

PENNSYLVANIA HOUSING FINANCE AGENCY

PennHOMES PROGRAM

**FEDERAL COMPLIANCE SUPPLEMENT
FOR HOME-FUNDED DEVELOPMENTS**

INTRODUCTION

This supplement to the Pennsylvania Housing Finance Agency's (PHFA) Submission Guide for Architects and Minimum Housing Standards includes federal requirements applicable to the construction of PennHOMES projects located in Non-Participating jurisdictions that receive Federal HOME funds (HOME Investment Partnerships Program).

All construction contracts and bid documents must include the General Conditions-Federal Requirements for HOME Investment Partnerships Program, verbatim.

Contractors and subcontractors with contracts over \$10,000 must comply with Executive Order 11246 requirements as set forth in the General Conditions-Federal Requirements. The supplemental Executive Order 11246 section of this packet includes information to assist you in meeting these requirements.

Project owners must submit to PHFA within 10 working days of your pre-processing meeting Exhibit 1 Certification of Contract Awards to document all contracts awarded prior to submission of your application. Resubmit this form with your final commitment submission to confirm additional contracts awards, if necessary.

Project owners and their contractors and subcontractors with contracts exceeding \$100,000, must comply with Section 3 requirements. These requirements are included in the General Conditions - Federal Requirements. Prior to receiving the Agency's loan commitment, prime contractors must submit Section 3 Work Force Needs Tables and Contact/Solicitation and Commitment Statements (STD-168) and to the PHFA Compliance Officers and Development Officers assigned to their projects. During the construction period, the owner, prime contractor and subcontractors must submit additional documentation to meet Section 3 requirements. The supplemental Section 3 information of this packet will assist you in meeting these requirements.

Project owners and general/prime contractors must meet the Minority and Women's Business Enterprise (MBE/WBE) requirements stated in the General Conditions-Federal Requirements. Prior to receiving the Agency's loan commitment, prime contractors must complete and submit Contact/Solicitation and Commitment Statements (STD-168) to the PHFA Compliance Officer and appropriate Development Officer. During the construction period, contractors and subcontractors must submit additional documentation to verify MBE and WBE participation. The supplemental MBE/WBE Definitions/Forms/Information section of this packet will assist you in meeting these requirements.

Labor Standards Requirements, including the Davis-Bacon wage rates, Copeland Anti-Kickback and the Contract Work Hours and Safety Standards Act are only applicable to projects with 12 or more PennHOMES-assisted units. The project owner must include the current wage determination, including all modifications, in the final construction documents.

Prior to the Agency's loan commitment, project owners must complete and submit to their PHFA Development Officers and the Agency's Compliance Officer, the Contractor's Qualification Statement (AIA Document A305) for the Prime Contractor. The Development Officer will forward this form to the Agency's Compliance Officer to verify that the Contractor is not debarred or suspended from participation in federal programs. The project owner's commitment processing packet includes this form.

The Agency will complete and submit the Notice of Start of Construction and Contract Award Date (DCA-BHD-135) for the Prime construction contract. It is critical that the owner provide documentation confirming the general construction contract award date as soon as possible. The Agency will request the wage rate determinations. The Agency's Compliance Officer must receive a contract award letter for Prime contractor prior to the start of construction to "lock in" federal wage rates ("Start of Construction" means the beginning of initial site clearance and preparation, provided those activities are pursued diligently and are followed without appreciable delay by other construction activities).

The Agency's Technical Services' Field Representatives and Compliance Officer will discuss these requirements during the Agency's pre-construction conference with the project owner, general contractor and subcontractors.

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GENERAL CONDITIONS

FEDERAL REQUIREMENTS

for

**PennHOMES Multifamily Rental Housing Program
HOME-Funded Developments**

All bidders must comply with the following Federal requirements:

1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) as stated in 24 CFR 570.601

“No person in the United States shall on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Title.”

2. Executive Order 11063, as amended.

“No person in the United States shall on the basis of race, color, religion, sex, or national origin, be discriminated against in housing (and related facilities) provided with Federal assistance and in lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal Government.”

3. Executive Order 11246

A. If the contract amount is less than ten thousand (\$10,000) dollars the following conditions shall apply:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, color, religion, sex, or national origin. Such actions shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Pennsylvania Housing Finance Agency (PHFA) setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be

binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

- B. If the contract amount exceeds ten thousand (\$10,000) dollars the following conditions shall apply:
- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - (3) The Contractor will send to each labor union or representative workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, 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 Executive Order 11246 of September 24, 1965; and the rules, regulations and relevant orders of the Secretary of Labor.
 - (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by PHFA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

- (6) In the event of the Contractor’s noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the portion of the sentence immediately preceding paragraph B-(1) and the provisions of paragraphs B-(1) through B-(6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, 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 PHFA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by PHFA, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

C. Notice of Requirements 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 therein.
- (2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor’s aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals and Timetables for Minority Participation for Each Trade (insert Goal Percentage)	Goals and Timetables for Female Participation in Each Trade
_____ % *	_____ 6.9%

* **See attached Table 1 for Goals by Region/County at the end of this section.**

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 Part 60-4, paragraph 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 project. 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 Contractor’s 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 ten (10) working days of award of any construction subcontract in excess of ten thousand (\$10,000) dollars at any tier of construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone 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.

In addition, contractors must notify the Department of Labor, a listing of the above information for each subcontract in excess of \$10,000.

This information is to be sent to one of the following offices, whichever is appropriate:

Eastern PA	Western PA	Central PA
US Dept of Labor Office of Federal Contract Compliance Programs Philadelphia District Office Robert C. Nix, Sr Federal Building 9 th & market Streets, Rm 311 Philadelphia, PA 19107 (215) 597-9444	US Dept of Labor Office of Federal Contract Compliance Program 20 th Floor – Federal Building Pittsburgh, PA 15222 (412) 395-6300	US Dept of Labor Office of Federal Contract Compliance Program Baltimore District Office Appraiser Store Building 103 South Gay St, Room 202 Baltimore, MD 21202 (410) 962-3572

A copy of all notifications must be submitted to the Agency and maintained in the project owner’s PennHOMES contract files.

- (4) As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is **(insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).**
- D. 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 Program, United States Department of Labor, or any other 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) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable 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 ten thousand (\$10,000) dollars 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 part 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 that 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 PennHOMES town 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 Contractor's or subcontractor's 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 (7) (a) through (7) (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 a substantially uniform program 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 Contractor's obligations under these specifications, Executive Order 11246, nor the regulations promulgated pursuant thereto.
- (6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting 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 Contractor's employees are assigned to work. The Contractor where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's 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 names, addresses, and telephone numbers of each minority and female off-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 by the union or, if 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 therefore, 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 Contractor's efforts to meet his 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 Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled notice of these programs to the sources compiled under (7) (b) 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 on-site

supervisory personnel such as Superintendents, General Foremen, 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 in 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 Contractor's 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 Contractor's recruitment area and employment needs. Not later than one (1) month prior to the date for the acceptance of applications for apprenticeship or other training by and recruitment sources, 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 Contractor's work force.
- (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 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 classifications, 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 specifications are being carried out.
- (n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.
- (o) Document and maintain a record of all solicitation 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 (7)(a) through (7)(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 (7)(a) through (7)(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 work force participation, makes a good faith effort, 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 of 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 implementing 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 Part 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 or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the PennHOMES Investment Partnerships Program).

4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et. seq.) (12 D.U.s or More)

The Contractor, if the contract is in excess of \$2,000, and any of his subcontractors, shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations contained in 29 CFR Part 5.

Under Section 103 of the Act, the Contractor and any of his subcontractors shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of forty (40) hours. Work in excess of the standard work week is permissible, provided the worker is compensated at a rate not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in any week. Section 5 of the Federal Labor Standards Provisions, as shown below sets forth in detail the Section 103 requirements.

Section 107 of the Act provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety, as determined under construction, safety and health standards promulgated by the Secretary of Labor. The requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market.

5. Federal Labor Standards Provision - (12 D.U. s or More)

A. Applicability

The project to which the work covered by this Contract pertains is being assisted by PennHOMES and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal Assistance.

B. Minimum Wage Rates for Laborers and Mechanics

(1) Minimum Wages

- (a) All laborers and mechanics employed or working upon the site of the work 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, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less than monthly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.
- (b) 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 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth, the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon posted (WH-3121) shall be

posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible space where it can be easily seen by the workers.

- (2) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. PHFA shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (b) The classification is utilized in the area by the construction industry; and
 - (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (3) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and PHFA or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate) a report of the action taken shall be sent by PHFA or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise PHFA or its designee within the thirty (30) day period that additional time is necessary.
- (4) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and PHFA or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), PHFA or its designee shall refer the questions, including the views of all interested parties and the recommendations of PHFA or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise PHFA or its designee with the 30-day period that additional time is necessary.
- (5) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (3) or (4) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

C. Payrolls and Basic Records:

- (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of work preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work. 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 1b(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)(92)(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 certifications of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls PHFA or its designee if the Agency is a party to the contract, but if the Agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to PHFA or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20242. The prime Contractor is responsible for the submission of payrolls by all subcontractors.
- (3) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (a) That the payroll for the payroll period contains information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;
 - (b) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
 - (c) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification or work performed, as specified in the applicable wage determination incorporated into the contract.

The weekly submission of properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of

the “Statement of Compliance” required by 29 CFR Part 5.5, paragraph A.3(ii)(b).

- (4) The Contractor or subcontractor shall make the records required under 29 CFR Part 5.5, paragraph A.3(i) available for inspection, copying, or transcription by authorized representatives of PHFA or its designee 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, PHFA or its designee 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 pursuant to 29 CFR Part 5.12.

D. Apprentices and Trainees:

- (1) Apprentices: Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days off 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 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 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, fringe benefits shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize the apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (2) Trainees: Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidence by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeymen 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 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.

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

- E. Compliance with Copeland Act Requirements: The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in the contract.
- F. Subcontracts: The Contractor or subcontractor will insert in any subcontractors' contracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as PHFA or its designee by appropriate instruction 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 a subcontractor or lower tier subcontractor with all contract clauses in 29 CFR Part 5.5 (see Paragraph 14).
- G. Contract Termination; Debarment: A breach of the contract clauses in 29 CFR Part 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12 (see Paragraph 14)
- H. 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.
- I. 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 PHFA or its designee, the U.S. Department of Labor, or the employees or their representatives.
- J. Certification of Eligibility:
 - (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act of 29 CFR 5.12(a)(1).
 - (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Housing Administration Transaction, "provides in part; 'Whoever, for the purpose...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years, or both.'"

- K. Complaints, Proceedings, or Testimony by Employees: No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceedings or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.
- L. Contract Work Hours and Safety Standards Act: (As used in this paragraph the terms “laborers” and “mechanics” include watchmen and guards).
- (1) Overtime Requirements: No Contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any work week in which he is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1-1/2) times his basic rate of pay for all hours worked in excess of forty (40) hours in such work week.
 - (2) Violation: Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in subparagraph B.(1) 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 District 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 violations of the clause set forth in subparagraph L.(1) of this paragraph, in the sum of ten (\$10) dollars for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in subparagraph L.(1) of this paragraph.
 - (3) Withholding for Liquidated Damages: PHFA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, 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 subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph L.(2) of this paragraph.
 - (4) Health and Safety:

- (a) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (b) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly Part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).
- (c) The Contractor shall include the provisions of this Article in every subcontractors contract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Labor shall direct as a means of enforcing such provisions.

6. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1801 u).

- A. This agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1801 u), as amended. The Section 3 clause provides:

Every applicant, recipient, contracting party, Contractor and subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following clause (referred to as a Section 3 clause):

- (1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1801u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (2) The parties to the 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 said labor organization or workers' representative of Contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places available 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, 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 (1) after the Contractor is selected by before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.
- (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.

7. Lead-Based Paint Requirements

Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831) prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal Assistance in any form.

8. Clean Air and Clean Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 *et. seq.*, and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended, from time to time.

The Contractor and any of its subcontractors for work funded under the Agreement which is in excess of one-hundred thousand (\$100,000) dollars agree to the following requirements:

- A. A stipulation by the Contractor or subcontractors that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15.20.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and (33 U.S.C. 1318) relating to the

- inspection, monitoring, entry reports and information as well as all other requirements specified in said Section 114 and Section 308, and all regulations, and guidelines issued there under.
- C. A stipulation that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
 - D. Agreement by the Contractor that he/she will include or cause to be included the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provision.
 - E. Energy Conservation Provisions: Contractors must recognize mandatory standards and policies relating to energy efficiency contained in the Cost Effective Energy Conservation Measures.

9. Section 109 of the Housing and Community Development Act of 1974

“No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Title.”

10. Minority/Women’s Business Enterprise

A. Participation Level

- (1) The Project Owner has established minimum participation levels (MPLs) at 5% for minority business enterprises (MBE) and 3% for women business enterprises (WBE) for this project to be used solely as a threshold in determining bidder responsibility. A bidder will not be rejected as not responsible solely because it fails to reach the MPLs. To determine the participation level which has been reached, a bidder may divide the total dollar amount of the commitments by the total dollar amount of the bidder’s bid.
- (2) MBE/WBE subcontracts and manufacturers will be credited toward the minimum level at 100%. Stocking suppliers are credited at 100%. Non-stocking suppliers which are commonly and ordinarily the custom in the industry and a part of the industry’s trade practices are credited at 100%; non-stocking suppliers which are not commonly and ordinarily the custom in the industry nor a part of the industry’s trade practice are not credited.
- (3) A firm which is both an MBE and a WBE will only receive credit toward MPLs as either an MBE or WBE, but not both. Bidders must indicate on Form STD-168, MBE/WBE Contact/Solicitation and Commitment Statement whether the firm is being listed as either an MBE or a WBE.
- (4) An MBE/WBE firm who is the prime bidder on a project will receive no MPL credit for its own work effort for services provided. MBE/WBE bidding as prime proposer must solicit other certified MBEs/WBEs participation for material and/or supplies.
- (5) MBE/WBE subcontractors must perform at least seventy-five percent (75%) of the cost of the subcontract, not including the cost of materials, with its own employees.

B. Procedures - Invitations For Bids (IFB)

- (1) Advertisement

All invitations to bid will include the following information:

“The bidders/offerors must submit documentary evidence of minority and women business enterprises who have been contacted and to whom commitments have been made. Documentation of such solicitations and commitments shall be submitted concurrently with the bid.”

- (2) Notification of MBE/WBE

The procedure for the Prime Contractor to notify the minority/women business community of contract opportunities will be as follows:

(a) Notice of Invitation for Bid or Request for Proposals - A request will be sent to the Agency for a listing of MBE/WBE firms that undertake the particular type of construction or service being advertised or requested. The project owner will submit this request by completing the Agency's Certification of Contract Awards (MBE/WBE/SERBs) form. The listing of MBE/WBE firms will be provided to the owner at the Commitment Processing Meeting. A copy of the Notice of Invitation for Bids or Requests for Proposals will be sent by the Prime Contractor to all MBE/WBE firms listed.

(b) Other Notices - Notices are to be sent to the following organizations (as appropriate):

Local Minority Churches and Organizations;

Appropriate Minority Business Technical Assistance Organizations and/or Schools;

Appropriate Minority/Women Contractor Associations; and

Appropriate Minority/Women Trade Organizations

(c) Plans and Specifications - Plans and Specifications or Invitations for Bids on all projects will be made available to minority/women Contractor associations and trade organizations.

(d) List of Planholders - The names of bidders/offerors requesting bid documents will be made available upon request to minority/women businesses shown on the provided listing.

(e) List of Minority/Women Businesses - Each bidder/offeror obtaining plans and specifications or requests for proposals for projects will be provided a list of minority/women businesses to be used in soliciting subcontract bids and for materials and services.

C. Responsiveness

- (1) Bidders must complete and submit Form STD-168 with the bid. Failure to submit this form with the bid, will result in the bid being rejected as nonresponsive.

- (2) A bidder should only solicit MBE/WBE subcontractors, vendors, manufacturers, or suppliers whose services, material, or supplies are within the scope of work and which the bidder reasonably believes it will choose to subcontract with or purchase from.
- (3) Bidders failing to meet the minimum levels of participation must submit concurrently with the bid, an explanation of why the MPLs have not been met. This explanation must demonstrate that the bidder has not engaged in discriminatory practices in solicitation and utilization of MWBEO-certified MBAs/WBEs to perform as subcontractors or suppliers of goods and services related to the performance of the contract. The evidence submitted by the bidder must demonstrate the following:
 - (a) Indicate whether MBEs/WBEs were solicited for each type of work the bidder expects to subcontract for and for all materials which the bidder expects to procure and, if not, the reason(s) why no such solicitation was made;
 - (b) Indicate the reason why an MBE/WBE has not been committed to for a type of subcontract work or materials in any area where a quote was received from a MBE/WBE; and
 - (c) In any case where no quotations are received nor commitments made to MBE or WBE firms, indicate on Form STD-168 that no quotes were received, and if there is another reason for no commitments being made, the reason for the lack of commitments.
- (4) If the bidder fails to submit such evidence, the bid submission shall be considered non-responsive and the bid rejected.
- (5) Information related to the above may be submitted on Form STD-168 or on additional paper.

D. Responsibility

- (1) The submittals of each bidder are subject to review to determine whether the bidder has discriminated in the selection of manufacturers, subcontractors and suppliers. If a bidder has met the MPLs for MBE/WBE participation, the bidder will be presumed not to have discriminated in their selections. Where the MPLs are not met, the Project Owner and PHFA will determine whether discrimination has occurred. If, after investigation including a review of Form STD-168, it is found that discrimination has occurred, the reviewed bidder shall thereby be deemed to be not responsible and the bid will be rejected.
- (2) Documentation submitted by the bidder should meet the following standards for review:

- The bidder whose actions resulted in a limited or no commitment to MBEs/WBEs was not motivated by consideration of race or gender;
 - MBEs/WBEs were not treated less favorably than other businesses in the contract solicitation and commitment process; and
 - Solicitation and commitment decisions were not based upon policies which disparately affect MBEs/WBEs.
- (3) Commitments to MBE and WBE firms made at the time of bidding must be maintained throughout the term of the contract, unless a change in commitment to these firms is preapproved by the Project Owner or the administering agency performing the evaluation of the invitation for Bid.

E. Access to Information

The Project Owner may obtain documents and information from any bidder, Contractor, subcontractor, supplier, or manufacturer that may be required in order to ascertain bidder or Contractor responsibility. Failure to provide requested information may result in the Contractor being declared not responsible.

F. MBE/WBE Certification

- (1) Bidders will not be given credit for MBEs/WBEs which are not certified by the State Minority and Women Business Enterprise Office (MWBEO).
- (2) Under the State Act of December 21, 1984, No. 230, P.L. 210, 18 PA. C.S.A. § 4107.2 a person commits a felony of the third degree if, in the course of business, he/she engages in deception relating to MBE/WBE certification.

G. Recordkeeping and Reporting

- (1) The Contractor will keep such records as are necessary to determine compliance with its minority and women business enterprise commitments. These records must be in sufficient detail to indicate the number of minority and women businesses, the contract work performed, and the percentage of minority and women businesses performing work. Additionally, the Contractor is required to maintain an open file for a specified period, during which time the (Name of Project Owner) may make periodic reviews of records pertaining to relevant contracts.
- (2) The prime Contractor must provide the Project Owner with a report of MBE/WBE subcontracting activity on a monthly or per project basis, whichever

is sooner. The report shall reflect the names of and the total dollar amount paid to all MBE/WBE subcontractors (including suppliers) utilized under this contract.

- (3) MBE/WBE Subcontractors must provide the Project Owner with a report reflecting the prime Contractors who have purchased their services and/or supplies on a monthly basis. The report shall reflect the name of the prime Contractor and the total dollar amount invoiced and total dollar amount received for payment.

11. Age Discrimination Act of 1975

“No person in the United States shall be, on the basis of age, excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

12. Section 504 of the Rehabilitation Act of 1973

“No qualified individual with handicaps shall, solely on the basis of handicaps, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.”

13. Lobbying

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement, in accordance with 24 CFR Part 87.

If any funds other than 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 in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreement) and that all subrecipients shall certify and disclose accordingly.

14. Debarment, Suspension, Ineligibility And Voluntary Exclusion - Lower Tier Covered Transactions

- A. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- B. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including a suspension and/or debarment.
- C. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- D. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- E. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- F. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all solicitations for lower tier covered transactions.
- G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (717-783-2936).
- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- I. Except for transactions authorized under paragraph F of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

STATE REQUIREMENTS

All Bidders must also comply with the following State requirements:

1. Pennsylvania Steel Products Procurement Act (No. 178-3)

If any steel products are to be used or supplied in the performance of the Contract, only steel products produced in the United States shall be used or supplied in the performance of the Contract or any subcontract thereunder. This provision shall not apply in any case where the head of the public agency, in writing, determines that the type of steel products necessary to the performance of the Contract are not produced in the United States in sufficient quantities to meet the requirement of the Contract.

2. Pennsylvania Human Relations Act, as amended

- A. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated fairly during employment, without regard to their race, color, religious creed, handicap, ancestry, national origin, age or sex.

CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated fairly during employment, without regard to their race, color, religious creed, handicap, ancestry, national origin, age, or sex. Such affirmative action shall include but is not limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

CONTRACTOR shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

- B. CONTRACTOR shall in advertisements or requests for employment placed by it or on its behalf state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age or sex.
- C. CONTRACTOR shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause.

Similar notice shall be sent to every other source of recruitment regularly utilized by CONTRACTOR.

- D. It shall be no defense to a finding of noncompliance with the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission of this nondiscrimination clause that CONTRACTOR had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligation. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
- E. Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that CONTRACTOR will be unable to meet its obligations under the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, or this nondiscrimination clause, CONTRACTOR shall then employ and fill vacancies through other nondiscriminatory employment procedures.
- F. CONTRACTOR shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 PA Code Chapter 49 and with all State and Federal laws prohibiting discrimination in hiring or employment opportunities. In the event of CONTRACTOR'S noncompliance with the non-discrimination clause of this contract or with any such laws, this CONTRACT may, after hearing and adjudication, be terminated or suspended, in whole or in part, and CONTRACTOR may be declared temporarily ineligible for further COMMONWEALTH contracts, and such other sanction may be imposed and remedies invoked as provided by the Contract Compliance Regulations.
- G. CONTRACTOR shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency for purposes of investigation to ascertain compliance with the provisions of this clause. If CONTRACTOR does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency.
- H. CONTRACTOR shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.
- I. CONTRACTOR shall include the provisions of this nondiscrimination clause in every subcontract, so that provisions will be binding upon each subcontractor.
- J. CONTRACTOR'S obligations under this clause are limited to the CONTRACTOR'S facilities within Pennsylvania, or where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY

Project Name _____

PHFA Number _____

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 C.F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

CERTIFICATION BY BIDDER

NAME AND ADDRESS OF BIDDER (Include Zip Code)

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

Yes No

2. Compliance reports were required to be filed in connection with such contract or subcontract.

Yes No

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.

Yes No None Required

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?

Yes No

CERTIFICATION:

The information above is true and complete to the best of my knowledge and belief.

NAME AND TITLE OF SIGNER (Please Type)

SIGNATURE

DATE

CERTIFICATION BY PROPOSED SUBCONTRACTOR REGARDING EQUAL EMPLOYMENT OPPORTUNITY
Project Name _____ PHFA Number _____ Name of Prime Contractor _____
INSTRUCTIONS
<p>This certification is required pursuant to Executive Order 11246 (30 C.F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.</p> <p>Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.</p>
SUBCONTRACTOR'S CERTIFICATION
NAME AND ADDRESS OF SUBCONTRACTOR (Include Zip Code)
<p>1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.</p> <p>_____ Yes _____ No</p>

2. Compliance reports were required to be filed in connection with such contract or subcontract.

_____ Yes _____ No

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.

_____ Yes _____ No _____ None Required

4. If the answer to item 3. is “No”, please explain in detail below or on a separate sheet.

CERTIFICATION:

The information above is true and complete to the best of my knowledge and belief.

NAME AND TITLE OF SIGNER (Please Type)

SIGNATURE

DATE

TABLE 1

PENNSYLVANIA GOALS EXECUTIVE ORDER 11246

Female Participation Goals

The goal for female participation is 6.9% statewide

Minority Participation Goals

REGION 1	REGION 2	REGION 3	REGION 4	REGION 5	REGION 6
Montgo 17.	Berks 2.5	Adams 2.2	Bedford 4.8	Armstron 4.8	Camer 0.7
	Bradfor 1.2	Cumberl 6.2	Blair 1.0	Butler 4.8	Clario 1.8
	Carbon 1.6	Dauphin 6.2	Cambria 1.3	Fayette 4.8	Clearfi 0.7
	Lackawa 0.6	Franklin 3.1	Centre 0.7	Greene 4.8	Crawfo 1.8
	Lehigh 1.6	Lebanon 3.1	Clinton 0.7	Indiana 4.8	Elk 0.7
	Luzerne 0.6	Perry 6.2	Columbia 0.5	Westmor 6.3	Erie 2.8
	Monroe 0.6		Fulton 3.1		Forest 1.8
	Northam 1.6		Huntingdo 3.1		Jeffers 0.7
	Pike 17.		Juniata 3.1		Lawre 6.7
	Schuylki 14.		Lycoming 1.0		McKea 6.3
	Sullivan 0.7		Mifflin 3.1		Mercer 6.7
	Susqueh 1.1		Montour 0.7		Potter 6.3
	Tioga 1.2		Northumbe 0.7		Venan 1.8
	Wayne 0.5		Snyder 0.7		Warre 1.8
	Wyomin 0.5		Somerset 1.3		
			Union 0.7		