. All permits are to be kept at the site of the Project until completion of that part of the Work pertaining to those permits and then turned over to the Authority.

## **SECTION 27 - COMPLIANCE WITH LAWS AND REGULATIONS**

The Contractor shall give all required notices and comply with all federal, state, municipal, and departmental laws, local laws, ordinances, rules and regulations, notices, orders and any requirements as to permits and licenses which affect the Work and which bear upon the conduct thereof and upon those engaged therein. All costs arising out of the performance of any Work contrary to any of these shall be borne by the Contractor. If the drawings or specifications are at variance with any of these, the Contractor shall promptly notify the Authority in writing so that any necessary changes may be made.

## **SECTION 28 - ORDER OF THE WORK**

Unless otherwise specified in writing the Contractor shall commence the Work under the Contract at the time of award. The Authority may also designate the first block, section, or area, or the first apartment or apartments or building or buildings within a block, section, or area, on which the Contractor shall commence work. All work shall be performed in such order and by such methods as will produce the best workmanship, economy, safety and speed.

## **SECTION 29 - ASSIGNMENT OF BUILDINGS**

At the time of the commencement of work, the Authority may not have all the apartments, buildings and the other spaces available. Therefore, the Contractor shall proceed immediately with the Work in such apartments, buildings and other spaces as are made available by the Authority, and will perform all other work required under the Contract in such order and at such times as the Authority will direct

## **SECTION 30 - FITTING AND COORDINATION OF THE WORK**

The Contractor shall be responsible for the proper fitting of all Work and for the coordination of the Work with that of other contractors who may be engaged in the performance of work at the development.

## **SECTION 31 - PROGRESS CHART; ATTENDANCE AT REGULARLY SCHEDULES JOB MEETINGS**

- (a) **Progress Chart.** At the time of commencement of work, the Contractor, if requested, shall furnish a satisfactory progress schedule which shall be in the form of a graph to suitable scale, indicating salient features of the work and the expected status of the work and the expected status of the work at any time. The progress schedule shall be submitted to the Authority for approval and for such modifications to such schedule as the Authority may deem necessary. The sequence of the performance of the Work may, however, from time to time, be altered by the Authority.
- (b) **Authority May Require Satisfactory Progress.** The Authority shall have the right, without any extra compensation to the Contractor, at any time when, in the judgment of the Authority and the work is not proceeding in accordance with the approved progress chart or schedule, to require the Contractor to take such measures or adopt such methods as may be necessary, in the opinion of the Authority, to obtain and maintain satisfactory progress.
- (c) **Attendance at Regularly Scheduled Job Meetings.** The Contractor shall attend (or cause its authorized representative to attend and act on behalf of the Contractor at) all job meetings regularly scheduled by the Authority. If the Contractor fails to attend or cause its authorized representative to attend any such regularly scheduled job meeting, the Authority may, in its sole discretion, charge the Contractor, and the Contractor shall pay the Authority, a fee of two-hundred and fifty dollars (\$250.00) as an administrative fee. Such fee may be charged against the Contract price or against any other contract the Contractor may have with the Authority.

## SECTION 32 - INSPECTION AND TESTS

(a) **Generally.** The Authority at all times shall have access to the Work, wherever and whenever it is in preparation or progress, and the Contractor shall provide facilities for such access for the purpose of inspection. The Authority will maintain such inspectors as it shall deem necessary to inspect the materials and labor furnished and the Work done, but shall be under no obligation to do so, nor shall it assume any responsibility for defective work which inspection may or could have disclosed. All work, materials, processes of manufacture, and all methods of construction shall at all times and places, including places of manufacture or origin, be subject to inspection and tests as may be determined by the Authority.

In the event the Contractor informs the Authority that the Work or any part of the Work is complete for inspection, whether or not as an element of any requisition for partial payment, and the Authority subsequently determines that the Work or the part thereof does not pass inspection, the Authority shall charge the Contractor and the Contractor shall pay the Authority a fee of fifty dollars (\$50.00) as an administrative fee for the time and travel of the Authority staff directed to inspect such substantially incomplete Work or part thereof. The Authority may, without limitation, credit this fee against the Contract price or any other contract the Contractor may have with the Authority.

### (b) Allocation of Costs of Tests and Re-Examination for Work:

1. **Special Tests.** If the Contract Documents, the instructions of the Authority, local laws, or any public agency or officials require any work to be specially tested or approved, the Contractor shall give the Authority timely notice of its readiness for such inspection. All such tests or inspection shall be paid for by the Contractor, except as otherwise specifically provided for.
2. **Other Tests.** The cost of test of materials as may be required by the Authority will be borne by the Authority. If, however, the tests prove that the materials tested are not according to the requirements of the Contract, then the cost of such tests is to be borne by the Contractor.
3. **Re-Examination of Work.** Re-examination of questioned work may be ordered by the Authority and if so ordered the work must be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the Authority shall pay the cost of re-examination and replacement. If such work be found not in accordance with the Contract Documents, the contractor shall pay such cost. If any work be covered up without the approval or consent of the Authority, such work must, upon request of the Authority, be uncovered at the expense of the Contractor.

## SECTION 33 - CORRECTION AND REPLACEMENT OF DEFECTIVE OR DAMAGED WORK

**Right of Authority to Reject.** The Authority may reject defective or unsatisfactory Work or materials. The Contractor shall proceed at once with the correction of rejected, defective, or unsatisfactory workmanship or materials and shall have all objectionable materials removed from the site (or any place used for storing materials for use on the Work) and replaced.

## SECTION 34 - MATERIALS AND WORKMANSHIP; PATENTS

(a) **Quality and Suitability.** All materials, equipment and articles incorporated in the Work shall be new, unless the Authority shall otherwise direct in writing. All workmanship, equipment, materials, and articles incorporated in the Work shall be of the best grade of their respective kinds for their purposes. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

(b) The Contractor shall indemnify, hold and save the Authority harmless from liability of any nature or kind, including claims, suits, judgments, costs, and expenses, for, or on account of any infringement, alleged infringement, or use of any patented or unpatented, or copyrighted or non-copyrighted invention, method, appliance, process, design, article or device manufactured or used in the performance of the Contract, and the Contractor shall defend all suits or claims by any person on account of the foregoing at its own cost and expense.

### (c) PROHIBITION ON USE OF TROPICAL HARDWOODS

1. In accordance with Section 167-b of the State Finance Law, tropical hardwoods and tropical hardwood products, shall not be obtained or utilized in the performance of this contract. The following species are tropical hardwoods:

**Scientific Name/Common Name**

Vouacapous americana/Acapu  
Pericopsis elata/Afromosis  
Shorea almon/Almon  
Peltogyne spp./Amaranth  
Guibourtia ehie/Amazaque  
Aningeris spp./Aningeria  
Dipterocarpus grandiflorus/Apilong  
Ochroma lagopus/Balsa  
Virola spp./Banak  
Anisoptera thurifera/Bella Rose  
Guibourtis arnoldiana/Benge  
Deterium Senegalese/Boire  
Guibourtis demeusil/Bubinga  
Prioria copaifera/Cativo



Antiaris africana/Chenchen  
 Dalbergis retusa/Concobola  
 Cordia spp./Corida  
 Diospyros spp./Ebony  
 Aucoumes klaineana/Gaboon  
 Chlorophors excelsa/Iroko  
 Acacia Koa/Koa  
 Pterygota macrocarpa/Koto  
 Shorea negrosensis/Red Lauan  
 Pentacme contorta/White Lauan  
 Shores ploysprma/Tanguile  
 Terminalia superba/Limba  
 Aniba duckei/Louro  
 Kyaya ivorensis/African Mahoga  
 Swletenia macrophylla/American Mahogany  
 Tieghemella leckellii/Makora  
 Distemonanthus benthamianus/Movingui  
 Pterocarpus soyauxii/African Padauk  
 Pterocarpus angolensis/Angola Padauk  
 Aspidosperma spp./Peroba  
 Peltogyne spp./Purpleheart  
 Gonystylus spp./Ramin  
 Dalbergia spp./Rosewood  
 Entandrophragma cylindricum/Sapela  
 Shores philippinensis/Sonora  
 Tectona grandis/Teak  
 Lovoa trichilloides/Tigerwood  
 Milletia laurentii/Wenge  
 Microberlinia brazzavillensis/Zebrawood

2. Any bid or proposal, which proposes or calls for the use of any tropical hardwood, or tropical hardwood product, in the performance of the Agreement shall be deemed to be non-conforming.

3. If, after execution of any contract, purchase order, or other agreement (any and all of which are referred to hereafter in this paragraph as "Agreement"), the Authority learns that any tropical hardwood or any hardwood product has been used or will be used in connection with the performance of the Agreement, the Contractor shall be in default of the Agreement and the Authority shall have the right to terminate the Agreement and to exercise any and all rights and remedies, both legal and equitable, available to the Authority under the Agreement.

### **SECTION 35 - REFERENCE BY NAME, TECHNICAL WORDS, NUMBER, OR SYMBOL: "EQUAL" DEFINED**

**(a) Reference by name.** Specific reference in the Contract Documents to any article, product, materials, fixture, form, type of construction, equipment, appurtenance, or any other item to be incorporated into the Work or to be used in connection therewith, by name, make or catalogue number, is made only to establish a standard of quality and shall not be construed as limiting competition.

**(b) Reference by Technical Words.** Materials or Work specified herein in words which have a well known technical meaning shall be held to refer to the particular standards which such words imply.

**(c) Reference by Number or Symbol.** Materials specified by reference to the number or symbol or a specific standard, such as a Commercial Standard, a Federal Specification, or other similar standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Solicitation of Bids, except as limited to type, class, or grade, or modified in such reference. The standards referred to, except as modified in the Specifications, shall have full force and effect as though set forth herein.

**(d) Use of Products Equal to Those Specified.** If the Contractor obtains the prior approval of the Authority in writing, the Contractor may substitute in lieu of any article or material specified by the Contract Documents a similar article or materials which in the judgment of the Authority is equal to that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended.

### **SECTION 36 - SAMPLES**

The Contractor shall furnish for approval of the Authority, all samples as required by the Specifications or as directed by the Authority. When the Authority approves samples, the work shall be in accordance with such approved samples. Each sample shall have a label indicating the material represented, its place of origin, and the name of its producer, the name of the Contractor, and the name of the Work for which the materials is intended. The approval of any sample shall be only for the characteristics or for the uses named in such approval, and for no other matter.

### **SECTION 37 - COOPERATION WITH OTHER CONTRACTORS**

The Authority reserves the right to and may award other contracts in connection with this Contract. If the Authority shall let other contracts in connection with this Contract, the Contractor shall afford such other contractors reasonable opportunity for the introduction and storage of their materials, deposit of waste, and for the execution of the work under such other contracts, and shall fully cooperate with such other contractors and carefully fit, coordinate, and connect the Work of this Contract with that of the other contracts. This obligation shall be a part of the Work and shall also be subject to the direction of the Authority. It is expressly understood and agreed that the Contractor shall lay out and install the Work at such time or times and in such manner as not to delay or interfere with the progress of any other contractor's work.

### **SECTION 38 - LOSS CAUSED BY OR TO OTHER CONTRACTORS**

**(a) Loss Caused by Other Contractors.** Should this Contractor sustain any loss, damage, or delay through any act or omission of any other contractor having a contract with the Authority for the performance of work or delivery of materials upon the site, then this Contractor shall have no claim against the Authority for such loss, damage, or delay, but shall have recourse solely to such other contractor. In the event another contractor defaults in or abandons his contract, then the Authority shall have a reasonable opportunity to engage others to perform the uncompleted work of the other contractor and shall not be liable for any delay, damage or loss which may be caused by the work of this Contractor in the interim.

**(b) Loss Caused to Other Contractors.** If any other contractor shall suffer loss, damage, or delay through the acts or omissions on the part of this Contractor, this Contractor hereby agrees to reimburse such other contractor for his loss or damage. If such other contractor shall assert any claim against the Authority on account of any loss, damage, or delay alleged to have been so sustained, the Authority shall notify this Contractor, who shall save the Authority harmless against all claims, losses, costs, expenses, fees, and other liabilities of whatsoever kind, including legal fees and expenses incurred by the Authority in defending any suit or suits based upon such claim or claims, and, if any judgment or claim against the Authority shall be allowed, then this Contractor shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith.

### **SECTION 39 - WORK OF OTHER CONTRACTORS**

If any part of this Contractor's Work depends for proper execution or results upon the work of any other contractor, the Contractor herein shall inspect and promptly report to the Authority any defects in such work that render it unsuitable for the proper performance and execution of this Contractor's Work. The failure of the Contractor herein so to inspect and report shall constitute an acceptance by him of the work done under other contracts as fit and proper to receive his Work and to become the basis thereof, except as to defects which may develop in the work done under other contracts after the completion of the Work to be performed under this contract. In the event that any of the Work performed hereunder becomes defective, inadequate, or unsatisfactory because of defects in work done under other contracts which defects should or would have been discovered by a proper inspection of such work by the Contractor herein, then this Contractor shall be responsible and liable to replace such damaged portions of this Work as if the work of any other contractor had not been involved.

### **SECTION 40 - ASSIGNMENTS**

The Contractor shall not assign, transfer, convey, sublet (directly or indirectly), or otherwise dispose of this Contract, of any right, title, or interest in or to the same or any part thereof, or monies due or to become due thereunder, without the previous consent in writing of the Authority. Any such assignment made without such written consent shall be void. Nothing herein contained shall be construed to hinder, prevent or affect an assignment by the Contractor for the benefit of his creditors made pursuant to the laws of the State of New York.

### **SECTION 41 - SUBCONTRACTS**

**(a)** The Contractor may not subcontract more than 88% of the work unless otherwise agreed in writing by the Authority.

**(b)** All subcontracts made by the Contractor must be in writing. No Work may be performed by a subcontractor prior to the Contractor entering into a written subcontract with the subcontractor and complying with the provisions of this section and all other provisions of the Contract applicable to subcontractors.

**(c)** The Contractor shall (1) submit to the Authority for its written approval the name, tax ID, trade, address and additional contact information of subcontractors for any part of the Work, (2) file all required disclosures regarding the subcontractor in the Contractor's PASSPort account, and (3) provide any other information requested by the Authority evidencing that the subcontractor has the necessary facilities, skill, integrity, past experience, and financial resources to perform the Work satisfactorily in accordance with the terms of the Contract. Further, if applicable, the Contractor must submit to the Authority a Letter of Assent to the PLA signed by a proposed subcontractor at the same time that the Contractor submits the name of the proposed subcontractor to the Authority for approval. The Contractor's use of any subcontractor to perform the Work including, but not limited to, any of the Proposed Subcontractors, is subject to the Authority's written approval.

(d) If the Contractor seeks to (1) change any of the Proposed Subcontractors identified in its bid, (2) change a subcontractor that has been otherwise approved by the Authority, or (3) use a subcontractor not identified in its bid, the Contractor must submit a written request to the Authority along with the name of the proposed substitute or new subcontractor with full information as to its qualifications and ability to perform the Work satisfactorily (a "Subcontractor Change"). A Subcontractor Change is subject to, and expressly conditioned on, the Authority's written approval in accordance with subsection (a) of this section above and the Contractor's compliance with all of the submission requirements in accordance with subsection (b) of this section above. Further, any Subcontractor Change of the Proposed Subcontractors identified in a Sealed Subcontractor List, and any change in the amounts to be paid to each, may only be granted by the Authority upon the Contractor's showing of a legitimate construction need which shall include, but not be limited to, a change in project specifications, a change in construction material costs, a change to subcontractor status as determined pursuant to Section 222(e) of the New York State Labor Law, the subcontractor becoming unavailable to perform the subcontract.

(e) The Contractor shall assume the risk of loss, damage, or delay resulting from a Subcontractor Change. A request for a Subcontractor Change shall act as the Contractor's waiver of any and all claims that the Contractor may bring, under these General Conditions or otherwise, for extra costs, expenses, equitable adjustments, and damages that the Contractor may incur as a result of the Subcontractor Change including, but not limited to, with respect to any time expended by NYCHA in reviewing the Subcontractor Change request or approving the proposed substitute or new subcontractor. Further, the Authority's acceptance of a Subcontractor Change shall not be considered a time extension for the completion of the Work, nor shall it limit the Authority's rights and remedies under the Contract with respect to any delays in completing the Work including, but not limited to, the Authority's right to assess and charge liquidated damages, pursuant to these General Conditions.

(f) The Contractor shall, upon demand of the Authority, submit to the Authority a copy of each contract made with any subcontractor.

(g) The Authority and the Contractor are the only parties to this Contract. No subcontract and no approval of any subcontractor shall create or be deemed to create any rights in favor of such subcontractor and against the Authority or create any contractual relation between any subcontractor or suppliers of material and the Authority.

(h) The Contractor shall not subcontract with any parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the Executive Orders 12549 and 12689 and implementing regulations at 2 CFR 180.

## **SECTION 42 - COMPLIANCE WITH LABOR LAWS AND REGULATIONS**

The Contractor shall comply with all provisions of the New York State Labor Law and any law, rule or regulation of the federal, state or city governments, or agencies thereof, applicable to employees engaged in the performance of this Contract and their compensation, except as may otherwise be provided below.

## **SECTION 43 - PREVAILING WAGE RATES**

(a) The Contractor shall pay to all laborers and mechanics employed in the Work not less than the wages prevailing in the locality of the Project, as predetermined by the Secretary of Labor of the United States pursuant to the federal wage rate requirements set forth at 40 U.S.C. 3141 *et seq.* (formerly known as the Davis-Bacon Act) and other related laws and regulations. Notwithstanding prevailing wage rates and supplemental benefits for trades or occupations stated in the attached schedule, it is the Contractor's responsibility to become informed of, and to pay, the appropriate prevailing wages.

(b) With respect to federally-funded contracts, in the event the prevailing wages in effect at the time of the contract award are higher than those stated in the attached schedule, the Contractor shall pay, for the duration of the Contract, the prevailing wage rates and supplemental benefits in effect at the time of the award unless:

1. The contract has been awarded within 90 days after the bid opening date, or
2. No contract has been awarded, but construction has begun within 90 days after the bid opening date, or
3. The United States Department of Labor has issued an extension of the stated wage rates.

(c) The Contractor shall consult with the Authority's Department of Equal Opportunity to determine the applicability of prevailing wage schedules established by the U.S. Department of Housing and Urban Development pursuant to the Housing Act of 1937 (42 U.S.C. 1401 *et seq.*), or by the City Comptroller pursuant to Articles 8 and 9 of the New York State Labor Law and/or Section 6-109 of the New York City Administrative Code. Where the City Comptroller's prevailing wage schedule is applicable to the Contract Work, the Contractor must pay the prevailing wages in effect on the day that the work is actually performed.

(d) 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 this Contract is inapplicable to this Contract and shall not be enforced by the Authority for employees engaged under this Contract whenever either of the following occurs:

Such non-federal prevailing wage rate exceeds

1. The applicable wage rate determined by the U.S. Secretary of Labor pursuant to the federal wage rate requirements (40 U.S.C. 3141 *et seq.*, formerly known as the Davis-Bacon Act, and other related laws and regulations) to be prevailing in the locality with respect to such trade; or
2. An applicable apprentice wage rate specified in an apprenticeship program registered with the U.S. Department of Labor or a DOL-recognized State Apprenticeship Agency; or
3. An applicable trainee wage rate specified in a DOL-certified trainee program; or
4. Such 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.

(e) The Contractor shall post at the Work site, in a place that is prominent, accessible and visible to all employees of the Contractor and its subcontractors during the daily time period that the Contractor and/or subcontractor performs work at the site, the poster entitled *Notice to All Employees Working on New York City Housing Authority Contracts*. The Contractor's display location requires the approval of the inspector assigned to the Contract by the Administering Department/Program Unit. The poster, in 11" x 17" format, will be provided by the Authority's Administering Department/Program Unit at the pre-start meeting. The poster also can be obtained at the Maintenance Office in the Development. The Contractor must indicate on the lower half of the poster, using a permanent marker, the RFQ number, the name of the Development, the type of work, the name of the Contractor, and the names of subcontractors, if any, working on the site. The Contractor must attach to the bottom of the poster a copy of the appropriate prevailing wage schedule as follows:

1. For a federally-funded construction contract, the Labor Department or HUD-Determined schedule; or
2. For a state-funded or city-funded contract, the pages of the appropriate prevailing wage schedule covering all titles applicable to the contract.

(f) The Contractor must inform all employees, including those of its subcontractors, that they may obtain a copy of the prevailing wage schedule from the Contractor. The Contractor must provide the appropriate copy within forty-eight hours after any such request.

(g) **Contractor Daily Sign-In Sheet.** The Contractor shall prepare a daily report on the Authority form entitled *Contractor Daily Sign-In Sheet*, copies of which can be obtained at the Pre-Start Meeting or at the Maintenance Office in the Development. The *Contractor Daily Sign-In Sheet*, which

consists of an original and two copies, shall be completed in accordance with this provision.

1. At the beginning of each workday, the Contractor shall:
    - a. fill in the top of the *Contractor Daily Sign-In Sheet*, including the location, date, contractor/subcontractor name and RFQ number;
    - b. ensure that each employee, including those of subcontractors, has printed and signed his or her name and indicated his or her classifications, the last four digits of his or her social security number, and his or her starting time;
    - c. submit the Superintendent's Copy at the development's Maintenance Office within the first hour of work at the site; and
    - d. Ensure that each employee, including those of subcontractors, has signed out and indicated his or her ending time.
  2. At the end of each workday, the Contractor shall:
    - a. sign the Certification Statement at the bottom of the form to indicate that the information contained in the Contractor Daily Sign-In Sheet is true and accurate;
    - b. submit the original completed form to the development's Maintenance Office for pick-up by the Contract Inspector; and
    - c. Keep the last copy for its records.
- (h) Development Log Book.** The Contractor, through a designated supervisor, must record the Contractor's presence and the number of employees present each day in the Development Log, a bound book that is kept in the development's Maintenance Office. The Contractor must ensure that a representative of each subcontractor signs the Development Log.
- (i)** Failure by the Contractor to display the prevailing wage poster as required, to provide a copy of the prevailing wage schedule when requested, to prepare and submit the daily report entitled *Contractor Daily Sign-In Sheet*, or to record the information required on a daily basis in the Development Log shall be deemed a violation of prevailing wage law and Contract requirements. Such failure or the repeated violation of these requirements shall constitute a material breach of the Contract that may result in suspension of the Work, or in termination of the Contract for default, and may also result in a finding of non-responsibility with respect to the possible award of any future Authority contracts.
- (j)** The Contractor shall make all payroll records that it is required to maintain pursuant to Sections 47(b) and 49(3) of the General Conditions, available for inspection by authorized representatives of the Authority, including without limitation the Authority's Department of Equal Opportunity, and the Authority's Office of the Inspector General, and shall permit the above to interview employees during working hours on the job.
- (k)** If any Contractor or subcontractor finds it necessary or desirable to exceed the prevailing wage rates set forth in this Contract, any expense incurred by the Contractor or subcontractor because of the payment of wages in excess of those set forth in this Contract shall not be considered cause for any increase in the amount payable under this Contract. No right of recovery or claim shall be valid and enforceable against the Authority because of such payments.

Where work of this contract includes abatement of asbestos, the following labor classification shall apply for such work:

- a. For removal of asbestos from mechanical systems - INSULATOR/ASBESTOS WORKERS.
- b. For removal of asbestos from walls, ceilings,

floors, columns, and all other non-mechanical structures and surfaces - LABORERS: ASBESTOS REMOVAL.

(I) The classification of Demolition Laborers, Tier A and Tier B shall apply only when laborers are assigned the following tasks:

1. TIER A: Responsible for the removal of all interior partitions and structural partitions that can consist of sheet rock, block or masonry. Also, all structural slab openings for ducts, mechanical, shafts, elevators, slab openings and exterior walls where the building is not being completely demolished (sic).
2. TIER B: Responsible for shoveling of debris into containers, pushing containers from the inside to the outside of the building.

Demolition Laborers shall not be used for other contract work duties. Demolition Laborers, Tier B, shall be used only in an approved ratio to Demolition Laborers Tier A.

#### **SECTION 44 - EMPLOYMENT OF APPRENTICES AND TRAINEES**

(a) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in the 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 the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of journeypersons in any craft classification shall not be greater than the ratio permitted to the Contractor's entire work force under the registered program.

(b) **Trainees.** Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeypersons shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training.

#### **SECTION 45 - PAYMENT OF WAGES AND OBLIGATIONS**

Prompt Payment Required. Every employee of the Contractor or subcontractor shall be paid in full, less deductions made mandatory by law, not less often than once in each week and in lawful money of the United States, or by check if the Contractor provides or secures convenient and satisfactory facilities for the cashing of such checks without cost or expense to the employee, in the full amount accrued to each individual at the time of closing of the payroll, which shall be at the latest date practicable prior to the date of payment.

#### **SECTION 46 - HOURS OF WORK; OVERTIME**

(a) No laborer, worker, or mechanic in the employ of the Contractor, subcontractor, or other person doing or contracting to do the whole or a part of the Work contemplated by the Contract, shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in cases of extraordinary emergency including fire, flood, or danger to life or property. The term "extraordinary emergency" as contained herein shall have the meaning set forth in Section 220 of the New York State Labor Law.

(b) No contractor or subcontractor contracting for any part of the Contract work may require or permit the employment of laborers or mechanics to be employed on such work in excess of eight (8) hours in any calendar day in excess of forty (40) hours in any workweek unless such laborer or mechanic receives compensation at a rate of not less than one and one-half times (1.5x) the basic rate of pay for all hours worked in excess of eight (8) hours in any such calendar day, or in excess of forty (40) hours in any such workweek, as the case may be.

(c) **Non-Work Periods.** Unless specifically directed in writing by the Administering Department/Program Unit, the Contractor shall not perform contract work on Authority owned premises as follows:

Saturday, Sunday, New Years Day, Martin Luther King Jr. Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, Christmas Day, Before 8 a.m. & after 4 p.m. on weekdays.

If a Contractor wishes to obtain a waiver of this provision, a written request must be submitted to the Administering Department/Program Unit for review, not less than forty eight (48) hours before the non-work period. If the Contractor's request is approved, the Administering Department/Program Unit will communicate this fact to the Contractor in writing, as well as the name of the contract inspector who will be assigned to provide inspection services on the days approved.

All costs incurred by the Authority, related to inspection services, shall be charged to the Contractor by the issuance of a credit change order to the Contract.

#### **SECTION 47 - LABOR REPORTS AND PAYROLL RECORDS**

**(a) Statements of Amounts Due.** Before any payments shall be made under this Contract, the Contractor and all subcontractors performing any part of the Work called for by this Contract must file in the office of the Authority a verified statement as required by Section 220-a of the New York Labor Law, verifying the amounts then due and owing from the Contractor and subcontractors filing such statements, to any and all laborers for daily or weekly wages on account of labor performed upon the Work under this Contract.

**(b) Payroll Records.** The Contractor and every subcontractor shall keep payroll records during the course of the Work and for a period of three years thereafter for all laborers and mechanics employed. Such records shall contain the name and full social security number of each such employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. The Contractor shall submit weekly to the Authority such copies and summaries (on forms furnished by the Authority, US DOL Form WH-347, or equivalent) of all his payrolls and those each of his subcontractors as the Authority may require, together with an affidavit to the effect that such payroll is correct and complete, the wage rates contained therein are not less than those required by the provisions of the Contract Documents and the classifications set forth for each laborer and mechanic conform with the work performed. The weekly summaries submitted to the Authority shall contain the laborer or mechanic's name and only the last four digits of the laborer or mechanic's social security number and shall not contain his/her full social security number. All payroll records shall be available for inspection by the Authority, the United States Department of Housing and Urban Development, the United States Department of Labor, the Industrial Commissioner of the State of New York, and the Comptroller of the City of New York and the Contractor shall permit such representatives to interview employees during working hours on the job.

#### **SECTION 48 - CONTRACTOR'S EMPLOYEES; LOCAL EMPLOYMENT**

**(a)** The Contractor shall employ upon all parts of the Work only competent and trustworthy persons, including an expert and reliable supervisor or superintendent. The Contractor shall not employ persons or means which may cause strikes, stoppages, or similar troubles by workers employed either by the Contractor, the subcontractors, or other contractors or their subcontractors, or by other workers whose services affect the progress of the Work.

#### **(b) Resident Employment and Business Opportunity Generally**

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), and its implementing regulations, provide certain requirements for contractors to employ low- and very low-income persons and public housing residents and to use business concerns substantially owned by low- and very low-income persons and public housing residents in the performance of work on certain federally assisted Developments as specifically set forth below.

For the purposes of the requirements under Section 3, a contractor means an entity that contracts with the Authority to perform work generated by the expenditure of certain federal funds or for work in connection with a Section 3 Covered Development (as hereinafter defined). In addition, a subcontractor means an entity (other than a person who is an employee of the Contractor) that has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 Covered Assistance (as hereinafter defined) or for work in connection with a Section 3 Covered Development (this ordinarily does not include subcontracts for the purchase of supplies or materials, except whenever a subcontract for supplies or materials includes the installation of same). The contractor must comply with, and must cause its subcontractors to comply with, the provisions of the Section 3 Clause (as hereinafter defined) outlined below.

#### **(c) Definitions**

As used in the Section 3 Clause and this section, these terms will have the following definitions:

1. **"HUD"** means the United States Department of Housing and Urban Development.
2. **"Resident"** means an individual or individuals who reside in public housing and are listed on a public housing lease.
3. **"Section 3 Business Concern"** means a business concern that meets either one of the following descriptions:
  - a. that is 51% or more owned by Section 3 Residents; or
  - b. whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 Residents, or who, within three years of the date of first employment with the business concern, were **Section 3 Residents**; or

c. That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (a) and (b) in this definition of "**Section 3 Business Concern.**"

4. "**Section 3 Covered Assistance**" means:

- a. Public and Indian housing development assistance provided under section 5 of the U.S. Housing Act of 1937, as amended (the "1937 Act") [42 U.S.C. 1437(c)];
- b. Public and Indian housing operating assistance under section 9 of the 1937 Act;
- c. Public and Indian housing modernization assistance provided under section 14 of the 1937 Act; and
- d. Assistance provided under any HUD housing or community development program that is expended for work arising in connection with: (i) housing rehabilitation; (ii) housing construction; or (iii) other public construction projects (which include other buildings or improvements, regardless of ownership).

5. "**Section 3 Covered Contract**" means a contract or subcontract (including a professional service contract) awarded by the Authority or a contractor for work generated by the expenditure of Section 3 Covered Assistance or for work arising in connection with a Section 3 Covered Development.

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

7. "**Section 3 Resident**" means:

- a. A Resident; or
- b. An individual who resides in the metropolitan area or Non-metropolitan County in which the Section 3 Covered Assistance is expended and who is:
  - (i) A "Low-Income Person," as this term is defined in section 3(b)(2) of the 1937 Act [42 U.S.C. 1437a(b)(2)]. Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary of HUD (with adjustments in the income ceilings by the Secretary of HUD from time to time); or
  - (ii) A "Very-Low Income Person," as this term is defined in section 3(b)(2) of the 1937 Act [42 U.S.C. 1437a(b)(2)], which defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by HUD (with adjustments by the Secretary of HUD in the income ceilings from time to time).

**(d) The Section 3 Clause**

Under 24 Code of Federal Regulations ("CFR") Part 135.38, the contractor is subject to the following Section 3 clause (the "Section 3 Clause"), and the contractor must include this clause in any subcontract with any subcontractor. All Section 3 covered contracts must include the following Section 3 Clause:

1. The work to be performed under this contract is subject to 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 Developments 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.
2. 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.
3. 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.
4. 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 such as under subparagraph 6 below, 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.
5. The contractor will certify that any vacant employment positions, including training positions, that are filled (i) after the contractor is selected, but before the contract is executed, and (ii) 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.
6. 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.



**(e) The "Greatest Extent Feasible" Standard**

The contractor may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in 24 CFR Part 135, as amended, for providing training, employment and contracting opportunities to Section 3 Residents and Section 3 Business Concerns. The numerical goals represent minimum numerical targets.

**(f) Section 3 Affirmative Action Plan**

The contractor must submit, and cause each of its subcontractors to submit, a "Section 3 Affirmative Action Plan" (the "Section 3 AAP") prior to the award of the contract or any subcontract. The provisions of the subcontractor's Section 3 AAP must be consistent with stated objectives of the contractor's Section 3 AAP developed for the contract. The contractor's and each subcontractor's Section 3 AAP must have two parts:

**Part I - Opportunities for Employment and Training**

Under the contract and for each subcontract, the contractor and each subcontractor must review and may implement any of the various examples contained in the Appendix to 24 CFR Part 135, as amended, in meeting its Section 3 obligations with respect to training and employment opportunities for **Section 3 Residents**. The contractor must include any activities proposed to be undertaken by it or its subcontractor in the contractor's Section 3 AAP, which is subject to review and written approval by the Authority. The Authority may require the contractor, and cause the contractor to require each subcontractor, to undertake any of the activities contained in the Appendix to 24 CFR Part 135, if the Authority determines that the contractor or subcontractor may not otherwise meet the numerical goals set forth in Section 3 or otherwise set forth in this contract. In addition, each contractor and subcontractor must perform the following tasks, without limitation:

1. Identify the number of positions, by trade and skill level, required to plan and implement the work to be done at the housing development;
2. Identify the number of those positions currently filled and the number of those positions that are not filled by regular permanent employees;
3. Identify the number of positions by trade and skill level that will be targeted to be filled by **Section 3 Residents**;
4. Make a good faith effort to utilize **Section 3 Residents** in filling vacant training and employment positions. In this regard, the Authority has recruited and established lists of applicants for employment, from the residents of the housing development where the work under the contract is being performed and/or from other Authority developments. The successful bidder may utilize such lists in recruiting employees to meet the goals of Section 3. In addition, the successful bidder must take steps at least as extensive as the following:
  - a. Send to each labor organization or representative of workers, which has a collective bargaining agreement or other contract or understanding, a notice advising said labor organization or workers' representative of the contractor's or subcontractor's, as the case may be, commitments under Section 3 and post copies of the notice in conspicuous places available to employees and applicants for employment or training;
  - b. Meet with applicable apprentice program administrators to request their cooperation in identifying and referring unemployed apprentices/trainees who reside in the development or other New York City public housing developments and who otherwise meet the definition of Section 3 Resident;
  - c. Prominently place a notice of training opportunities and eligibility requirements at the development where the work under the contract is being performed, and/or at other New York City public housing developments and/or other places in New York City where applications for training and employment are taken;
  - d. Meet with the resident organization or resident council at the development where the contract work is being performed to inform such resident organization or resident council of applicable eligibility requirements for existing or impending training or employment opportunities and to request the cooperation of such resident organization/council in identifying and referring eligible individuals; and
  - e. Maintain a list of all Residents who apply on their own or by referral and the ultimate disposition of those applications.
5. The contractor and subcontractors may demonstrate compliance with Section 3 by committing to employ **Section 3 Residents** as:
  - a. 10% of the aggregate number of new hires for the one year period beginning federal fiscal year ("FY") 1995;
  - b. 20% percent of the aggregate number of new hires for the one year period beginning in FY 1996; and
  - c. 30% of the aggregate number of new hires for the one-year period beginning in FY 1997 and continuing thereafter.
6. The contractor and subcontractors must provide a preference in hiring and in training to **Section 3 Residents** in the following order of priority:
  - a. **Section 3 Residents** of the housing development or developments for which the Section 3 covered assistance is being expended in the performance of the work under the contract (Category 1 Residents).
  - b. **Section 3 Residents** of other Authority housing developments (Category 2 Residents);
  - c. Participants in HUD Youthbuild Programs being carried out in the metropolitan statistical area in which the Section 3 Covered Assistance is being expended (Category 3 Residents); and
  - d. Other low-income and very-low income persons who are not Residents of public housing, but who reside in the metropolitan area or Non-metropolitan County in which Section 3 Covered Assistance is being expended (Category 4 Residents).
7. The contractor or subcontractor may not circumvent the numerical goals for employing and training new hires of **Section 3 Residents** by filling any vacant employment or training positions generated by the contract or subcontract after the proposed contractor or subcontractor is selected, but before the contract or subcontract is executed.

**Part II - Plan to Utilize Section 3 Business Concerns:**

For the contract and for each subcontract, the contractor and each subcontractor must review and may implement any of the various examples contained in the Appendix to 24 CFR Part 135, as amended, in meeting their Section 3 obligations with respect to utilizing **Section 3 Business Concerns**. The contractor must include any activities proposed to be undertaken by the contractor and its subcontractor in the contractor's Section 3 AAP, which is subject to review and written approval by the Authority. The Authority may require that the contractor undertake, and that the contractor cause its subcontractors to undertake, any of the activities contained in the Appendix to 24 CFR Part 135, as amended, if the Authority determines that the contractor or subcontractor may not otherwise meet the numerical goals set forth in Section 3. With respect to Section 3, the contractor and subcontractor must do the following specific tasks:

1. Identify the approximate number and dollar value of subcontracts to be awarded over the duration of the contract or subcontract. This estimate should be broken down by type of business or profession; and
2. Specify a target number and value of subcontracts to be awarded to **Section 3 Business Concerns** based on an analysis of the estimated contract needs. These targets should consider the availability of **Section 3 Business Concerns** within the categories identified in the initial estimate of contract needs.
3. Take specific steps to ensure that **Section 3 Business Concerns** are notified of pending contractual opportunities; and
4. Outline a strategy for achieving the targets established for awards to **Section 3 Business Concerns**.
5. The Contractor and each subcontractor may demonstrate compliance with Section 3 by committing to award to **Section 3 Business Concerns**:
  - a. At least 10% of the total dollar amount of all Section 3 covered contracts for building trades' work for maintenance, repair, modernization or development of public housing, or for building trades' work arising in connection with housing rehabilitation, housing construction and other public construction; and
  - b. At least 3% of the total dollar amount of all other Section 3 Covered Contracts.
6. The contractor and each subcontractor must direct their efforts to award Section 3 Covered Contracts, to the greatest extent feasible, 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 developments for which the Section 3 Covered Assistance is expended, or whose full-time, permanent workforce includes at least 30% of these persons as employees (Category 1 Businesses);
  - b. Business concerns that are 51% or more owned by residents of other housing developments or developments managed by the public housing authority that is expending the Section 3 Covered Assistance, or whose full-time, permanent workforce includes at least 30% of these persons as employees (Category 2 Businesses);
  - c. HUD Youthbuild programs being carried out in the metropolitan area (or non-metropolitan county) in which the Section 3 Covered Assistance is expended (Category 3 Businesses); and
  - d. Business concerns that are 51% or more owned by **Section 3 Residents**, or whose permanent, full-time workforce includes at least 30% of **Section 3 Residents** (Category 4 Businesses), or that subcontract in excess of 25% of the total amount of subcontracts to business concerns identified in subparagraphs 6(a) and 6(b) above (also Category 4 Businesses).

**(g) Coordination of Equal Opportunity Regulations Implementing Section 3 and Authority Policy Regarding Minority, Women and Small Business Enterprises**

In addition to the Contractor's and subcontractor's obligations with respect to **Section 3 Business Concerns**, the Authority has a policy to ensure that all business entities have an equal opportunity to benefit from participation in Authority procurement, consulting and construction activities. When issuing solicitations for subcontractors, the Contractor shall take affirmative steps to include minority- and women-owned business enterprises. The Contractor will, in all solicitations or advertisements for bids for subcontractors placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for subcontracts without regard to race, color, religion, sex, national origin, disability, age, handicap, marital status or military service.

As used in this Section (g), these terms have the following definitions:

1. **Minority Business Enterprise ("MBE")** means a business that is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members include (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (e) those groups of United States citizens or resident legal aliens designated by the Small Business Administration or any group designated in regulations developed by the Secretary of HUD.
2. **Women Business Enterprise ("WBE")** means a business that is at least 51% owned by one or more women who are United States citizens or resident legal aliens; or, in the case of publicly owned businesses, one in which at least 51% of the stock is owned by one or more women who are United States citizens or resident legal aliens and whose management and daily operations of the business are controlled by one or more such women.
3. **Small Business Enterprise ("SBE")** means a business that is owned by one or more persons who are United States citizens or resident legal aliens, with a place of business located in the United States, operates primarily within the United States and is sized consistently with the requirements set forth in 13 CFR Section 121.201, which defines size standards for small businesses, based on either annual receipts or the number

of employees.

#### **SECTION 48A - RESIDENT EMPLOYMENT REQUIREMENTS FOR SECTION 3 COVERED CONTRACTS IN EXCESS OF \$500,000**

(a) Where the Total Value of a Section 3 Covered Contract exceeds \$500,000, in addition to the requirements of Section 48, set forth above, the Contractor shall, and is hereby required to, expend not less than 15 percent of the total labor cost (including fringe benefits) component of the Total Contract Value of the work in accordance with the following hiring priority: first, to unemployed legal residents of the Authority development where the Contract is to be performed; second to unemployed legal Authority residents who are participating in Authority-sponsored or Authority-supported training and/or apprenticeship programs, or who have already had relevant training for the position(s) sought to be filled by the contractor in compliance with this resident employment requirement; third to unemployed legal residents of the neighboring Authority developments within the same New York City borough where this contract is to be performed; and forth to unemployed legal residents of Authority developments within any other New York City borough.

(b) The Contractor's noncompliance with the provisions of Section 48A (a) shall constitute a breach of this Contract and may result in sanctions, default, and/or a finding of non-responsibility with respect to future contracts with the Authority.

#### **SECTION 49 - LABOR STANDARDS PROVISIONS - APPLICABLE TO FEDERALLY FUNDED CONTRACTS**

The following Labor Standards Provisions, found in Section 5.5(a) of Title 29 of the Code of Federal Regulations ("CFR"), are applicable to federally-funded contracts and shall be deemed to supplement and not to supersede any other provisions in this Contract:

##### **(1) FEDERAL MINIMUM WAGE RATE REQUIREMENTS (40 U.S.C. 3141 et seq., formerly, the Davis-Bacon Act)**

(i). All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraph (4) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(ii)(B) or (C) of this section, 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.

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

(ii) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **(2) WITHHOLDING**

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **(3) PAYROLLS AND BASIC RECORDS**

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Authority. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (3)(i) of this section, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Authority, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Authority.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under Section 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Section 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Authority or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the

Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **(4) APPRENTICES AND TRAINEES**

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than that permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

#### **(5) COMPLIANCE WITH COPELAND ACT REQUIREMENTS.**

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

#### **(6) SUBCONTRACTS.**

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in this Section 49 and such other clauses as the Authority may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

#### **(7) CONTRACT TERMINATION: DEBARMENT.**

A breach of the contract clauses in this Section 49 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

#### **(8) COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS.**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

#### **(9) DISPUTES CONCERNING LABOR STANDARDS.**

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Authority, the U.S. Department of Labor, or the employees or their representatives.

#### **(10) CERTIFICATION OF ELIGIBILITY.**

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

#### **SECTION 49A - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following Labor Standards Provisions, found in Section 5.5(b) of Title 29 of the Code of Federal Regulations ("CFR"), are applicable to federally-funded contracts in an amount in excess of \$100,000 and shall be deemed to supplement and not to supersede any other provisions in this Contract:

##### **(1) OVERTIME REQUIREMENTS.**

No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics 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 forty 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 forty hours in such workweek.

##### **(2) VIOLATION; LIABILITY FOR UNPAID WAGES; LIQUIDATED DAMAGES.**

In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, 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 forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

##### **(3) WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES.**

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other 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 clause set forth in paragraph (2) of this section.

##### **(4) SUBCONTRACTS.**

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### **SECTION 50 - NON DISCRIMINATION - EQUAL OPPORTUNITY**

(a) In the hiring of employees for the performance of Work under this Contract or any subcontract hereunder, no Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of age, race, creed, color, sex or national origin discriminate against or intimidate any person who is qualified and available to perform the work to which the employment relates. There shall be deducted from the amount payable to the Contractor by the Authority under this Contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of these provisions. This Contract may be cancelled or terminated by the Authority and all monies due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section.

##### **(b) EQUAL OPPORTUNITY COMMITMENTS**

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap, marital status or military service. The Contractor will undertake programs of affirmative action to ensure that applicants and employees are afforded equal employment opportunities without discrimination. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, this Equal Opportunity clause.

2. The Contractor will, in all solicitations or advertisement for employees placed by on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability, age, handicap, marital status or military service.

3. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Presidential Executive Order 11246, as amended, and all other Federal, State and City laws and Executive Orders relating to Equal Opportunity and with all the rules, regulations and relevant orders issued in relation to the fulfillment of said laws and Executive Orders.

5. The Contractor will furnish all information and reports required by the New York City Housing Authority pursuant to Presidential Executive Order 11246, as amended, and in compliance with Federal, State and City rules, regulations, and laws and Executive Orders related to Equal Opportunity and will permit access to books, records and accounts by the New York City Housing Authority or other government agencies for the purposes of investigation to ascertain the Contractor's compliance with such laws and Executive Orders.

6. In the event of the Contractor's non-compliance with the Equal Opportunity provisions of the Contract or with any of the Federal, State or City rules, regulations, laws and Executive Orders related to Equal Opportunity, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Governmental contracts in accordance with procedures authorized in presidential Executive Order 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in State or City rules, regulations, laws and Orders.

7. The Contractor will include the portion of the sentences immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract of \$10,000 or more and in all Purchase Orders so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the New York City Housing Authority may direct as a means of enforcing the Equal Opportunity provisions, including sanctions for non-compliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the New York City Housing Authority, the Contractor may request the United States, New York State or New York City to enter into such litigation to protect the interests of the respective levels of governments.

8. The provisions of this section are supplementary to, and not in lieu of, or in substitution for, the provisions of the New York State Labor Law relating to non-discrimination, and other applicable Federal, State or City laws, ordinances, rules, regulations and Executive Orders.

#### **SECTION 51 - FINAL INSPECTION**

When the Work is practically completed, the Contractor shall notify the Authority in writing that the Work will be ready for final inspection on a definite date which shall be stated in such notice. Such notice shall be given at least ten (10) days prior to the date stated for final inspection.

#### **SECTION 52 - CERTIFICATE OF FINAL ACCEPTANCE**

(a) After completion and inspection of all the Work the Authority will issue a Certificate of Final Acceptance which shall be filed in the office of the Authority. A copy thereof shall, upon such filing, be forwarded by the Authority to the Contractor.

(b) The Certificate of Final Acceptance may set forth minor items of uncompleted work not preventing the Authority from making use of the Work or of the premises wherein the Work is performed; however, notwithstanding any other provision of the Contract, final payment shall not be due until all of the Work has been completed by the Contractor.

(c) If the Contractor unduly delays in the completion of the uncompleted work the Authority, at its option, after notice to the Contractor, may terminate the Contract and deduct from the Contract Price the value of the uncompleted work and any other cost and expense incurred, remitting to the Contractor, as and for Final Payment, any monies otherwise due the Contractor.

(d) Except through fault of the Contractor, loss or damage to the Work shall not be the Contractor's responsibility after issuance of the Certificate of Final Acceptance.

#### **SECTION 53 - CONTRACTOR'S GUARANTEES**

The Contractor hereby guarantees that upon completion of the Work all portions thereof will be in accordance with the Contract and will be perfect as to materials and workmanship, and will so remain for a period of one year except that in respect to items of uncompleted Work referred to in the preceding Section, such period shall commence on the date of their completion. Such period shall commence with the date of issuance of the Certificate of Final Acceptance. The Contractor further guarantees that during the period of the guarantee all defects to the Work and all damage caused to property of the Authority by such defects or by the work required to remedy such defects will be made good at the Contractor's expense. Upon demand, the Contractor shall furnish instruments separately evidencing the guarantees covered by the Contract.

#### **SECTION 54 - CLEANING UP**

Upon completion of the work, the Contractor shall leave the work and the premises in a clean, neat and perfect condition, satisfactory to the Authority.

#### **SECTION 55 - LIMITATION OF ACTION OR SPECIAL PROCEEDINGS - WAIVER OF JURY - CHOICE OF LAW AND CHOICE OF FORUM**

(a) Notwithstanding any other provisions of the Contract, no action or special proceeding shall lie or be maintained by the Contractor, his assignees, successors in interest, or anyone claiming under him, against the Authority upon any claim arising out of or based upon the Contract, or by reason of any act, omission or requirement of the Authority, unless such action or special proceeding shall be commenced within one (1) year after the date of issuance of the Certificate of Final Acceptance, regardless of the completion of items of uncompleted work set forth therein, or upon any claim based upon monies to be retained for any period after the filing of such Certificate of Final Acceptance, unless such action or special proceeding is commenced within one (1) year after such monies become due and payable under the terms of the Contract, or, if the Contract is terminated, rescinded, revoked, annulled, or abandoned under the terms hereof, unless such action or special proceeding is commenced within one (1) year after the date of termination, rescission, revocation, annulment, or abandonment.

The Contractor, his/her assignees, successors in interest, or anyone claiming under him/her shall not be entitled to any additional time to begin anew any other action or special proceeding, if an action or special proceeding commenced within the times herein specified be dismissed or discontinued, notwithstanding any provisions in the Civil Practice Law and Rules to the contrary.

(b) It is mutually agreed by and between the Authority and the Contractor, his/her assignees, successors in interest or anyone claiming under him/her against the Authority upon any claim or upon any matter whatsoever arising out of, under or based upon the Contract, that the respective parties hereto shall, and they hereby do, waive trial by jury in any action, counterclaim or third party action, brought by either of the parties against the other, on any claim and upon any matter whatsoever out of, under, based upon or in any way connected with the Contract, excepting, however, from the foregoing, any action brought to recover, or based upon a claim for damages for personal injuries or death.

(c) The Contract and performance of it are governed by and are to be construed in accordance with the laws of the State of New York, excluding New York State's rules regarding conflicts of laws. Any and all proceedings relating to the subject matter of the Contract must be maintained in the state courts sitting in the City and County of New York, which courts have exclusive jurisdiction for such purpose. The parties hereby consent to submit themselves to the jurisdiction of such courts with respect to any proceedings arising out of, under or related to the Contract.

#### **SECTION 56 - CONTRACTOR'S WARRANTIES**

The Contractor represents and warrants:

(a) That no member of the City Council, head of a department, chief of a bureau, deputy thereof, or clerk therein, or any other officer or employee of the City of New York or of the New York City Housing Authority is, shall be or become interested, directly or indirectly, as contracting party, partner, stockholder, surety or otherwise, in this Contract, or in the performance thereof, or in any portion of the profits thereof.

(b) That 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 therefrom; provided, that this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

(c) That the Contractor holds a license, permit, or other special license, to perform the services included in this Contract, as may be required by the Administrative Code of the City of New York, or employs or works under the general supervision of the holder of such license, permit or special license.

(d) The Contractor warrants good title to all materials, supplies, and equipment installed or incorporated in the Work, and agrees, upon the completion of all Work, to deliver the possession of the premises, together with all improvements thereon, to the Authority free from any claims, liens or charges.

#### **SECTION 57 - NON-LIABILITY OF THE MEMBERS OF THE AUTHORITY AND OTHERS**

Neither the members of the Authority nor any officer, agent or employee thereof shall be charged personally by the Contractor with any liability, or held liable to the Contractor under any term or provision of the Contract, or because of its execution or attempted execution, or because of any breach thereof.

#### **SECTION 58 - MODIFICATION OF CONTRACT**

No modification of, or change in the Contract shall be valid or enforceable against the Authority unless it is in writing and signed by the Authority.

#### **SECTION 59 - COMMUNICATIONS**

(a) To be in writing. All notices, demands, requests, instructions, approvals, claims and orders between the Authority and the Contractor must be in writing.

(b) Delivery to Contractor. Any notice or demand upon the Contractor shall be sufficiently given if delivered at the office of the Contractor specified in the Form of Proposal (or at such other office as the Contractor may from time to time designate to the Authority in writing), or deposited in a sealed postpaid wrapper in any post office box regularly maintained by the United States Government, or delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office, or if delivered to the superintendent of the Contractor.

(c) Delivery to Authority. All papers to be delivered to the Authority shall be delivered to it at its principal office in New York City, and any notice to and demand upon the Authority shall be sufficiently given if delivered to the office of the Authority in the City of New York, or transmitted to the Authority by registered United States mail in a sealed postpaid wrapper, or delivered with charges prepaid to any telegraph company for transmission.

#### **SECTION 60 - PROVISIONS OF LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein.

#### **SECTION 61 - INVESTIGATIONS; CANCELLATION AND DISQUALIFICATION UNDER CERTAIN CIRCUMSTANCES**

(a) The parties to the Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (**State**) or City of New York (**City**) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of the Authority with respect to the transaction, submitted bid, submitted proposal, agreement, Contract, lease, license, or person dealing with the Authority that is the subject of the investigation, audit or inquiry.



- (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, Contract, lease or license entered into with the Authority, the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;
  - (2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the Authority, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, Contract, lease or license entered into with the Authority, the City, the State, or any political subdivision thereof or any local development corporation within the City; then;
  - (3) The Chair and Chief Executive Officer (the **Chair and CEO**) of the Authority, or his/her designee, shall convene a hearing, upon no less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
  - (4) If any non-governmental party to the hearing requests an adjournment, the Chair and CEO of the Authority, or his/her designee, may, upon granting the adjournment, suspend any agreement, Contract, lease or license with such party pending the final determination pursuant to subsection (b) below without the Authority incurring any penalty or damages for delay or otherwise.
- (b) The penalties which may attach to a final determination by the Chair and CEO of the Authority, or his/her designee, may include but shall not exceed:
- (1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any agreement, contract, lease or license with or from the Authority; and/or
  - (2) The cancellation or termination of any and all such existing Authority agreements, contracts, leases or licenses that the refusal to testify concerns and that have not been assigned as permitted under the agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the Authority incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the Authority.
- (c) The Chair and CEO of the Authority, or his/her designee, shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Articles (1) and (2) immediately below. He or she may also consider, if relevant and appropriate, the criteria established in Articles (3) and (4) immediately below in addition to any other information which may be relevant and appropriate;
- (1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
  - (2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
  - (3) The nexus of the testimony sought to the subject entity and its agreements, contracts, leases or licenses with the Authority.
  - (4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subsection (b) above, provided that the party or entity has given actual notice to the Chair and CEO of the Authority, or his/her designee, upon the acquisition of the interest, or at the hearing called for in Section 61(a)(3) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- (d) Definitions Used in this Section:
- (1) The term license as used herein shall be defined as a license not granted as a matter of right.
  - (2) The term personas used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
  - (3) The term entity as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, or leases from the Authority or otherwise transacts business with the Authority.
  - (4) The term member as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
- (e) In addition to and notwithstanding any other provision of this Contract, the Chair and CEO of the Authority, or his/her designee, may in his or her sole discretion terminate the Contract upon not less than three (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of the Department of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the Authority or other person, firm corporation or entity for any purpose which may be related to the procurement or obtaining of the Contract by the Contractor, or affecting the performance of the Contract.

## **SECTION 62 - NO ESTOPPEL OR WAIVER**

- (a) The Authority shall not be precluded or estopped by any acceptance, certificate or payment, final or otherwise, made by any of its officers, agents or employees, from showing the true amount and character of the work performed or that such acceptance, certificate or payment is incorrect or improperly made, and to recover on such account any monies paid in excess of those the Contractor is entitled to or any damages it may have sustained by reason of the Contractor's failure to comply with the Contract.

(b) No act done or permitted to be done by any member, officer, agent or employee of the Authority at any time shall be deemed to be a waiver of any provision of the Contract, excepting only a resolution of the members of the Authority providing expressly for such waiver.

### **SECTION 63 - CHANGED CIRCUMSTANCES**

If, at any time after the execution of the Agreement, the Authority is informed of "Changed Circumstances" (as hereinafter defined) with regard to the Contractor that the Authority, in its sole discretion, determines to be contrary to its best interest, the Authority in its sole discretion, may terminate the Agreement upon one day's prior written notice to the Contractor. As used herein, the term "Changed Circumstances" shall mean:

- (1) The initiation of any type of investigation by any federal, state or local governmental department, agency, authority or other instrumentality, or any federal, state or local prosecutor's office, into any activity or operation of the Contractor or any director, officer or principal shareholder or
- (2) The return of any federal or state grand jury indictment against the Contractor or any director, officer or principal shareholder.

In the event of any termination under this clause, the Contractor shall be entitled to payment as provided under the clause entitled "Termination for Convenience", except that the Authority shall have the right to part or all of any profit that would otherwise be payable under such clause in the event the indictment pertains in whole or in part to the solicitation, award or performance of this Agreement.

### **SECTION 64 - TERMINATION FOR CONVENIENCE**

The Authority may, for any reason, terminate this Agreement upon ten (10) days prior written notice to the Contractor. In the event of such termination, the Authority shall, within thirty (30) days after receipt of the Contractor's invoice and all supporting documentation reasonably required by the Authority; pay the Contractor an amount equal to the Contractor's reasonable direct costs incurred in the performance of work under this Agreement prior to termination, plus reasonable overhead and profit with respect to such work, less the sum of all payments previously made to the Contractor under this Agreement, but in no event in excess of the pro rata portion of the total compensation payable under this agreement with respect to such work.

### **SECTION 65 - COMPLETION OF CONTRACT WORK, INCLUDING PUNCH LIST WORK; CONTRACTOR'S LIABILITY FOR FAILURE TO TAKE CORRECTIVE ACTIONS**

(a) The Contractor itself, or using its subcontractors that have been approved by the Authority, must furnish all labor, materials, tools, trucks, equipment, and other incidental items needed to:

1. Complete all Contract Work, including punch list Work;
2. Correct any damaged Work or damage to the Work site caused by the Contractor's or by its subcontractors' acts or omissions; and
3. correct the condition that gave rise to, and fully abate, remediate, and clean up, any unsafe or hazardous conditions arising out of the Contractor's Work including, without limitation, environmental hazards such as releases, leaks, or discharges of petroleum, gas, asbestos, or other hazardous or toxic wastes or materials (any and all of the foregoing actions being referred to as "Corrective Action(s)"). In the event that the Contractor fails to take Corrective Action(s) and prosecute such Corrective Action(s) to completion thereof to the satisfaction of the Authority, within any time frame set therefor in the Contract or by the Authority, or in the absence of any such time frame set therefor in the Contract or set by directive from the Authority, promptly (and, in the case of an emergency situation, immediately), the Authority may, at its sole option, perform the Corrective Action(s) itself; or engage a third party for that purpose, and the Contractor shall be liable to the Authority for all costs and expenses incurred by the Authority in connection with such Corrective Action(s), including, without limitation, any amounts paid to another contractor to take such Corrective Actions, and the labor costs (including fringe benefits) associated with time spent by any Authority employees in taking any Corrective Action(s), as well as any material costs and equipment costs (collectively, the "Costs and Expenses"). In addition, the Authority shall be entitled to an administrative charge ("Administrative Charge") in the event that it has to take any Corrective Action(s), equal to the greater of: (x) \$1,000, or (y) 21% of the aggregate of such Costs and Expenses.

(b) The Authority shall have the right, at its sole option, to collect such monies, together with such Administrative Charge, directly from the Contractor, or to back charge the Contract, or to offset the amount of such monies, including such Administrative Charge, against any monies owed to the Contractor under any other contract between the Authority and the Contractor.

(c) The Contractor, or any subcontractor engaged by the Contractor to perform any abatement, remediation, or clean up Work must have all licenses, permits, and training required by law and applicable regulations, and the Contractor or its subcontractor must provide copies of such licenses or permits to the Authority upon request.

(d) Whether the Contractor has created a hazardous condition at any Work site or has failed to correct, in accordance with this section, a hazardous condition created at any Work site, or has failed to complete all Contract Work, including punch list work, or to correct any damaged Work or damage to the Work site caused by the Contractor's or its subcontractors' acts or omissions, may be considered in determining the Contractor's responsibility in connection with the award of any future contracts on which the Contractor is low bidder.

### **SECTION 66 - COMPLIANCE WITH ENVIRONMENTAL LAWS AND ENERGY STANDARDS**

The Contractor agrees to comply with: (a) all applicable standards, orders or requirements of the Clean Air Act, as amended (42 U.S.C. Section 7602) [formerly 42 U.S.C. Section 1857(h)], the Clean Water Act, as amended (33 U.S.C. Section 1368), Executive Order 11738 and all implementing regulations promulgated by the Environmental Protection Agency (40 CFR Part 15); and (b) all mandatory standards and policies relating to energy efficiency contained in the New York State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163), and any other applicable laws or amendments thereto.

## **SUPPLEMENTAL CLAUSE 1. RIGHT TO AUDIT, MAINTENANCE OF BOOKS AND RECORDS**

The Authority, any agency providing funds to the Authority, the Office of the Inspector General for the Authority, and the Comptroller General of the United States have the right to perform an audit of Vendor's finances and the books and records related to its performance under the Contract, including, without limitation, the financial arrangement with anyone that Vendor may delegate to discharge any part of its obligations under the Contract.

Vendor must provide, and must cause each of its subcontractors to provide, access by the Authority, any agency providing funds to the Authority, the Office of the Inspector General for the Authority, the Comptroller General of the United States or any of their duly authorized representatives to any books, documents, papers, records and supporting documentation of Vendor and such Subcontractors that are directly pertinent to the Contract for the purpose of making audit, examination, excerpts, duplicate photocopies and transcriptions.

In order to permit the making of audit, examination, excerpts, duplicate photocopies and transcriptions by the Authority, any agency providing funds to the Authority, the Office of the Inspector General for the Authority, the Comptroller General of the United States or any of their duly authorized representatives, Vendor agrees to maintain all records and supporting materials for the Services for a period of six years following the later of (i) the end of the duration of the Contract, or (ii) such time as the Authority makes final payments and all other pending matters related to the Contract (including, without limitation, litigation, claims and appeals) are closed (the Retention Period). Prior to the expiration of the Retention Period, NYCHA, in its sole discretion and upon written notice to the Vendor, may extend the Retention Period for an additional one-year.

## **SUPPLEMENTAL CLAUSE 2. INVESTIGATIONS**

(a) The parties to the Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (**State**) or City of New York (**City**) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of the Authority with respect to the transaction, submitted bid, submitted proposal, agreement, Contract, lease, license, or person dealing with the Authority that is the subject of the investigation, audit or inquiry.

(1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, Contract, lease or license entered into with the Authority, the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

(2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the Authority, and is seeking testimony concerning the award of, or

performance under, any transaction, agreement, Contract, lease or license entered into with the Authority, the City, the State, or any political subdivision thereof or any local development corporation within the City; then;

(3) The Chair and Chief Executive Officer

(the **Chair and CEO**) of the Authority, or his/her designee, shall convene a hearing, upon no less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(4) If any non-governmental party to the hearing requests an adjournment, the Chair and CEO of the Authority, or his/her designee, may, upon granting the adjournment, suspend any agreement, Contract, lease or license with such party pending the final determination pursuant to subsection (b) below without the Authority incurring any penalty or damages for delay or otherwise.

(b) The penalties which may attach to a final determination by the Chair and CEO of the Authority, or his/her designee, may include but shall not exceed:

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any agreement, contract, lease or license with or from the Authority; and/or

(2) The cancellation or termination of any and all such existing Authority agreements, contracts, leases or licenses that the refusal to testify concerns and that have not been assigned as permitted under the agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the Authority incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the Authority.

(c) The Chair and CEO of the Authority, or his/her designee, shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Articles (1) and (2) immediately below. He or she may also consider, if relevant and appropriate, the criteria established in Articles (3) and (4) immediately below in addition to any other information which may be relevant and appropriate;

(1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(3) The nexus of the testimony sought to the subject entity and its agreements, contracts, leases or licenses with the Authority.

(4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subsection (b) above, provided that the party or entity has given actual notice to the Chair and CEO of the Authority, or his/her designee, upon the acquisition of the interest, or at the hearing called for in Section 61(a)(3) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity

must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

(d) Definitions Used in this Section:

- (1) The term license as used herein shall be defined as a license not granted as a matter of right.
- (2) The term personas used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (3) The term entity as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, or leases from the Authority or otherwise transacts business with the Authority.
- (4) The term member as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

(e) In addition to and notwithstanding any other provision of this Contract, the Chair and CEO of the Authority, or his/her designee, may in his or her sole discretion terminate the Contract upon not less than three (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of the Department of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the Authority or other person, firm corporation or entity for any purpose which may be related to the procurement or obtaining of the Contract by the Contractor, or affecting the performance of the Contract.

#### **SUPPLEMENTAL CLAUSE 3. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

If the Contract's maximum amount is over \$100,000 and the Work involves the employment of mechanics and laborers, the Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USCS 3701 et seq. (formerly at 40 U.S.C. 327-330)) as supplemented by Department of labor regulations (29 CFR Part 5).

#### **SUPPLEMENTAL CLAUSE 4. ROYALTIES AND PATENTS**

The Contractor shall pay all royalties and license fees and shall obtain all licenses to use any third-party intellectual property in connection with the Work so as to vest in the Authority good and complete title with respect to the ownership of all such Work. It shall defend all suits or claims for infringement of any patent rights and shall save the Authority harmless from loss on account thereof; except that the Authority shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Authority. Failure to give such notice shall make the Contractor responsible for resultant loss.

#### **SUPPLEMENTAL CLAUSE 5. 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 (the **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: (i) are not reasonably available in a reasonable period of time; (ii) 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 (iii) are only available at an unreasonable price. (b) Subsection (a) shall apply to items purchased under the Contract where: (i) the Contractor purchases in excess of \$10,000 of the item under the Contract; or (ii) during the preceding Federal fiscal year, the Contractor: (A) 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 (B) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

#### **SUPPLEMENTAL CLAUSE 6. BYRD ANTI-LOBBYING AMENDMENT**

If the Contract's maximum amount is \$100,000 or more, each tier shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures shall be forwarded from tier to tier up to the Authority.

#### **SUPPLEMENTAL CLAUSE 7. HUD REPORTING REQUIREMENTS**

Contractor/Supplier/Vendor shall complete and submit all reports, in such form and according to such schedule, as may be required by NYCHA. The Contractor/Supplier/Vendor shall cooperate with all NYCHA efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 2 C.F.R. 200.328, 2 C.F.R. 200.343, and 24 C.F.R. 570.507, if applicable.