



**INVITATION TO BID**

**Solicitation No. 5207  
Volume I**

**PROJECT MANUAL  
for  
CEDARVALE VILLAGE PLUMBING AND DRAIN REPLACEMENT**

**Seattle Housing Authority  
190 Queen Anne Avenue North  
Seattle, WA 98109-5002**

**Bid Submittal Deadline:  
Tuesday, February 18, 2020 by 1:00 PM**

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00005  
PROJECT DIRECTORY**

**OWNER:**

Seattle Housing Authority  
190 Queen Anne Ave N  
P.O. Box 19028  
Seattle, Washington 98109-1028

**CONTACT:**

Greg Antoine, Senior Contract Administrator  
Tel: 206-615-3394  
Fax: 206 615-3410

**PROJECT ADDRESSES:**

Cedarvale Village  
11219 Roosevelt Way NE  
Seattle WA 98125

**ARCHITECT:**

N/A

**END OF SECTION 00005**

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#### NOTES:

*Forms preceded by an “\*” (asterisk sign) must be completed and returned with Bid submittal.*

*Forms preceded by a “+” (plus sign) must be completed and returned if Bidder claims to be a HUD Section 3 firm.*

# **VOLUME 1**

# **BIDDING REQUIREMENTS**

### 1.01 SUMMARY OF THE WORK

- A. This section is intended to summarize the Contractor's responsibilities for the Project. The Project Manual and Drawings provide a complete description of the Work and shall govern.
- B. The Contractor will be required to furnish and install, through self-performance or the management of Subcontractors, the following elements of work, including but not limited to: Plumbing and Drain Line Replacement. See Section 010100 General Description, 1.04 General Scope Summary.
- C. This Invitation to Bid will include and require a total bid price for the project, and assurances of Contractor experience and capacity to adequately contract and perform the work.
- D. Responding to this Invitation to Bid, the Bidder acknowledges that for any contract signed as a result of this Invitation to Bid, the authority to proceed with the work is contingent upon availability of funding.
- E. Work shall be Substantially Complete and ready for final payment in accordance with the contract documents within 180 consecutive calendar days from the effective date of the Notice to Proceed.

### 1.02 PROJECT LOCATION

Cedarvale Village, 11219 Roosevelt Way NE, Seattle WA 98125.  
Properties may be owned by SHA or a Limited Partnership of which SHA is managing general partner.

### 1.03 ESTIMATE

This project cost is estimated between \$120,000.00 and \$180,000.00.

### 1.04 BID SUBMITTAL

- A. Sealed bids must be received for this project by the Seattle Housing Authority (SHA) at its office at 190 Queen Anne Avenue North (5th Floor, Reception), Seattle, Washington 98109, no later than **1:00 PM, on Tuesday, February 18, 2020**. Bids received after 1:00 PM will not be accepted or read. Faxed bids will not be accepted.

- B. The outside of all bid envelopes must be clearly labeled with the following information: "Bid Documents," name of project, date and time of opening, the bidder's business name, address, and telephone number.

### **1.05 PRE-BID MEETING/SITE VISIT**

Two pre-bid site visits will be held for this project.

The first pre-bid site visit will be held at **9:00 AM**, on **Thursday, January 30, 2020**.

The second pre-bid site visit will be held at **9:00 AM**, on **Wednesday, February 5, 2020**.

Each potential bidder will be taken through the project site. Prospective bidders should meet at Cedarvale Village, 11219 Roosevelt Way NE.

All prospective bidders are strongly encouraged to attend. Non-attendance on the part of the Bidder shall not relieve the bidder of any responsibility for adherence to any of the provisions of the bid documents or any Addenda.

### **1.06 PLANS, SPECIFICATIONS, ADDENDA, AND PLANHOLDER'S LIST**

Plans, specifications, addenda, and planholders' list for this project will be available on-line through Builder's Exchange of Washington, Inc. at <http://www.bxwa.com>. Access to project bid documents is provided to Prime Bidders, Subcontractors, and Vendors by going to [www.bxwa.com](http://www.bxwa.com) and clicking on "Posted Projects", "Public Works", and "Seattle Housing Authority". This online plan room provides Bidders with fully usable online documents with the ability to: download, view, print, order full/partial plan sets from numerous reprographic sources, and a free online digitizer/take-off tool. It is recommended that Bidders "register" in order to receive automatic e-mail notification of future addenda and to place themselves on the "Self-Registered Bidders List". Bidders that do not register will not be automatically notified of addenda and will need to check the on-line plan room for addenda issued on this project. For assistance with access or registration, contact Builders Exchange at (425) 258-1303.

### **1.07 PLAN CENTERS/PROJECT DOCUMENTS**

A copy of the Drawings and Project Manual may be viewed at the Seattle Housing Authority's office. The following Plan Centers were also notified of the opportunity. Associated Contractors of Washington, Builders

Exchange of Washington, Contractors Resource Center, Reed  
Construction Data.

### **1.08 TECHNICAL QUESTIONS**

Technical questions regarding this project must be received in writing no later than **1:00 PM, on Monday, February 10, 2020** and emailed to [purchasing@seattlehousing.org](mailto:purchasing@seattlehousing.org).

### **1.09 BID GUARANTY:**

Each bid must be accompanied by a surety company bid bond, or a certified or cashier's check payable to the order of the Seattle Housing Authority for a sum not less than five percent (5%) of the total amount of the bid.

### **1.10 PREVAILING WAGES**

The General Contractor and all subcontractors will be required to pay prevailing wages pursuant to the Wage Determination which is included in Section 00830. The General Contractor and all subcontractors will be required to comply with all regulations and requirements of the Wage Determination. L&I approved Statement of Intent to Pay Prevailing Wages form(s) and Affidavit(s) of Wages Paid form(s) are required for every contractor performing work. For federally funded projects, the intent(s) and affidavit(s) must include the federal exemption language "Project is exempt from State Prevailing Wage requirements based on the Housing Act of 1937 and 24 CFR 965.101. Workers will be/was paid in accordance with Davis Bacon wage requirements. Beginning January 1, 2020, weekly certified payroll reports are required to be filed online with the WA State Department of L&I at least once a month for all public works projects. This requirement was added to the prevailing wage laws within RCW 39.12.120.

Successful Bidder will be required to submit Weekly Certified Payrolls to Seattle Housing Authority.

### **1.11 RESERVED FOR ELECTRONIC CERTIFIED PAYROLL SUBMISSION AND SOCIAL EQUITY REPORTING**

The Owner has implemented a Web-based Labor Compliance Software Reporting System to enable online submission of certified payrolls as well as social equity reporting. The Contractor and all subcontractors will attend Owner provided training and will be required to use this web-based software reporting system for the submission of its certified payrolls and social equity reports.

The Contractor and all subcontractors will be required to utilize this web-based software reporting system to enter payroll information and submit payrolls on-line. The General Contractor is responsible for compliance of all subcontractors regardless of tier.

**1.12 CONTRACT PAYMENTS:**

The Owner's preferred method of contract payment is through its Bank of America epayables program. If the Contractor enrolls in the program, payments will be made to the Contractor electronically through a Visa credit card. Benefits for using this method include reduced labor costs associated with the processing of checks and enhancing cash flow by eliminating float time associated with the mailing of checks. Please note, as the program utilizes the Visa/Mastercard credit card processing system, transactions going through this program have the same fees associated with it as any other credit card payment. The Contractor is responsible for those fees. To learn more about the program, please click here or copy and paste the following URL into your browser: [www.bankofamerica.com/epayablesvendors](http://www.bankofamerica.com/epayablesvendors). For new vendors, the Owner will automatically send an enrollment form upon contract award.

**1.13 COMMITMENT TO DIVERSITY**

SHA is an Equal Employment Opportunity Employer, and strongly encourages minority-owned and women-owned businesses, socially and economically disadvantaged businesses, HUD Section 3 businesses, and small businesses to submit bids or to participate as subcontractors and suppliers on SHA contracts.

**1.14 RIGHTS RESERVED**

SHA reserves the right to cancel this invitation to bid, to waive as informality any irregularities in bids, to reject any and all bids, and accept the lowest responsive bid from a qualified and responsible bidder.

**END OF SECTION 00020**



## **U.S. Department of Housing and Urban Development**

Office of Public and Indian Housing

# **Representations, Certifications, and Other Statements of Bidders Public and Indian Housing Programs**

## Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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13. Bidder's Signature

#### 1. **Certificate of Independent Price Determination**

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

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[insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form

provided by the PHA/ IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

## 2. 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 a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

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

(2) [ ] has, [ ] 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 answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA 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.

## 3. 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 signing 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.

#### 4. 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, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

#### 5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

- (1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,
- (2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be

terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

#### 6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

#### 7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/offer that it --

(a) [ ] is, [ ] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [ ] is, [ ] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and

operate the business.

(c)  is,  is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

Black Americans

Asian Pacific Americans

Hispanic Americans

Asian Indian Americans

Native Americans

Hasidic Jewish Americans

**8. Indian-Owned Economic Enterprise and Indian Organization Representation**

(applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a)  is,  is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b)  is,  is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe,

band, group, pueblo, or community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

**9. Certification of Eligibility Under the Davis-Bacon Act** (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

**10. Certification of Nonsegregated Facilities** (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its

establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

**Note:** The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

**11. Clean Air and Water Certification**

(applicable to contracts exceeding \$100,000)

The bidder certifies that:

- (a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:
- (b) The bidder will immediately notify the

PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

**12. Previous Participation Certificate**

(applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [ ] is, [ ] is not included with the bid.

**13. Bidder's Signature**

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

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

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Address)

**END OF SECTION 00110**

**SECTION 1 BID REQUIREMENTS AND CONDITIONS**

1.01 Responsible Bidder

A. The Seattle Housing Authority (hereinafter "Owner") will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the Owner will consider such matters as the bidder's:

1. Integrity;
2. Compliance with public policy and bid requirements;
3. Record of past performance; and
4. Financial and technical resources (including construction and technical equipment).

B. Before a contract is awarded, the bidder may be asked to submit a statement or other documentation regarding the items in paragraph A above. A bidder's failure to provide the requested information will render the bidder non responsible and ineligible for award of the contract.

C. As provided in RCW 39.04 or 2 CFR 200, a bidder must meet the following responsibility criteria:

1. At the time of bid submittal, have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of the bid submittal;
2. Have a current Washington Unified Business Identifier (UBI) number;
3. If applicable:
  - Have Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required in Title 51 RCW;
  - Have a Washington Employment Security Department number, as required in Title 50 RCW;
  - Have a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
  - Electrical Contractor License, if required by Chapter 19.28 RCW
  - Elevator Contractor License, if required by Chapter 70.87 RCW
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3).
5. Has not more than one violation of the off-site, prefabricated, non-standard, project specific items reporting requirements of RCW 39.04.370. (Applicable until December 31, 2013)
6. Has not been debarred, suspended, or otherwise ineligible to contract with SHA and is not included on the Excluded Parties List System (EPLS) on GSA's SAM (System for Award Management)

<https://www.sam.gov/portal/public/SAM/> or the Department of Housing and Urban Development's "Limited Denial of Participation" list. This requirement also applies to the Bidder's principals.

7. Have completed training requirements under RCW 39.04.350 and RCW 39.06.020 before bidding on public works projects as determined by the Washington State Department of Industries OR have been in business with an active Unified Business Identifier (UBI) number for 3 or more years AND have performed work on 3 or more public works projects.
- D. As required by RCW 39.06.020, bidders must verify responsibility criteria for each first tier Subcontractor. A Subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include confirming that each Subcontractor, at the time of Subcontract execution, meets the responsibility criteria including possession of an electrical Contractor's license if required by RCW 19.28, and an elevator Contractor's license if required by RCW 70.87.
- E. If Owner finds a bidder to be not responsible, Owner will provide, in writing, the reasons for the determination. The bidder may appeal the determination by following the process described in subsection 3.11 below. If the final determination affirms the finding that the bidder is not responsible, Owner will not execute a contract with any other bidder until two (2) business days after the final determination is sent by Owner to the bidder determined to be not responsible.

## 1.02 EXAMINATION OF CONTRACT DOCUMENTS

- A. The bidder shall verify that all documents, upon which the bidder is basing its bid, are full and complete with no missing pages, sheets, or unintentional blank spaces, and that the bidder has received all addenda issued prior to the bid opening date.
- B. Each bidder shall thoroughly examine the Bid Documents and strictly comply with all instructions and provisions contained therein.
- C. The submission of a bid shall constitute an acknowledgement upon which the Owner may rely that the bidder has thoroughly examined, and is familiar with, the Bid Documents and has reviewed and inspected all applicable federal, state and local statutes, ordinances, regulations, environmental assessments or impact statements relating to the work, and all permits that have been applied for or issued pertaining to the Work.
- D. A bidder's failure, for any reason, to receive, examine, or understand any of the Bid Documents, statutes, ordinances, regulations, or permits shall not relieve the bidder from any obligations with respect to the bid or to the



contract. Bidders bear full responsibility for any errors or misunderstandings in its estimating and preparing the bid.

### 1.03 INSPECTION OF WORK SITE

The construction site is available for bidders' inspection. Bidders who fail to inspect the work site do so at their risk and peril.

### 1.04 EXPLANATIONS AND INTERPRETATIONS TO BIDDERS

- A. Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request the explanation by the time period specified in the Bid Documents. Requests must be submitted in writing. The only oral clarifications that will be provided will be those related to bid solicitation procedures. No other oral explanation or interpretation will be provided or may be relied upon by bidders for any reason. Any information given a prospective bidder concerning this solicitation that is necessary for submitting bids, or that would prejudice other prospective bidders is not disclosed, will be furnished promptly to all other prospective bidders as a written amendment to the solicitation.
- B. Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

### 1.05 ADDENDA

- A. If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- B. Bidders shall acknowledge receipt of any addenda to this solicitation:
  - 1. by signing and returning the addenda,
  - 2. by identifying the addendum number and date on the Bid Form, or
  - 3. by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The Owner must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any addenda will result in rejection of the bid if the addenda contained information which substantively changed the Owner's requirements.
- C. Addenda will be posted on the website(s) specified in the Bid Documents as well as on file in the offices of the Owner. It will not be emailed to contractors.

### 1.06 SOCIAL EQUITY

- A. GENERAL: The Owner's social equity policies and goals for employment and contracting identify key objectives that Owner will promote and encourage in

this ITB. Provisions of these Bid Documents related to social equity policies and goals include, but are not limited to Sections 00200, 00700, 00800, and 00875, if applicable. Bidders shall carefully review all provisions in the Bid Documents and take such provisions into account when preparing and submitting their bids, including the Community Participation Plan requirements and Community Workforce Agreement (CWA) as applicable.

- B. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION:** It is the policy of the Owner that no one contracting with the Owner shall deny any person, on the basis of race, creed, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, Vietnam-era veteran status, disabled veteran status, political affiliation, or the presence of any sensory, mental or physical disability in an otherwise qualified disabled person the benefits of, or exclude any person from participation in, the award and performance of any work under contracts and agreements awarded by the Owner, and that everyone doing business with the Owner shall afford equal, non-discriminatory opportunities to potential subcontractors, subconsultants, and suppliers on contracts and agreements awarded by the Owner.

It is the policy of the Owner that practices of employment discrimination against any person on the basis of race, creed, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, Vietnam-era veteran status, disabled veteran status, political affiliation, or the presence of any sensory, mental or physical disability in an otherwise qualified disabled person are prohibited. The Owner encourages bids from firms that demonstrate a commitment to equal employment opportunity and bids from firms that employ a workforce that reflects the region's diversity.

- C. EMPLOYMENT AND TRAINING:** The Owner is committed to maximizing employment and training opportunities. This commitment includes a commitment to ensuring both formal and on-the-job training and work experiences for women and minorities and Section 3 eligible persons.
1. **APPRENTICE UTILIZATION:** For contracts where the Owner's estimate is \$1,000,000.00 or more or for contracts covered by the Owner's CWA, the Apprentice Utilization Goal is 15% of total contract labor hours and applies as set forth in Section 00800 or 00875, if applicable. The bidder, by submitting a bid certifies that, if awarded the contract, it shall make good faith efforts to locate, qualify and help increase the skills of apprentices on the Project and comply with the apprenticeship provisions of the Contract.
  2. **EMPLOYMENT OF WOMEN AND MINORITIES:** The Owner has established employment goals for the workforce of the Project of not less than 21 percent minorities and 20 percent women, with an employment subgoal of 4.5 percent for minority women.
  3. **SECTION 3 EMPLOYMENT:** The Owner has established, as a goal that 100% of all new hires for the Project shall be Section 3 eligible persons.

The bidder, by submitting a bid certifies that, if awarded the Contract, it will make good faith efforts to locate and provide first priority to Section 3 eligible persons in filling new hire positions on the Project.

4. If a CWA applies to the Project, additional or other requirements for employment and training may apply as outlined in Section 00875, Paragraph 1.09, if applicable.
5. Each bidder shall affirm its intent to utilize good faith efforts to comply with these provisions through the submission of the applicable Community Participation Plan form contained in Section 00330.

**D. PARTICIPATION BY SMALL BUSINESSES, SECTION 3 BUSINESSES, AND WOMEN AND MINORITY BUSINESSES:**

1. The Owner promotes and encourages small business participation, which also includes Section 3 and women and minority owned businesses (WMBEs). The Owner encourages bids that involve such participation as prime contractors, joint venture partners, or subcontractors, including, lower-tier subcontractors. Such participation, however, is not required to respond to this solicitation. Any goals that the Owner has established for small business /WMBE/Section 3 business participation are specified in Section 00800 or Section 00875, if applicable.
2. Each bidder shall make good faith efforts to reach out to such businesses to assure participation by these firms and shall provide the Owner with documentation of its efforts through the submission of the applicable Community Participation Plan form, contained in Section 00330. The Owner will evaluate the Community Participation Plan as part of its Bidder Responsibility Review. Examples of good faith efforts are outlined in Section 00800 or Section 00875, if applicable.
3. Section 3 Business Preference: As part of its Section 3 policy, the Owner provides a preference to Section 3 businesses when awarding contracts based on an ITB, regardless of funding source, as described below:  
**NOTE:** This preference shall not apply to contracts awarded based on a Request for Competitive Proposal method.

If the bidder claims to be a Section 3 business on the Section 3 Business Certification form submitted with the bid, and the bid of the Section 3 business exceeds the low bid by no more than 10%, the Owner will conduct an investigation to determine whether the business actually qualifies as a Section 3 business. If the bidder qualifies, the Owner will award the contract to the Section 3 business at the price bid by the Section 3 business. In submitting a bid, the bidder agrees to provide any information required by the Owner to determine whether the business qualifies as a Section 3 business. A business may qualify as a Section 3 business by meeting one of the following criteria:

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00200  
INSTRUCTIONS TO BIDDERS**

Region/Area	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
King and Snohomish Counties	\$ 56,200	\$64,200	\$ 72,250	\$ 80,250	\$ 86,700	\$ 93,100	\$ 99,550	\$ 105,950
Pierce County	\$ 41,800	\$ 47,800	\$ 53,750	\$ 59,700	\$ 64,500	\$ 69,300	\$74,050	\$ 78,850

- a) At least 51% of the business is owned by Section 3 qualified persons as defined in item 1.04.1(A) and meet the prescribed income limitations based on family size as shown in the table below:
  
- b) 30% or more of the business' permanent, full-time employees (core employees within the last 12 months) are Section 3 qualified persons as defined in item 1.04.1(A) and meet the prescribed income limitations based on family size as shown in the table above.
  
- c) The business makes a commitment to subcontract with Section 3 businesses for more than 25% of the dollar amount of all subcontracts to be awarded by the business. Prior to award, such businesses must submit a plan and the supporting documents describing how the subcontracting commitment will be met. The Owner will evaluate the plan and documents submitted and determine whether the bidder is likely to attain the subcontracting percentage. The Owner will monitor the Section 3 business' compliance with their subcontracting commitment. If the successful bidder fails to fulfill the Section 3 subcontracting commitment, the Owner shall consider it a material breach of the contract which may result in the Owner taking any or all of the following actions: (1) demanding specific performance of the subcontracting plan; (2) withholding from contract payments the dollar amount of any or all subcontracts that were to have been awarded to Section 3 businesses or such lesser amount as may be appropriate; (3) withholding any liquidated damages that the Owner may incur as a result of the successful bidder's failure to comply with its Section 3 commitment and subcontracting plan; and (4) declaring the successful bidder ineligible to compete for, or participate in any contract for a period of five years from the acceptance date of the contract in which the Section 3 subcontracting commitment was made.

4. The Section 3 contract clause contained in Section 00700, Part 11, will be included as part of the Contract to be executed based on this ITB.

**1.07 CONTRACT COMPLIANCE REQUIREMENTS**

- A. Monthly Community Participation Plan Reporting: As described in this Section, Section 00800, or Section 00875, the Contractor shall report on a monthly basis its progress in achieving its goals as identified in its Community Participation Plan or other related documents, such as documents resulting from a Community Workforce Agreement, if applicable, concerning the social equity requirements established for the Project.
- B. Monthly Community Participation Plan Meetings: As described in Section 00800 or Section 00875, the Contractor and select subcontractor(s) may be required to attend monthly meetings at the Owner's request to discuss implementation of the Community Participation Plan. Some of these meetings will be held after business hours, such as the Owner's monthly Section 3 Advisory Committee meeting which is held every month and is attended by members of the community and business representatives. Other meetings may be required as a result of other related requirements, such as a Community Workforce Agreement, if applicable.

**1.08 PREVAILING WAGES**

- A. The Work is subject to prevailing wage requirements. Prevailing wage requirements vary depending on the funding source(s) of the project.
- B. If the Project is non-federally funded, the wage requirements of RCW Chapter 39.12, RCW Chapter 49.28, as amended or supplemented apply. These wage requirements are specified in Part 5 of the General Conditions for Construction.
- C. If the Work is federally funded, either the federal Davis-Bacon Act and Related Regulations will apply or the HUD Determined Non-Routine Maintenance Wage Rates and provisions will apply. These wage requirements are specified in Part 11 of the General Conditions for Construction.
- D. Copies of the applicable Wage Decision established for the Project are included in Section 00830.
- E. Bidders shall examine and be familiar with such requirements as well as any requirements included in subsections 1.06 and 1.07 of this Section as well as any requirements stated in Sections 00700 and 00800 concerning the Owner's social equity programs. No claim for additional compensation will be allowed that is based upon lack of knowledge or error in interpretation of any such requirements by the Contractor.

**SECTION 2 BID PREPARATION AND SUBMISSION**

**2.01 FORM OF BID**

- A. Bids shall be made on the Bid Form provided in Section 00300.
- B. The Bid Form shall be completed in its entirety and prices entered for each Bid item and a total in the extended price column.
- C. If a CWA applies to a Project, bidders must submit as part of their bid a completed and signed Letter of Assent. See Section 00875 for more information.
- D. Bids that contain omissions, erasures or irregularities of any kind may be deemed nonresponsive and rejected. Any qualification, addition, limitation or provision attached to or contained in a bid may render the bid non-responsive.
- E. No verbal, facsimile, email, telegraphic, or telephonic bids or modifications will be considered.
- F. The bid shall be signed and the bidder's name typed or printed on the bid sheet or each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid.
- G. The bid shall be signed by a person authorized to legally bind the bidder.
- H. If the bid is made by a partnership or joint venture, it shall contain the names of each partner, the mailing address of the partnership or joint venture, and shall be signed in the firm name, followed by the signature of the person signing, indicating that person's position in the partnership or joint venture. If the bid is made by a partnership or joint venture, a certified copy of the resolution or agreement empowering such representative to execute the bid and bind the firm, partnership or joint venture shall be furnished upon request to Owner.
- I. A bidder, upon request of, shall provide copies of Articles of Incorporation, partnership or joint venture agreements, and any other documents evidencing the legal status of the bidder and the authority of the officer signing the bid and executing the Contract.
- J. If the bid is signed by an agent of the bidder, the bid shall be accompanied by evidence of the agent's authority to bind the bidder.
- K. If the Bid Documents require bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders shall insert

the words “No Bid” in the space provided for any items on which no prices are submitted.

## 2.02 SUBMISSION AND RECEIPT OF BIDS

- A. Bidders shall deliver bids no later than the date and time specified in the Advertisement for Bids or Section 00020. If delivering to the **Physical Address**: The Housing Authority of the City of Seattle, 190 Queen Anne Avenue North, Fifth Floor Reception, Seattle, Washington, 98109. If delivering to the **Mailing Address**: The Housing Authority of the City of Seattle, P.O. Box 19028, Seattle, WA 98109-1028.
1. The Bid submittal shall be submitted in a sealed envelope and clearly marked with the words “BID DOCUMENTS” the Invitation to Bid (“ITB”) number, any project or identifying number, the Bidder's firm name, address, and telephone number and the date and time for receipt of bids.
  2. Bids that are properly submitted will be publicly opened and read aloud.
- B. Owner will not accept bids after the time specified for receipt of bids in the Bid Documents. In the event that the bid submittal is delivered after the time specified, the bid will not be accepted and the submittal envelope will not be opened.
- C. Owner will not be liable for delays in delivery of bids to due to handling by the U.S. Postal Service, or any other type of delivery service. Owner will keep bids unopened until the time of the bid opening.
- D. Owner reserves the right to postpone the date and time for submittal of bids at any time prior to the bid opening or to delay or reschedule the bid opening for its own convenience.
- E. The time stamp clock located at the Reception Desk on the fifth floor of the Reception office at 190 Queen Anne Ave North, Seattle, Washington 98109 is Owner’s official bid clock for this ITB. Timeliness of bid submittals will be determined using only this clock.
- F. Owner reserves the right to cancel, revise, or amend this ITB and associated Bid Documents up to the time specified for receipt of bids in the Bid Documents.

## 2.03 TOTAL BID PRICE

The total bid price, as shown on the Bid Form shall include all costs for the performance and completion of the Work and fulfillment of the Contract, including but not limited to, applicable taxes imposed by law, furnishing all labor, materials, equipment, tools, transportation, plant and other facilities, and all management,

superintendence, services, field design, and all operations necessary to perform and complete the Work within the Contract Time.

## 2.04 TAXES

### A. Retail Sales Tax:

1. Purchases of Labor. Unless otherwise specified on the Bid Form, the Contractor's bid price shall not include Washington State retail sales tax or the compensatory use tax for labor or services in the performance of the Contract.
2. Purchases of Materials. Unless otherwise specified on the Bid Form, the Contractor's bid price should include the retail sales tax or the compensatory use tax on material only. (In accordance with Chapter 90, Laws of 1975, First Extra Session, all materials purchased by a contractor in the performance of a contract let by the Owner are subject to Washington State retail sales tax or the use tax, effective July 15, 1975). All taxes imposed by law shall be included in the total bid price, unless otherwise specified on the Bid Form. The Contractor shall pay the WSST to the Department of Revenue and shall furnish proof of payment to the Owner if requested.

### B. Federal Excise Tax

The price quoted by the Contractor shall include all applicable Federal Excise Taxes. The amount of the excise tax will be deducted from the contract price by the Owner when tax refunds are permitted and authorized under applicable law. The Contractor shall show the amount of Excise Tax in its bid.

## 2.05 BID GUARANTY

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Certified checks and bank drafts must be made payable to the order of the Owner. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

## 2.06 BIDDER/SUBCONTRACTOR LIST



In compliance with RCW 39.30.060, for any public works contract estimated to cost one million dollars or more, each bidder shall complete and submit the Bidder/Subcontractor List form, Section 00420, naming those Subcontractors with whom the bidder, if awarded the Contract, will subcontract for performance of the Work of heating, ventilation and air conditioning; plumbing; and electrical, or to name itself for the Work. The bidder may list no more than one Subcontractor for each category of Work identified, unless Subcontractors vary with bid alternates, additives, or deductives, in which case the bidder must indicate on a separate Bidder/Subcontractor List which Subcontractor will be used for which alternate, additive, or deductive. Failure of the bidder to complete and submit the Bidder/Subcontractor List(s) as required shall render the bidder's bid non-responsive and, therefore, void.

Section 00420, the Bidder/Subcontractor List, must be submitted with the bid. Failure of the bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work shall render the bidder's bid nonresponsive and, therefore, void.

No changes shall be made to any Bidder/Subcontractor List following bid submittal.

## **2.07 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWAL OF BIDS**

- A. Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:
1. Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
  2. Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Owner that the late receipt was due solely to mishandling by the Owner after receipt at the Owner; or
  3. Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.
- B. Any modification or withdrawal of a bid is subject to the same conditions as in paragraph A of this provision. The modification may not disclose the original or revised bid amount, but only the amount of the modification. The Owner shall not be responsible for technical problems involved in the transmission and receipt of the facsimile modification or withdrawal.

- C. The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the Bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
- D. The only acceptable evidence to establish the time of receipt at the Owner is the time/date stamp of Owner on the proposal wrapper or other documentary evidence of receipt maintained by the Owner.
- E. The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph C of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.
- F. Notwithstanding paragraph A of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Owner will be considered at any time it is received and may be accepted.
- G. Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission or by e-mail received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

## 2.08 BID OPENING

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

### **SECTION 3 BID EVALUATION**

#### **3.01 CLAIM OF ERROR**

- A. In the event a bidder wishes to claim a material error in its bid, the bidder must submit the claim of error in writing to the Senior Contract Administrator named in the Owner's Bid Form, no later than twenty-four (24) hours after the bid submittal time or the claim will not be considered.
- B. The request must be a sworn affidavit under penalty of perjury that (i) states that the bid contains an error, (ii) describes the manner in which the error occurred, (iii) provides the amount of the intended price, (iv) has the original worksheets used in the preparation of the bid attached that demonstrates the error, (v) states that the bidder is requesting withdrawal of its bid and (vi) certifies that the worksheets are the originals used in the preparation of the bid. The Owner reserves the right to require the submittal of other bid records or information, as Owner may deem necessary to evaluate the claim of error.
- C. Any review by Owner of a bid or claim of error (including supporting evidence) creates no duty or liability on to discover any other bid error or mistake, and the sole liability for any bid error or mistake rests with the bidder.
- D. In the event the bidder demonstrates a material error in the Bid to Owner's satisfaction, Owner may allow that bidder to withdraw its bid, without prejudice.
- E. A low bidder who claims error on a public works project and fails to enter into a contract is prohibited from bidding on the same project if the project is re-bid.

#### **3.02 VALIDITY OF BIDS**

- A. All bids submitted in accordance with the Bid Documents shall be valid and binding on the bidder for a period of sixty (60) days following the bid submittal date.
- B. If the Contract has not been awarded within the specified time period, the bids will expire and will no longer be valid unless the bidder grants a written extension to Owner.
- C. Owner reserves the right to request extensions of the award period from the bidder. Upon such extension, bids and Bid Guaranties shall remain valid and enforceable until execution of the Contract.

**3.03. BID TABULATION**

- A. Owner reserves the right to correct mathematical errors that are obvious on the face of the bid.
- B. After bid opening, bids will be checked for correctness of bid item price extensions and the total bid price. A discrepancy between a bid item unit price and the extended amount of any bid item shall be resolved by accepting the bid item unit price as correct.
- C. The low bid shall be determined by the summation of bid item prices or bid item price extensions, corrected where necessary, plus any Additives, Alternates, and/or Deductives that the Owner decides to include in the Contract Award. Additives, Alternates, and/or Deductives may be selected in any order that the Owner chooses.
- D. The summation of extensions, corrected where necessary and including sales tax, if applicable, will be used for Award purposes, to fix the awarded Contract Sum, and the amount of the Payment and Performance Bonds.

**3.04. BID REVIEW:**

- A. The Owner will evaluate bids in response to this solicitation generally without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Owner considering only price and any price-related factors specified in the solicitation.
- B. Owner's evaluation will include evaluation of the bidder's good faith efforts as outlined in its Community Participation Plan and an evaluation of the bidder's compliance with the mandatory responsibility criteria specified in subsection 1.01 of this Section as well as any Supplemental Bidder responsibility criteria described in Section 00210. The documentation must demonstrate that the bidder is qualified to perform the work based on the firm's successful completion of past work and the firm's compliance with legal and contractual requirements. The Owner reserves the right to take whatever action it deems necessary to ascertain the ability of the bidder to perform the work satisfactorily.
- C. The Owner reserves the right to arrange the Bid Form with Alternate, Additive, and/or Deductive items, if such be to the advantage of the Owner. The bidder shall bid on all Alternates, Additives and Deductives in the Bid Form.

- D. In the case of tie low bids, award shall be made in accordance with the Owner’s written policy and procedures.
- E. Unless precluded elsewhere in the solicitation, the Owner may accept any item or combination of items bid.
- F. Reciprocal Preference for Resident Contractors:

A nonresident Contractor is a Contractor who does not have a physical office located in Washington at the time of bidding and is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts per RCW 39.04.380. The state of residence for a nonresident contractor is the state in which the contractor was incorporated or, if not a corporation the state where the contractor’s business entity was formed. For a public works bid received from a nonresident contractor from a state that provides an in-state percentage bidding preference, a Comparable Percentage Disadvantage (CPD) will be applied to the bid of that nonresident contractor. The CPD is the percent advantage provided by the nonresident contractor’s home state. For the purpose of determining the successful bidder, Owner will multiply the nonresident contractor bid amount by the CPD. The “bid amount” shall be the total of the base bid and all accepted alternate bid items. The CPD shall be added to the nonresident contractor bid amount to establish the Nonresident Disadvantage Total. The Nonresident Disadvantage Total shall be compared to the Washington state contractor bid amounts.

See example below:

**EXAMPLE:**

Alaska Nonresident Contractor Bid Amount	\$100,000
Multiplied by the Alaska CPD	x 0.05

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<b>Alaska CPD Total</b>	<b>\$ 5,000</b>
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Alaska Nonresident Contractor Bid Amount	\$100,000
Alaska CPD Total	+5,000

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<b>Nonresident Disadvantage Total</b>	<b>\$105,000</b>
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If the Nonresident Disadvantage Total is lower than all other Washington contractor bid amounts, the Alaska nonresident contractor is the low bidder and will be awarded a contract for the bid amount of \$100,000, provided that they are determined to be a responsive and responsible bidder.

If the Nonresident Disadvantage Total is higher than a Washington contractor bid amount, the Washington bidder will be awarded a contract for the bid

amount, provided that they are determined to be a responsive and responsible bidder.

### 3.05 BID EVALUATION CONFERENCE

- A. At Owner's request, a bidder shall attend a bid evaluation conference. Upon the Owner's request, the bidder shall bring to the conference any supporting bid related documents required by Owner for review. Owner reserves the right to conduct concurrent evaluations of multiple bids, including holding bid evaluation conferences with multiple bidders.
- B. By conducting a bid evaluation conference, Owner does not waive its right to make determinations regarding responsiveness of bids and responsibility of the apparent low bidder(s) or to reject any or all bids.

### 3.06 REJECTION OF BIDS

- A. Owner may reject any bid, or all bids for any reason, including, but not limited to the following:
  - 1. Any omission, erasure, or irregularity of the Bid Form;
  - 2. Any qualification, addition, limitation, or provision attached to or contained in the bid;
  - 3. Any bid that omits a price on any item on the Bid Form;
  - 4. Any of the bid item prices are excessively unbalanced, either above or below the amount of a reasonable bid, to the potential detriment of Owner. (A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work);
  - 5. Any bid accompanied by insufficient or irregular Bid Guaranty; or
  - 6. Any bid determined to be non-responsive by Owner.
- B. Owner reserves the right to waive informalities and irregularities related to the bidding process.

### 3.07 DISQUALIFICATION OF BIDDERS

A bidder may be deemed not responsible and be disqualified from Award if:

- 1. The bidder does not meet the bidder responsibility criteria in RCW 39.04.350(1);
- 2. The bidder appears on the Excluded Parties List System (EPLS) on GSA's SAM (System for Award Management) <https://www.sam.gov/portal/public/SAM/>
- 3. The bidder does not meet the Supplemental Bidder Responsibility Criteria, did not provide the completed and signed form or required documentation

- to evaluate the bidder qualifications, or fails to disclose or submits false or misleading information on the form or in the attached documentation;
4. More than one bid is submitted for the same project from a bidder under the same or different names;
  5. Evidence of collusion exists with any other bidder or potential bidder;
  6. An unsatisfactory performance record exists as shown by past or current Work for Owner, or for others, as judged from the standpoint of conduct of the Work, environmental or safety compliance records, workmanship, progress, or equal employment opportunity practices;
  7. The bidder failed to settle bills for labor or Materials on past or current contracts;
  8. The bidder has failed to complete a public Contract or has had a public Contract terminated for cause;
  9. The bidder has been convicted of a crime arising from a previous public Contract;
  10. The bidder is unable, financially or otherwise, to perform the Work;
  11. The bidder failed to meet the Social Equity Requirements;
  12. If applicable, the bidder failed to attend a mandatory pre-bid conference or site visit; or
  13. For any other reason deemed proper by the Owner.

### 3.08 PROPOSED SUBCONTRACTORS

Owner reserves the right to require a bidder, after bid opening, to submit a statement of experience with references for any proposed subcontractor(s). Owner may reject any subcontractor that is determined not to be responsible and require the bidder substitute that firm for a qualified firm.

### 3.09 COLLUSION

- A. By submitting a bid, the bidder represents and warrants that such bid is genuine and not collusive or a sham or made in the interest or on behalf of any person or bidder, and that the bidder has not, directly or indirectly, induced or solicited any other bidder to put in a sham bid, or any other person, firm or corporation to refrain from proposing, and that the bidder has not in any manner sought by collusion to secure to the bidder an advantage over any other bidder.
- B. If at any time it is discovered that a bidder or Contractor colluded with any other party or parties in presenting a bid or bid(s), then the bid or Contract, if awarded, shall be null and void, and the bidder or Contractor and its sureties shall be liable to Owner for all loss or damage which Owner may suffer thereby. Owner may advertise for a new Contract for the labor, supplies, materials or equipment called for in this Contract, and the rejected bidder or terminated Contractor shall be fully responsible for all costs to Owner of rebid, including any increase in the Contract Sum, and all costs, expenses, or other

damages arising out of the rejection of the bid or termination of the Contract.  
A rejected bidder or terminated Contractor is prohibited from submitting a bid.

### 3.10 PUBLIC DISCLOSURE

- A. Pursuant to RCW 42.56, et seq., Bids submitted under this ITB shall be considered public records and with limited exceptions will be available for inspection and copying by the public.
- B. Bidders shall specifically designate and clearly label as "CONFIDENTIAL" any and all materials or portions thereof which they deem to contain trade secrets or other proprietary information, which is exempt from public inspection and copying. The bidder shall provide the legal basis for the exemption to upon request.
- C. If a bid does not clearly identify the "CONFIDENTIAL" portions; Owner will not notify the bidder that its bid will be made available for inspection. If a request is made for disclosure of material or any portion marked "CONFIDENTIAL," Owner will determine whether the material should be made available under the law.
- D. If Owner determines that the material is not exempt and may be disclosed, Owner will notify the bidder of the request and allow the bidder ten (10) business days to take appropriate action pursuant to RCW 42.56.540. If the bidder fails or neglects to take such action within said period, Owner may release the portions of the bid deemed subject to disclosure.
- E. To the extent that Owner withholds from disclosure all or any portion of bidder's documents at bidder's request, bidder shall agree to fully indemnify, defend and hold harmless from all damages, penalties, attorneys' fees and costs incurs related to withholding information from public disclosure.
- F. By submitting a bid, the bidder consents to the procedure outlined in this paragraph and shall have no claim against by reason of actions taken under this procedure.

### 3.11 PROTEST AND APPEAL PROCEDURES

- A. Definitions. As used in this provision: "Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract. "Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.
- B. Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from



Jena Richmond, Contracts & Procurement Manager  
Purchasing Division, Seattle Housing Authority  
190 Queen Anne Ave North  
P.O. Box 19028  
Seattle, WA 98109-1028

- C. All protests shall be resolved in accordance with the Owner's protest policy and procedures, copies of which are available on its website at [http://seattlehousing.org/business/guidelines/pdf/Procurement\\_Policies.pdf](http://seattlehousing.org/business/guidelines/pdf/Procurement_Policies.pdf)
- D. In accordance with Seattle Housing Authority's Procurement Policies and in accordance with RCW 39.04.350:
1. Any protest against the award of a contract based on an Invitation to Bid must be received by the Contracting and Procurement Manager no later than two full business days after the bid submittal deadline, or before award of the contract, whichever is later, or the protest will not be considered. Owner shall not execute a contract "with anyone other than the protesting bidder without first providing at least two full business days' written notice" of Owner's "intent to execute a contract for the project."
  2. Any appeal of a decision by Owner to reject a bid submitted in response to an Invitation to Bid must be received by the Contracting and Procurement Manager within two business days after being notified in writing of Owner's decision, or the appeal will not be considered.

## **SECTION 4     AWARD AND CONTRACT EXECUTION**

### **4.01    NOTICE OF AWARD**

A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

### **4.02    EXECUTION OF THE CONTRACT**

- A. Two originals of the Contract Form will be ready for signature by the successful bidder on the first business day following award, or shortly thereafter.
- B. The successful bidder shall sign and return to the Purchasing Division within seven (7) calendar days from the date of Notice of award the following documentation:
1. The two originals of the Contract form,

2. Acceptable evidence of insurance (see Part 2 of the General and Supplementary Conditions).
- C. The above time limit may be extended by mutual agreement between the Owner and the successful bidder.
- D. Letter of ESD needs to be provided to SHA to confirm the vendor is in good standing.

#### 4.03 FAILURE TO EXECUTE THE CONTRACT

- A. The bidder's bid guaranty will be forfeited if the successful bidder fails to:
  1. Execute the Agreement Form within the required time frame,
  2. Furnish satisfactory bond(s) and insurance within the required time frame;  
or,
  3. Refuses to enter into a Contract with the Owner.
- B. The Owner may then either award the contract to the next lowest responsible bidder or solicit new bids.

#### 4.04 PAYMENT AND PERFORMANCE BONDS

- A. Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance will be in the form of a performance and payment bond in a penal sum of 100 percent of the contract price.
- B. Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.
- C. Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the Contract.

- D. Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the Owner may grant based upon reasons determined adequate by the Owner, shall render the bidder ineligible for award. The Owner may then either award the contract to the next lowest responsible bidder or solicit new bids. The Owner may retain the ineligible bidder's bid guarantee.

#### 4.05 PRECONSTRUCTION CONFERENCE

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the Owner and its architect/engineer, and other interested parties convened by the Owner. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., prevailing wage and social equity provisions of the Contract, including the Community Workforce Agreement, if applicable). The Owner will provide the successful bidder with the date, time, and place of the conference.

#### 4.06 LABOR COMPLIANCE MANAGEMENT TRAINING

- A. The Owner has implemented a web-based Labor Compliance Software Reporting System to enable online submission of certified payrolls as well as social equity reporting. The Prime Contractor and all subcontractors will be required to utilize this web-based software reporting system to enter payroll information and submit payrolls on-line. The Prime Contractor is responsible for compliance of all subcontractors regardless of tier.
- B. SHA staff provides training to contractors and is available for questions during the project.
- C. There is no fee to a contractor to use Labor Compliance Software Reporting System. The contractor can manually enter its payroll data into the system or use a template provided by SHA to upload its payroll data. The template is available in the following formats: XML, Excel, Text and CVS.
- D. In addition to the preconstruction conference, the administrative staff of the successful bidder and its subcontractors (regardless of tier) who will be entering into the system certified payroll and other related information, including but not limited to Social Equity, shall be required to attend a training session at the Seattle Housing Authority Office at 190 Queen Anne Ave N., Seattle.

#### 4.07 NOTICE TO PROCEED

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00200  
INSTRUCTIONS TO BIDDERS**

After Owner executes the Contract, Owner will issue a written Notice to Proceed (NTP) stating the effective date on which the successful bidder shall commence the Work.

**END OF SECTION 00200**

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00300  
BID FORM**

Project Identification: Cedarvale Village Plumbing and Drain Replacement  
11219 Roosevelt Way NE  
Seattle WA 98125

Seattle Housing Authority

5th Floor Reception – Attn: Greg Antoine  
190 Queen Anne Ave North  
Post Office Box 19028  
Seattle, Washington 98109-1028

Bid From:

\_\_\_\_\_  
(Contractor (PRINT NAME))

\_\_\_\_\_  
(Individual: (PRINT NAME))

Pursuant to, and in compliance with the Invitation to Bid and other documents relating thereto, and subject to all conditions thereof, the undersigned hereby proposes and agrees to furnish all labor, materials, equipment and testing necessary to perform and furnish the Work as indicated in the Contract Documents, and in accordance with the terms and conditions of the Contract Documents.

In submitting this Bid, the Bidder represents that:

- A. This Bid will remain subject to acceptance for 60 days after the day of opening.
- B. The Owner has a right to reject this Bid.
- C. Bidder will sign and submit the Agreement with Bonds, Insurance, and other documents required by the bid documents within 7 calendar days after the date of Owner's Notice of Award per Section 200.4.02.
- D. Bidder has examined copies of all the Bidding Documents, and has visited the site and become familiar with the general, local, and site conditions.
- E. Bidder will ensure equal opportunity for employment and to engage in Affirmative Efforts in the solicitation of women and minorities, Section 3 residents, WMBE and Section 3 firms for participation on this Contract.
- F. By submission of its bid and the attached compliance certificate, Bidder represents that neither it nor its principals is presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00300  
BID FORM**

excluded from participation in this transaction by any federal department or agency. Where the Bidder is unable to certify to this statement, it shall attach an explanation to this bid. It further represents that by signing this bid that it will comply with the requirements regarding subcontracting, and the purchase of supplies or materials from firms or the firms' principals who are not debarred or otherwise disqualified from doing business with the Owner. The Bidder understands that it shall provide evidence of Bidder's eligibility and eligibility of its subcontractors upon the Owner's request. A signed certification of compliance for itself and for any of its subcontractors will be required on an annual basis if the Contract extends beyond one year in duration.

- G. Bidder is in compliance with all of the responsibility requirements under RCW 39.04.350, including, but not limited to: having a certificate of registration under RCW 18.27 prior to bidding; a UBI number; industrial insurance coverage if required under Title 51; an employment security number Title 50; and a state excise tax registration number under Title 82.
- H. The requirements imposed by Part 2, which waives, with respect to the Owner only, the Contractor's immunity under RCW Title 51, (Industrial Insurance) of the Revised Code of Washington.
- I. Bidder accepts the provisions of and represents that Bid is in accordance with the Contract Documents.

Bidder acknowledges receipt of Addenda(s) Number(s)\_\_\_\_\_.

Bidder acknowledges the requirement that Work will be Substantially Complete and ready for final payment in accordance with the General Conditions within 180 calendar days after Notice to Proceed.

Bidder will complete the Work in accordance with the Contract Documents for the following price.

	Basic Bid TOTAL COST Including Sales and Use Tax (on materials only)	IDENTIFY WA. State Sales and Use Tax on Materials only.
TOTAL Lump Sum Price	\$ _____	\$ _____

**Retail Sales Tax / Compensatory Use Tax**

**\*\*Purchases of Labor.** Unless otherwise specified on the Bid Form, the Contractor's bid price shall not include Washington State retail sales tax or the compensatory use tax for labor or services in the performance of the Contract.

**\*\*Purchases of Materials.** Unless otherwise specified on the Bid Form, the Contractor's bid price should include the retail sales tax or the compensatory use

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00300  
BID FORM**

tax on material only. All taxes imposed by law shall be included in the total bid price, unless otherwise specified on the Bid Form. The Contractor shall pay the WSST to the Department of Revenue and shall furnish proof of payment to the Owner if requested. (In accordance with Chapter 90, Laws of 1975, First Extra Session, all materials purchased by a contractor in the performance of a contract let by the Owner are subject to Washington State retail sales tax or the use tax, effective July 15, 1975).

The following completed and signed documents are attached to and made a condition of this Bid:

1. Required Bid Bond
2. Required Forms:
  - A. U.S. Department of HUD "Representations, Certifications, and Other Statement of Bidders (Form HUD-5369-A)
  - B. Bid Form
  - C. Certificate as to Corporate Principal
  - D. Seattle Housing Authority Vendor Fact Sheet
  - E. HUD Section 3 Business Certification and Resident Employment Plan
  - F. Suspension and Debarment Compliance
  - G. Non-Collusive Affidavit
  - H. Environmental Regulation Compliance
  - I. SSB5301-Certification of Compliance with Wage Payment Statutes
  - J. HUD 2530-Previous Participation Certification

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00300  
BID FORM**

SUBMITTED on: \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Bid From: \_\_\_\_\_  
(Firm Name)

Submitted by: \_\_\_\_\_  
(Print name)

Signature of Person Submitting Bid: \_\_\_\_\_  
(Sign name)

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

City:State:Zip: \_\_\_\_\_

Business Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Contractor's number for Washington Employment Security Department as  
required in Title 50: \_\_\_\_\_

**END OF SECTION 00300**



HOUSING AUTHORITY OF THE CITY OF SEATTLE

BID BOND

We, the undersigned,

\_\_\_\_\_  
(Name of Principal)

as PRINCIPAL, and

\_\_\_\_\_ as SURETY

are held and firmly bound unto the Housing Authority of the City of Seattle, hereinafter called the "Authority" , in the penal sum of \_\_\_\_\_ Dollars, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid, dated \_\_\_\_\_, 20\_\_\_\_\_, for \_\_\_\_\_

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after the said opening, and shall within the period specified therefore, or, if no period be specified within ten (10) days after acceptance of the bid, give bond with good and sufficient surety or sureties as may be required, for the faithful performance and proper fulfillment of such contract; or the failure to give such bond within the time specified, if the Principal shall pay the Authority the difference between the amount for which the Authority may procure the required work or supplies or both, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00320  
REQUIRED FORMS**

IN WITNESS WHEREOF, the above bonded parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

In presence of:

\_\_\_\_\_  
(Individual Principal) (SEAL)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Individual Principal) (SEAL)

\_\_\_\_\_  
(Business Address)

ATTEST:

\_\_\_\_\_  
(Corporate Principal)

\_\_\_\_\_  
(Business Address)

BY: \_\_\_\_\_ Affix  
Corporate Seal

ATTEST:

\_\_\_\_\_  
(SURETY)

\_\_\_\_\_  
(Business Address)

BY: \_\_\_\_\_ Affix  
Corporate Seal

\_\_\_\_\_  
(Power-of-attorney for person signing for surety company must be attached to bond.)

**END OF BID BOND**

**HOUSING AUTHORITY OF THE CITY OF SEATTLE**

**CERTIFICATE AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the  
\_\_\_\_\_ Secretary of the corporation named  
as Principal in the within bond; that \_\_\_\_\_,  
who signed the said bond on behalf of the Principal was then  
\_\_\_\_\_ of said corporation; that I know his/her  
signature, and his/her signature thereto is genuine, and that said bond was duly  
signed, and attested to, for and in behalf of said corporation by authority of its  
governing body.

(SIGNED) \_\_\_\_\_

**END OF CERTIFICATE AS TO CORPORATE PRINCIPAL**



## VENDOR FACT SHEET

**Return this Form TO:** Seattle Housing Authority, Purchasing Division,  
 ATTN: Greg Antoine  
 190 Queen Anne Ave N, P.O Box 19028, Seattle WA 98109-1028

<b>General Business Information:</b>				<b>For SHA Use Only:</b>	
Name of Business, Organization, or Name of Person (if payment is to an individual):				JDE Vendor No.	
Mailing Address for Payments:					
City:		State:	Zip Code:	E-Mail Address:	
Telephone No.:		Fax No.:		DUNS No.:	
Washington UBI No.:		City of Seattle Business License No.:		Washington Contractor's License No.:	
President/General Manager:		Principal products and/or services offered:			
<b>Type of Organization (check one):</b>					
Individual <input type="checkbox"/>	Sole Proprietor <input type="checkbox"/>	Partnership <input type="checkbox"/>	Corporation <input type="checkbox"/>	Governmental Agency <input type="checkbox"/>	Other _____ <input type="checkbox"/>
Employee Tax ID No. (TIN) or Social Security No. (if Individual):					
<b>Substitute IRS Form W-9 Certification:</b>					
<p><b>Under penalties of perjury, I hereby certify that the number shown on this form is my correct taxpayer identification number, <u>and</u> that I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, <u>and</u> I am a U.S. person (including a U.S. resident alien).</b></p> <p><b><u>Note:</u> The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.</b></p>					
<b>SIGN HERE →</b>		Signature of U.S. Person			Date

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00320  
REQUIRED FORMS**

<b>Ownership Status (check all that apply):</b>	<b>Racial/Ethnic Status (check one):</b>
<input type="checkbox"/> <b>MBE</b> (Minority-Owned Business Enterprise) <input type="checkbox"/> <b>WBE</b> (Women-Owned Business Enterprise) <input type="checkbox"/> <b>MWBE</b> (Minority / Women-Owned Business Enterprise) <input type="checkbox"/> <b>CBE</b> (Combination Business Enterprise) <input type="checkbox"/> <b>Small Business</b> <input type="checkbox"/> <b>HUD Section 3 Business</b>	<input type="checkbox"/> Caucasian (1) <input type="checkbox"/> African American (2) <input type="checkbox"/> Native American (3) <input type="checkbox"/> Hispanic American (4) <input type="checkbox"/> Asian/Pacific American (5) <input type="checkbox"/> Hasidic Jews (6)
<input type="checkbox"/> Certified by OMWBE (Washington State Office of Minority and Women's Business Enterprises) <input type="checkbox"/> Self-Identified (SHA may request a signed statement re: self-certification)	
<p><b>Method of Contract Payments:</b> As outlined on the reverse side of this form, for contracts over one million dollars, SHA's method of contract payments is through an electronic virtual credit card issued by SHA's e-payables vendor, Bank of America. Unless SHA grants a waiver, Vendors will receive an enrollment form from SHA following issuance of a contract.</p>	

<b>SIGN BELOW:</b>	
Signature of Authorized Representative of Vendor:	Date:
<p>By signing immediately above, the Vendor hereby represents the following:</p> <ul style="list-style-type: none"> <li>a) The Vendor certifies that to the best of its knowledge and belief, neither it, nor any person/principal or firm which has an interest in the Vendor's firm, is ineligible to participate in a SHA contract, purchase order, direct pay or other transaction, pursuant to the Certification of Eligibility provision specified in the Vendor Fact Sheet Instructions, or;</li> <li>b) The Vendor will comply with SHA's General Terms and Conditions applicable to Purchase Orders, if the Vendor will be supplying goods and/or services through an SHA Purchase Order.</li> </ul> <p>To obtain a copy of the General Terms and Conditions, call (206) 615-3379 or visit our Web site at <a href="http://seattlehousing.org/business/guidelines/pdf/Purchase_Order_Terms_Conditions.pdf">http://seattlehousing.org/business/guidelines/pdf/Purchase_Order_Terms_Conditions.pdf</a>.</p>	

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT  
Vendor Fact Sheet Instructions**

**SECTION 00320  
REQUIRED FORMS**

Thank you for your interest in doing business with the Seattle Housing Authority (SHA). We look forward to doing business with you. If you have any questions about completion of the Vendor Fact Sheet, please call us at (206) 615-3379.

In order for SHA to make payments to you or to procure goods or services from you, we need the information requested on the Vendor Fact Sheet, which also serves as a substitute IRS W-9 Form. The information about you will be entered into our computerized payment system and will allow us to make required reports to the Federal government about our business and payment transactions.

**Substitute IRS Form W-9 Certification:** In completing the Vendor Fact Sheet, you must sign the “Substitute IRS Form W-9 Certification” or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct taxpayer identification number to SHA, you must cross out the portion of the certification after the word “and” in line two, through the end of line five, before signing the form. Detailed instructions about IRS Form W-9 are included on the form, which may be obtained by calling our office at (206) 615-3379 or visiting the IRS web site at [www.irs.gov](http://www.irs.gov).

**Certification of Eligibility:** In order to do business with SHA, the Vendor must be eligible to:

- 1) Be awarded contracts by any agency of the U.S. Government, HUD, or the State in which this Contract work is to be performed;  
or,
- 2) Participate in HUD programs pursuant to 24 CFR Part 24.

The websites to verify eligibility of the firm and its principals are:

<https://www.sam.gov/portal/public/SAM/> and  
[http://portal.hud.gov/hudportal/HUD?src=/topics/limited\\_denials\\_of\\_participation](http://portal.hud.gov/hudportal/HUD?src=/topics/limited_denials_of_participation).

By signing the Vendor Fact Sheet, the Vendor understands that the certification of eligibility is a material representation of fact upon which reliance was placed when SHA agreed to enter into the transaction with the Vendor. SHA may require the Vendor to submit such certification on an annual basis depending on the terms of its contract or the frequency of its business transactions with SHA. If the Vendor subcontracts any portion of the work, the Vendor will be required to submit a similar certification of eligibility to SHA for any Vendor subcontracts. Any written contract executed between SHA and the Vendor shall include these provisions, which may also be referred to as Suspension/Debarment provisions.

**Contract Payments:** Unless SHA grants a waiver, its method of contract payment for contracts of one million or more is through its Bank of America epayables program. Payments will be made electronically through a virtual Visa credit card. Benefits for using this method include reduced labor costs associated with the processing of checks and enhancing cash flow by eliminating float time associated with the mailing of checks. To learn more about the program, please click here or copy and paste the following URL into your

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
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browser: [www.bankofamerica.com/epayablesvendors](http://www.bankofamerica.com/epayablesvendors). For new vendors, SHA will automatically send an enrollment form upon contract award. If you have questions about the program, please contact Brenda Mix, SHA's Accounts Payable Manager, at 206-615-3421 or [bmix@seattlehousing.org](mailto:bmix@seattlehousing.org).

**Small Businesses:** The Vendor Fact Sheet also requests information about whether your business is owned and controlled by women or minorities, and/or is a small business. The following are definitions of these terms for your use. This information provides valuable information to SHA in its efforts to ensure its contracting program meets its diversity objectives and requirements.

- **WMBE:** Minority and women-owned business enterprises must either be self-identified or certified by, the Washington State Office of Women's and Minority Business Enterprises (OMWBE) to be at least fifty-one percent owned by women and/or minority group members.
- **Small Business:** A small business means a business concern, including its affiliates, that is independently owned and operated, not an affiliate or subsidiary of a business dominant in its field of operation, and qualified as a small business under the criteria and size standards in 13 CFR 121. Furthermore, a business is considered small according to the Small Business Administration's established guidelines provided to such businesses.
- **HUD Section 3 Business:** A business that is owned 51% or more by a Section 3 qualified person, or where 30% or more of the permanent, full-time employees of the business are Section 3 qualified persons, or where the business can provide evidence of a commitment to subcontract in excess of 25% of the amount of all subcontracts to other Section 3 certified businesses. A Section 3 qualified person must live in the metropolitan statistical areas identified on SHA's Section 3 form and whose income level meets or falls below the stated income limits.

**END OF VENDOR FACT SHEET**

**SEATTLE HOUSING AUTHORITY**

**SECTION 3 BUSINESS CERTIFICATION**

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

**Section 3 Business Criteria:** Your business is eligible for Section 3 Certification if it meets any one of the following criteria. If your business meets one or more of these criteria, please circle the applicable criteria.

1. Fifty-one percent or more of your business is owned and managed by a Section 3 qualified person or persons. (See qualification guidelines below) A completed and signed Individual Certification form for each Section 3 qualified person or persons is required to be submitted.
2. Thirty percent or more of your permanent, full time employees are Section 3 qualified persons. (When seeking certification under this criteria, please submit a listing of all current, permanent, full-time employees, as well as a completed and signed Individual Certification form for each Section 3 qualified employee.)
3. You can provide evidence of a commitment to subcontract in excess of 25 percent of the amount of all subcontracts to Section 3 certified businesses. (When seeking certification under these criteria, please consult with the Section 3 Coordinator regarding the documentation to be submitted.)

**Section 3 Person Criteria:** A Section 3 qualified person must:

- 1) Be a City of Seattle Housing Authority public housing resident; or
- 2) Live in the metropolitan statistical area (MSA) covering King, Snohomish, and Pierce counties, and,
- 3) Earn no more than the following amounts for the respective MSA area:

Region/Area	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
King and Snohomish Counties	\$ 56,200	\$64,200	\$ 72,250	\$ 80,250	\$ 86,700	\$ 93,100	\$ 99,550	\$ 105,950
Pierce County	\$ 41,800	\$ 47,800	\$ 53,750	\$ 59,700	\$ 64,500	\$ 69,300	\$74,050	\$ 78,850



**Section 3 Statement:** Please check the appropriate box below.

- My business is eligible to be certified as a Section 3 business in accordance with the criteria circled above under Section 3 Business Criteria.
  
- My business is not a Section 3 business.

Signature:		Date Signed:
Name:	Title:	
Company Name:		
Address:		
Telephone Number:		

Note: If you certify above that your business is a Section 3 business, SHA will request documentation and additional information as may be reasonably required to certify whether your business qualifies as a Section 3 business.

## **Section 3 Resident Employment Plan**

Section 3 of the Housing and Urban Development Act of 1968 (hereinafter “Section 3”) requires SHA, to the greatest extent feasible, to provide employment opportunities to “Section 3 residents.” Section 3 residents include residents of SHA communities and other low income residents of the metropolitan statistical area (hereinafter “MSA”) covering King, Snohomish, and Pierce counties. SHA residents, preferably residents of the SHA community in which the work is to be done, are favored over other low-income residents of the MSA.

For construction contracts only:

- Each bidder is required to submit with their bid package a plan which will result in the hiring of Section 3 residents to perform the work contemplated by the bid. SHA has established a goal that 100% of all new hires be Section 3 Residents to the greatest extent feasible.
  
- At a minimum, the Contractor and its subcontractors shall advertise new positions created in order to perform the work called for herein and will post notices to the Contractor’s commitments under Section 3 in conspicuous places at the work site. In addition, the Contractor must notify each labor organization with whom it or its subcontractors have a

collective bargaining agreement or other understanding of these Section 3 commitments.

In order to fulfill its Section 3 obligations, the Contractor may work with service providers on site at various SHA communities including, but not limited to, Neighborhood House and the Employment Opportunities Center. The plan should specify the number of positions the Contractor expects will be created and what minimum qualifications and skills will be required in order to perform the positions. The plan, if applicable, should also address the Contractor's strategy for recruiting SHA residents for the available positions, which should include consultation with SHA's Section 3 Coordinator.

1. How many new positions do you expect this contract will require you to create?

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2. Describe each position and provide the name and provide the location of the person(s) taking applications for each such position.

---

---

3. What minimum skills will be required for each position?

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4. Please describe any training opportunities which the contract may create and any agreements concerning training you have.

---

---

5. How will you advertise these positions to SHA residents?

---

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If you have any questions about this form, please call  
Cary Calkins at (206) 588-4314.

**END OF SECTION 3 BUSINESS CERTIFICATION**

**INDIVIDUAL AFFIDAVIT ON FAMILY SIZE AND INCOME  
 FOR SECTION 3 RESIDENT CERTIFICATION**

*(Complete this form after certified payroll is submitted on Labor Compliance Management)*

An individual seeking preference in training and employment provided as a result of the Seattle Housing's Section 3 program<sup>1</sup> shall certify and submit evidence, if requested, that the person is a Section resident as defined by the Section 3 Person Criteria listed below:

**Section 3 Person Criteria:** A Section 3 qualified person must:

- 4) Be a City of Seattle Housing Authority public housing resident; or
- 5) Live in the metropolitan statistical area (MSA) covering King, Snohomish, and Pierce counties, and,
- 6) Earn no more than the following amounts for the respective MSA as follows:

Region/Area	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
King and Snohomish Counties	\$ 56,200	\$64,200	\$ 72,250	\$ 80,250	\$ 86,700	\$ 93,100	\$ 99,550	\$ 105,950
Pierce County	\$ 41,800	\$ 47,800	\$ 53,750	\$ 59,700	\$ 64,500	\$ 69,300	\$74,050	\$ 78,850

NOTE: Information provided on this form shall remain confidential and shall be used for certification and reporting purposes only. **If you have questions, please contact Cary Calkins at (206) 588-4314 or [cary.calkins@seattlehousing.org](mailto:cary.calkins@seattlehousing.org).**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Employer Name: \_\_\_\_\_

Hire Date (the hire date for the company, NOT the hire date for the project): \_\_\_\_\_

Position Title: \_\_\_\_\_ Wages: \_\_\_\_\_

1. **I am a resident in a Seattle Housing Authority property.** \_\_\_\_YES \_\_\_\_NO  
*(If Yes, please list the name of the property and skip Questions 2 and 3 and sign at the bottom.)*

Property Name: \_\_\_\_\_

<sup>1</sup> As authorized under the Housing and Urban Development Section 3 Act of 1968, as amended, and codified in 24 CFR Part 135.

2. I am currently in Seattle Housing Authority's Section 8 Program. \_\_\_\_ YES  
\_\_\_\_ NO

*(If Yes, please skip question 3 and sign at the bottom.)*

3. I am a participant in a HUD Youthbuild Program. \_\_\_\_ YES \_\_\_\_ NO

*(If Yes, please skip question 4 and sign at the bottom.)*

4. There are a total of \_\_ members in my family. The total number of deductions claimed on my Federal income tax return from last year was \_\_\_\_\_.

5. The total gross income for my family, from all sources, from all related family members, reflected on my Federal Income tax return for last year was \$ \_\_\_\_\_.

I hereby certify under penalty of perjury that the information above is true and correct.

---

Signature

Date

**END OF AFFIDAVIT ON FAMILY SIZE AND INCOME**

SEATTLE HOUSING AUTHORITY

SUSPENSION AND DEBARMENT COMPLIANCE CERTIFICATE FOR  
 CONTRACTOR

By signing below, the Contractor certifies that to the best of its knowledge and belief neither its firm nor any of its principals as named below are presently debarred, suspended, or have been declared ineligible or are excluded from participation in this transaction by any federal, state or local government.

**Contractor's Firm Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

	PRINCIPAL(S) Name(s)	Title(s)
1		
2		
3		
4		
5		

Contractor's Signature	Printed Name	Title	Date

**NOTE:** This requirement applies to the Contractor's firm as well as its principals. Principal is defined in the regulation (2 CFR 180.995) as follows:

- 1) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
- 2) A contractor or other person, whether or not employed by the participant or paid with Federal funds, who-
  - a) Is in a position to handle Federal funds;
  - b) Is in a position to influence or control the use of those funds; or,
  - c) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity require to perform the covered transaction.

The federal websites to verify eligibility include: <https://www.sam.gov/portal/public/SAM/> and [http://portal.hud.gov/hudportal/HUD?src=/topics/limited\\_denials\\_of\\_participation](http://portal.hud.gov/hudportal/HUD?src=/topics/limited_denials_of_participation).

**SEATTLE HOUSING AUTHORITY**

**SUSPENSION AND DEBARMENT COMPLIANCE CERTIFICATE FOR SUB-CONTRACTORS**

*The Prime Contractor may use this form if the Prime can verify that their Sub-Contractors named below, nor any of their principals are debarred, suspended or ineligible from involvement by an Federal, State or Local Government. If the Prime is unable to verify this information, the Prime must send the previous SUSPENSION AND DEBARMENT COMPLIANCE CERTIFICATE FOR CONTRACTOR form to each sub-contractor to be completed and returned.*

**Prime Contractor’s Name:** \_\_\_\_\_

certifies that neither any of the sub- contracting firms named below, nor any of its principals are debarred, suspended or ineligible from involvement by an Federal, State or Local Government. I understand that the Seattle Housing Authority (SHA) relies on this certification and I understand that I am obligated to submit the following to SHA:

- A certification for any new sub- contractor hired after submission of this certification.
- A renewal certification for every sub- contractor on the anniversary of the Contract execution date if the Contract Time extends beyond one year.

**(Note:** In lieu of this certification, the Prime Contractor may elect to submit a separate certification signed by each sub- contracting firm to SHA as evidence of sub- contractor eligibility. It is the Prime Contractor’s responsibility to initiate, obtain, and provide all such individual sub- contractor certifications to SHA.)

<b>Prime Contractor’s Signature</b>	<b>Printed Name</b>	<b>Title</b>	<b>Date</b>

**Sub- Contractor Firm Listing:** (If sub- contractors are not involved in the project, please enter NONE.)


If additional pages are necessary, copy this form to ensure signed statement precedes any listing of sub- contractors. Please contact Greg Antoine at 206-615-3394 or by e-mail at [Gregory.Antoine@seattlehousing.org](mailto:Gregory.Antoine@seattlehousing.org) if you have any questions regarding compliance with this requirement.

**END OF SUSPENSION AND DEBARMENT COMPLIANCE CERTIFICATE**

**NON-COLLUSIVE AFFIDAVIT**

State of Washington )ss  
County of King )

\_\_\_\_\_ who is a \_\_\_\_\_  
of the firm of \_\_\_\_\_

\_\_\_\_\_, being first  
duly sworn, on their oath, says that the bid herewith submitted is a genuine and  
not a sham or collusive bid, or made in the interest or on behalf of any person not  
therein named; and further states that the said bidder has or was not directly or  
indirectly induced or solicited by any bidder on the above work or supplies to put  
in a sham bid, or any person or corporation to refrain from bidding; and that said  
bidder has not in any manner sought by collusion to secure themselves an  
advantage over any other bidder or bidders, or to secure any advantage against  
the Seattle Housing Authority or any person interested in the proposed contract;  
and that all statements in said proposal or bid are true.

\_\_\_\_\_  
BIDDER  
(if individual)

\_\_\_\_\_  
PARTNER  
(if partnership)

\_\_\_\_\_  
OFFICER  
(if corporation)

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_.

My commission expires \_\_\_\_\_, 20\_\_\_\_\_.

**END OF NON-COLLUSIVE AFFIDAVIT**

**ENVIRONMENTAL REGULATION COMPLIANCE**

\_\_\_\_\_ certifies that neither it, nor any person or firm which has an interest in the above named firm has any environmental sanctions in effect and complies with the requirements of Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387).

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

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

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

**END OF ENVIRONMENTAL REGULATION COMPLIANCE**



**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00320  
REQUIRED FORMS**



**Address** 190 Queen Anne Ave N  
PO Box 19028  
Seattle, WA 98109  
**Telephone** 206-615-3300  
**TTY** 1-800-833-6388  
**Website** www.seattlehousing.org

**CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES**

The undersigned hereby certifies that the bidder is now, and in the three-year period immediately preceding the date of this bid solicitation **(February 18, 2020)** has been, in compliance with the responsible bidder criteria requirement of RCW 39.04.350(1)(g) and has not been found to have willfully violated any provision of RCW Chapters 49.46, 49.48, or 49.52 in a final determination by the Department of Labor and Industries or any court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

\_\_\_\_\_  
Bidder's Business Name

\_\_\_\_\_  
Signature of Authorized Official\*

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date City State

*Check One:* Sole Proprietorship  Partnership  Joint Venture  Corporation

State of Incorporation, or if not a corporation, State where business entity was formed:

\_\_\_\_\_  
If a co-partnership, give firm name under which business is transacted:

\_\_\_\_\_  
*If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

**END OF CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES**

**HUD 2530 - PREVIOUS PARTICIPATION CERTIFICATION**

**US Department of Housing and Urban Development**  
Office of Housing/Federal Housing Commissioner

**US Department of Agriculture**  
Farmers Home Administration

<b>Part I to be completed by Principals of Multifamily Projects (See instructions)</b>		<b>For HUD HQ/FmHA use only</b>	
1. Agency name and City where the application is filed		2. Project Name, Project Number, City and Zip Code	
3. Loan or Contract amount \$	4. Number of Units or Beds	5. Section of Act	6. Type of Project (check one) <input type="checkbox"/> Existing <input type="checkbox"/> Rehabilitation <input type="checkbox"/> Proposed (New)

**7. List all proposed Principals and attach organization chart for all organizations**

Name and address of Principals and Affiliates (Name: Last, First, Middle Initial) proposing to participate	8 Role of Each Principal in Project	9. SSN or IRS Employer Number

Certifications: The principal(s) listed above hereby apply to HUD or USDA FmHA, as the case maybe, for approval to participate as principal(s) in the role(s) and project listed above. The principal(s) each certify that all the statements made on this form are true, complete and correct to the best of their knowledge and belief and are made in good faith, including any Exhibits attached to this form. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. The principal(s) further certify that to the best of their knowledge and belief:

1. Schedule A contains a listing, for the last ten years, of every project assisted or insured by HUD, USDA FmHA and/or State and local government housing finance agencies in which the principal(s) have participated or are now participating.
2. For the period beginning 10 years prior to the date of this certification, and except as shown on the certification:
  - a. No mortgage on a project listed has ever been in default, assigned to the Government or foreclosed, nor has it received mortgage relief from the mortgagee;
  - b. The principals have no defaults or noncompliance under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project;
  - c. There are no known unresolved findings as a result of HUD audits, management reviews or other Governmental investigations concerning the principals or their projects;

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00320  
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- d. There has not been a suspension or termination of payments under any HUD assistance contract due to the principal's fault or negligence;
  - e. The principals have not been convicted of a felony and are not presently the subject of a complaint or indictment charging a felony. (A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less);
  - f. The principals have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;
  - g. The principals have not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond;
3. All the names of the principals who propose to participate in this project are listed above.
4. None of the principals is a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in Standards of Ethical Conduct for Employees of the Executive Branch in 5 C.F.R. Part 2635 (57 FR 35006) and HUD's Standard of Conduct in 24 C.F.R. Part 0 and USDA's Standard of Conduct in 7 C.F.R. Part 0 Subpart B.
5. None of the principals is a participant in an assisted or insured project as of this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification, have not been filed with HUD or FmHA.
6. None of the principals have been found by HUD or FmHA to be in noncompliance with any applicable fair housing and civil rights requirements in 24 CFR 5.105(a). (If any principals or affiliates have been found to be in noncompliance with any requirements, attach a signed statement explaining the relevant facts, circumstances, and resolution, if any).
7. None of the principals is a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.
8. Statements above (if any) to which the principal(s) cannot certify have been deleted by striking through the words with a pen, and the relevant principal(s) have initialed each deletion (if any) and have attached a true and accurate signed statement (if applicable) to explain the facts and circumstances.

Name of Principal	Signature of Principal	Certification Date(mm/dd/yyyy)	Area Code and Tel. No.

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00320  
REQUIRED FORMS**

<b>This form prepared by (print name)</b>	<b>Area Code and Tel. No.</b>
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**Schedule A: List of Previous Projects and Section 8 Contracts.** Below is a complete list of the principals' previous participation projects and participation history in multifamily Housing programs of HUD/FmHA, State and local Housing Finance Agencies. **Note:** Read and follow the instruction sheet carefully. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If no previous projects, write by your name, **"No previous participation, First Experience"**.

1. Principals Name (Last, First)	2. List of previous projects (Project name, project ID and, Govt. agency involved )	3. List Principals' Role(s) (indicate dates participated, and if fee or identity of interest participant)	4. Status of loan (current, defaulted, assigned, foreclosed)	5. Was the Project ever in default during your participation <b>Yes No If yes, explain</b>			6. Last MOR rating and Physical Insp. Score and date

**Part II- For HUD Internal Processing Only**

Received and checked by me for accuracy and completeness; recommend approval or refer to Headquarters after checking appropriate box.

Date (mm/dd/yyyy)	Tel No. and area code	<input type="checkbox"/> A. No adverse information; form HUD-2530 approval recommended.  <input type="checkbox"/> B. Name match in system	<input type="checkbox"/> C. Disclosure or Certification problem  <input type="checkbox"/> D. Other (attach memorandum)
Staff	Processing and Control		

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00320  
REQUIRED FORMS**

Supervisor	Director of Housing/Director, Multifamily Division	Approved Yes No	Date (mm/dd/yyyy)
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**Instructions for Completing the Previous Participation Certificate, form HUD-2530**

Carefully read these instructions and the applicable regulations. A copy of those regulations published at 24 C.F.R. 200.210 to 200.245 can be obtained from the Multifamily Housing Representative at any HUD Office. Type or print neatly in ink when filling out this form. Mark answers in all blocks of the form. If the form is not filled completely, it will delay approval of your application.

Attach extra sheets as you need them. Be sure to indicate "Continued on Attachments" wherever appropriate. Sign each additional page that you attach if it refers to you or your record.

**Carefully read the certification before you sign it.** Any questions regarding the form or how to complete it can be answered by your HUD Office Multifamily Housing Representative.

**Purpose:** This form provides HUD with a certified report of all previous participation in HUD multifamily housing projects by those parties making application. The information requested in this form is used by HUD to determine if you meet the standards established to ensure that all principal participants in HUD projects will honor their legal, financial and contractual obligations and are acceptable risks from the underwriting standpoint of an insurer, lender or governmental agency. HUD requires that you certify your record of previous participation in HUD/USDA- FmHA, State and Local Housing Finance Agency projects by completing and signing this form, before your project application or participation can be approved.

HUD approval of your certification is a necessary precondition for your participation in the project and in the capacity that you propose. If you do not file this certification, do not furnish the information requested accurately, or do not meet established standards, HUD will not approve your certification.

***Note that approval of your certification does not obligate HUD to approve your project application, and it does not satisfy all other HUD program requirements relative to your qualifications.***

**Who Must Sign and File Form HUD-2530:**

Form HUD-2530 must be completed and signed by all principals applying to participate in HUD multifamily housing projects, including those who have no previous participation. The form must be signed and filed by all principals and their affiliates who propose participating in the HUD project. Use a separate form for each role in the project unless there is an identity of interest.

Principals include all individuals, joint ventures, partnerships, corporations, trusts, non-profit organizations, any other public or private entity that will participate in the proposed project as a sponsor, owner, prime

contractor, turnkey developer, managing agent, nursing home administrator or operator, packager, or consultant. Architects and attorneys who have any interest in the project other than an arm's length fee arrangement for professional services are also considered principals by HUD.

In the case of partnerships, all general partners regardless of their percentage interest and limited partners having a 25 percent or more interest in the partnership are considered principals. In the case of public or private corporations or governmental entities, principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation.

Affiliates are defined as any person or business concern that directly or indirectly controls the policy of a principal or has the power to do so. A holding or parent corporation would be an example of an affiliate if one of its subsidiaries is a principal.

**Exception for Corporations** – All principals and affiliates must personally sign the certificate except in the following situation. When a corporation is a principal, all of its officers, directors, trustees and stockholders with 10 percent or more of the common (voting) stock need not sign personally if they all have the same record to report. The officer who is authorized to sign for the corporation or agency will list the names and title of those who elect not to sign. However, any person who has a record of participation in HUD projects that is separate from that of his or her organization must report that activity on this form and sign his or her name. The objective is **full** disclosure. **Exemptions** – The names of the following parties do not need to be listed on form HUD-2530: Public Housing Agencies, tenants, owners of less than five condominium or cooperative units and all others whose interests were acquired by inheritance or court order.

**Where and When Form HUD-2530 Must Be Filed:**

The original of this form must be submitted to the HUD Office where your project application will be processed at the same time you file your initial project application. This form must be filed with applications for projects, or when otherwise required in the situations listed below:

- Projects to be financed with mortgages insured under the National Housing Act (FHA).
- Projects to be financed according to Section 202 of the Housing Act of 1959 (Elderly and Handicapped).
- Projects in which 20 percent or more of the units are to receive a subsidy as described in 24 C.F.R. 200.213.
- Purchase of a project subject to a mortgage insured or held by the Secretary of HUD.

- Purchase of a Secretary-owned project.
- Proposed substitution or addition of a principal or principal participation in a different capacity from that previously approved for the same project.
- Proposed acquisition by an existing limited partner of an additional interest in a project resulting in a total interest of 25 percent or more or proposed acquisition by a corporate stockholder of an additional interest in a project resulting in a total interest of 10 percent or more.
- Projects with U.S.D.A., Farmers Home Administration, or with state or local government housing finance agencies that include rental assistance under Section 8 of the Housing Act of 1937. For projects of this type, form HUD-2530 should be filed with the appropriate applications directly to those agencies.

**Review of Adverse Determination:** If approval of your participation in a HUD project is denied, withheld, or conditionally granted on the basis of your record of previous participation, you will be notified by the HUD Office. You may request reconsideration by the HUD Review Committee. Alternatively, you may request a hearing before a Hearing Officer. Either request must be made in writing within 30 days from your receipt of the notice of determination.

If you do request reconsideration by the Review Committee and the reconsideration results in an adverse determination, you may then request a hearing before a Hearing Officer. The Hearing Officer will issue a report to the Review Committee. You will be notified of the final ruling by certified mail.

**Specific Line Instructions:**

**Reason for submitting** this Certification: e.g., refinance, change in ownership, change in management agent, transfer of physical assets, etc.

**Block 1:** Fill in the name of the agency to which you are applying. For example: HUD Office, Farmers Home Administration District office, or the name of a State or local housing finance agency. Below that, fill in the name of the city where the office is located.

**Block 2:** Fill in the name of the project, such as "Greenwood Apts." If the name has not yet been selected, write "Name unknown." Below that, enter the HUD contract or project identification number, the Farmers Home Administration project number, or the State or local housing finance agency project or contract number. Include **all** project or contract identification numbers that are relevant to the project. Also enter the name of the city in which the project is located, and the ZIP Code.

**Block 3:** Fill in the dollar amount requested in the proposed mortgage, or the annual amount of rental assistance requested.

**Block 4:** Fill in the number of apartment units proposed, such as "40 units." For hospital projects or nursing homes, fill in the number of beds proposed, such as "100 beds."

**Block 5:** Fill in the section of the Housing Act under which the application is filed.

**Block 7:** Definitions of all those who are considered principals and affiliates are given above in the section titled "Who Must Sign and File...."

**Block 8:** Beside the name of each principal, fill in the appropriate role. The following are examples of possible roles that the principals may assume: Owner/Mortgagor, Managing Agent, Sponsor, Developer, General Contractor, Packager, Consultant, Nursing Home Administrator etc.

**Block 9:** Fill in the Social Security Number or IRS employer number of every principal listed, including affiliates.

**Instructions for Completing Schedule A:**

Be sure that Schedule A is filled-in completely, accurately and the certification is properly dated and signed, because it will serve as a legal record of your previous experience. All Multifamily Housing projects involving HUD/ FmHA, and State and local Housing Finance Agencies in which you have previously participated **must be** listed. Applicants are reminded that previous participation pertains to the individual principal within an entity as well as the entity itself. A newly formed company may not have previous participation, but the principals within the company may have had extensive participation and disclosure of that activity is required.

**Column 2. All previous projects must be listed or your certification cannot be processed.** Include the name of all projects, project number, city where it is located and the governmental agency (HUD, USDA-FmHA or state or local housing finance agency) that was involved.

**Column 3.** List the role(s) as a principal, dates participated and if fee or identity of interest (IOI) with owners.

**Column 4.** Indicate the current status of the loan. Except for current loan, the date associated with the status is required. Loans under a workout arrangement are considered assigned. For all noncurrent loans, an explanation of the status is required.

**Column 5.** Explain any project defaults during your participation.

**Column 6.** Provide the latest Management Review (MOR) rating and Physical Inspection score.

**Certification:** After you have completed all other parts of form HUD-2530, including schedule A, read the Certification carefully. In the box below the statement of the certification, fill in the names of all principals and affiliates as listed in block

7. Each principal should sign the certification with the exception in some cases of individuals associated with a corporation (see "Exception for Corporations" in the section of the instructions titled "Who Must Sign and File Form HUD-2530). Principal who is signing on behalf of the entity should attach signature authority document. Each principal who signs the form should fill in the date of the signature and a telephone number. By providing a telephone number, HUD can reach you in the event of any questions.



If you cannot certify and sign the certification as it is printed because some statements do not correctly describe your record, use a pen to strike through those parts that differ with your record, and then sign and certify.

Attach a signed statement of explanation of the items you have struck out on the certification. Item 2e. relates to felony convictions within the past 10 years. If you are convicted of a felony within the past 10 years, strike out 2e. and attach statement of explanation. A felony conviction will not necessarily cause your participation to be disapproved unless there is a criminal record or other evidence that your previous conduct or method of doing business has been such that your participation in the project would make it an unacceptable risk from the underwriting stand point of an insurer, lender or governmental agency.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by law (42 U.S.C. 3535(d) and 24 C.F.R. 200.217) and by regulation at 24 CFR 200.210. This information is needed so that principals applying to participate in multifamily programs can become HUD-approved participants. The information you provide will enable HUD to evaluate your record with respect to established standards of performance, responsibility and eligibility. Without prior approval, a principal may not participate in a proposed or existing multifamily project. HUD uses this information to evaluate whether or not principals pose an unsatisfactory underwriting risk. The information is used to evaluate the potential principals and approve only individuals and organizations that will honor their legal, financial and contractual obligations.

**Privacy Act Statement:** The Housing and Community Development Act of 1987, 42 U.S.C. 3543 requires persons applying for a Federally-insured or guaranteed loan to furnish his/her Social Security Number (SSN). HUD must have your SSN for identification of your records. HUD may use your SSN for automated processing of your records and to make requests for information about you and your previous records with other public agencies and private sector sources. HUD may disclose certain information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. You must provide all of the information requested in this application, including your SSN.

**Public reporting burden** for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

A response is mandatory. Failure to provide any of the information will result in your disapproval of participation in this HUD program.

**END OF PREVIOUS PARTICIPATION CERTIFICATION**

**END OF SECTION 00320**

**SAMPLE CONTRACT FORM**

This contract made and entered into as of the last signature date below between \_\_\_\_\_, herein after called "Contractor" and the Housing Authority of the City of Seattle, Washington, a public body corporate and politic, created by the Housing Authorities Law of the State of Washington, hereinafter called "Owner."

WITNESSETH, that the Contractor and the Owner for the consideration stated herein agree as follows:

ARTICLE 1. Statement of Work. The Contractor shall furnish all labor, materials and equipment and perform all work required for a complete job in strict accordance with the Specifications and Drawings included in the Cost Proposal documents, all of which are made a part hereof and designated as Cedarvale Village Plumbing and Drain Replacement.

ARTICLE 2. Contractor's Liability for Damages and Injury. The Contractor shall defend, indemnify, and hold the Owner, its commissioners, officers, agents and employees from all claims as set forth in Sections 5.03 and 5.22 of the General Conditions.

ARTICLE 3. Insurance and Payment and Performance Bond. The Contractor shall provide to the Owner, in accordance with Part 2 of the General Conditions, proof of required insurance and a Payment and Performance Bond.

ARTICLE 4. Time of Completion. The Contractor shall commence work after receipt of Notice to Proceed, follow the schedule specified in the Contract Documents, and all work must be completed within (7) consecutive calendars days from the Notice to Proceed.

ARTICLE 5. The Contract Price. The Owner shall pay the Contractor for the performance of the contract, subject to additions and deductions provided therein, in current funds as follows:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_.00)

ARTICLE 6. Contract Documents. Contract Documents shall consist of the following component parts:

1. Signed Contract (This Instrument)
2. Invitation to Bid
3. Signed Bid Proposal
4. Instructions to Bidders

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00500  
CONTRACT FORM**

5. U.S. Department of HUD “Representations, Certifications & Other Statements of Bidders (Proposers)” (form HUD-5369-A)
6. Bid Bond (Proposal Cost Guarantee)
7. Certificate as to Corporate Principal
8. SHA Vendor Fact Sheet
9. HUD Section 3 Business Certification and Resident Employment Plan Form
10. Suspension and Debarment Compliance
11. Non-Collusive Affidavit
12. Environmental Regulation Compliance
13. Payment and Performance Bonds
14. General Conditions of the Contract for Construction
15. Supplementary Conditions
16. Appropriate Wage Rate Schedules
17. U.S. Department of Labor “Equal Employment Opportunity Executive Order 11246, as Amended by Executive Order 11375”
18. SHA Contractor Performance Evaluation Program
19. SSB5301-Certification of Compliance with Wage Payment Statutes
20. HUD 2530-Previous Participation Certification
21. Specifications
22. Drawings
23. All Addenda
24. All Change Orders

This instrument together with the documents in this Article 6 form the Contract, and they are as fully a part of this Contract as if hereto attached or herein repeated.

In the event that any provision in any of the component parts of this Contract conflict with any provision of any other component part, the provision in the component part first enumerated in this Article 6 shall govern, except as otherwise specifically stated in section 1.02 of the General Conditions.

ARTICLE 7. Governing Law and Venue. This Contract shall be governed in all respects by the laws of the State of Washington. Venue for any action filed under this contract shall be limited to King County, Washington at Seattle or the Western District of Washington at Seattle.

ARTICLE 8 Severability. In case any term of this Contract shall be invalid, illegal, or unenforceable, in whole or in part, the validity of any of the other terms of this Contract shall not in any way be affected thereby.

The parties have executed this Contract by having their authorized representatives sign below.

**Name**  
Address

**Seattle Housing Authority**  
190 Queen Anne Avenue North

**SEATTLE HOUSING AUTHORITY SOLICITATION #5207  
CEDARVALE VILLAGE PLUMBING  
AND DRAIN REPLACEMENT**

**SECTION 00500  
CONTRACT FORM**

City, State, Zip Code

P.O. Box 19028  
Seattle, WA 98109-1028

By: \_\_\_\_\_  
\_\_\_\_Name \_\_\_\_\_ Date  
\_\_\_\_Title

By: \_\_\_\_\_  
\_\_\_\_Andrew J. Lofton \_\_\_\_\_ Date  
\_\_\_\_Executive Director

**END OF SECTION 00500**

SAMPLE



HOUSING AUTHORITY OF THE CITY OF SEATTLE  
GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION  
**MARCH 23, 2017**

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## PART 1 - GENERAL PROVISIONS

### 1.01 DEFINITIONS

- A. "Advertisement for Bids" A public notice published in the official newspaper, designated by the Owner, and/or on the internet, soliciting bids for the Work.
- B. "Addendum" or "Addenda" means alteration or clarification of the plans or specifications provided to bidders or proposers by the Owner prior to bid or proposal time, which becomes part of the Contract Documents when the Contract is executed.
- C. "Affirmative Efforts" means documented reasonable attempts in good faith to recruit, solicit, and employ HUD Program Section 3 eligible persons, women and minorities, apprentices, Women and Minority Businesses, and HUD Program Section 3 businesses on the Project
- D. "Application for Payment" means a written request submitted by Contractor to Owner for payment of Work completed

in accordance with the Contract Documents and approved Schedule of Values, supported by substantiating data as Owner.

- E. "Architect," "Engineer," or "A/E" means a person or entity lawfully entitled to practice architecture or engineering, representing the Owner within the limits of its delegated authority.
- F. "Bid Documents" means the component parts of the proposed Contract which may include the Advertisement for Bids, Bid Form, Agreement Form, Project Manual, Drawings, Addenda and any other documents incorporated into the Contract by reference.
- G. "Change Order" means a written instrument signed by Owner and Contractor stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any, and (3) the extent of the adjustment in the Contract Time, if any.
- H. "Claim" means Contractor's exclusive remedy for resolving disputes with Owner arising from the Contract documents (including disputes regarding the terms of a Change Order or a request for equitable adjustment), as more fully set forth in part 8.
- I. "Contract" The written agreement between the Owner and the Contractor, which includes the signed Agreement Form, Bid Form, Contract provisions, Drawings, Addenda, certifications, supplemental agreements, Change Orders and all other documents specifically incorporated by reference comprise the Contract
- J. "Contract Documents" means the Advertisement for Bids or Proposals, Instructions for Bidders or Proposers, completed Bid or Proposal Form, General Conditions, , Supplemental Conditions, Public Works Contract, Addenda, other Special Forms, Drawings and Specifications, (and, for federally-funded projects, the applicable wage rate determinations from either the U.S. Department of Labor or Housing and Urban Development), and all addenda and modifications thereof.
- K. "Contract Sum" is the total amount payable by Owner to Contractor for performance of the Work in accordance with the Contract Documents.
- L. "Contract Time" is the number of Days allotted in the Contract Documents for achieving Substantial Completion of the Work.
- M. "Contractor" means the person or entity who has agreed via contract with Owner to perform the Work in accordance with the Contract Documents.
- N. "Critical Path" means the longest, continuous sequence of interrelated activities of the Work that begins at the start of the Project (Notice to Proceed) and extends through Substantial Completion of the Project. These activities are critical because delay to an activity on this path will extend Contract Time.
- O. "Day" means calendar day, unless otherwise specified.
- P. "Drawings" are the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- Q. "Field Directive" is a document titled Field Directive, prepared by the Owner directing the Contractor to proceed

- diligently with specific work and shall not, in and of itself, constitute a Change Order or entitlement to an adjustment in Contract Time and/or Contract Price.
- R. "Final Acceptance" means the written acceptance issued to Contractor by Owner after Contractor has completed the requirements of the Contract Documents.
- S. "Final Completion" means the written completion issued to Contractor that the Work is fully and finally completed in accordance with the Contract Documents.
- T. "Force Majeure" means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in paragraph 3.05A.
- U. "Minority-owned Business Enterprise (MBE)" means a self-identified business or a business certified by the State of Washington to be at least fifty-one percent owned by a minority (including, but not limited to, African Americans, Native Americans, Asians, Hispanics, and Hasidic Jews) group members
- V. "Minority-owned Women Business Enterprise (MWBE)" means a self-identified business or a business certified by the State of Washington to be at least fifty-one percent owned by a minority woman.
- W. "Notice" means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended or, if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.
- X. "Notice to Proceed," means a notice from Owner to Contractor that defines the date on which the Contract Time begins to run.
- Y. "Overhead" means charges that may be incurred or allocated in support of the Contract but are not part of the cost of directly performing the Work. Overhead includes Site or Field Overhead and Home Office Overhead.
- Z. "Owner" means the Housing Authority of the City of Seattle . For purposes of sections 5.03 and 5.22, "Owner" also includes all commissioners, officers, agents and employees of the Housing Authority of the City of Seattle.
- AA. "Performance and Payment Bonds" means the approved form of security furnished by the Contractor and the Contractor's Surety or Sureties guaranteeing completion of the Work required by the Contractor Construction Contract and these General Conditions and payment to persons supplying labor and materials in the prosecution of the Work, in accordance with the terms and conditions of the Contract Documents.
- BB. "Person" means a corporation, partnership, or business association of any kind, trust, company, or individual.
- CC. "Prior Occupancy" means Owner's use of all or parts of the Project before Substantial Completion.
- DD. "Progress Schedule" means a schedule of the Work, in a form satisfactory to Owner, as further set forth in section 3.02.
- EE. "Project" means the total construction of which the Work is performed in accordance with the Contract Documents may be the whole or a part and which

may include supplemental construction by Owner or by separate contractors.

FF. "Project Manual" means the volume assembled for the Work, which may include the bidding requirements, sample forms, specifications, General Conditions, Supplemental Conditions and other Contract Documents.

GG. "Project Record" means the separate set of Drawings and Specifications as further set forth in paragraph 4.02A.

HH. "Request for Competitive Proposal" A formally advertised and competitive selection process used for obtaining construction services that will cost more than \$150,000, in which the evaluation and selection of a Contractor cannot be based on price alone, but is based on established criteria that include price and other factors.

II. "Request for Information" means a written submission from the Contractor seeking additional information regarding the prosecution of the Work and/or the Contract Documents governing the Work.

JJ. "Schedule of Values" means a written breakdown allocating the total Contract Sum to each principle category of Work, in such detail as requested by Owner.

KK. "Specifications" are the portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

LL. "Subcontract" means a contract entered into by a Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.

MM. "Subcontractor" means any person, other than Contractor, who agrees to furnish or furnishes any supplies, materials, equipment, or services of any kind in connection with the Work.

NN. "Substantial Completion" means that stage in the progress of the Work where Owner has full and unrestricted use and benefit of the facilities for the purposes intended, as more fully set forth in section 6.07.

OO. "Unusually Severe Weather" shall be defined, documented and calculated as follows:

1. Daily rainfall equal to, or greater than, .05 inch during a month when the monthly rainfall exceeds the normal monthly average by 15 to 100 percent.
2. Daily rainfall equal to, or greater than, 2.0 inch during a month when the monthly rainfall exceeds the normal monthly average by more than 100 percent.
3. Daily rainfall equal to, or greater than, 1.0 inch at any time.
4. Daily maximum temperature equal to or less than, 20 degrees F during a week when the maximum daily temperature never exceeds 35 degrees F.

PP. "Work" means the construction and services required by the Contract Documents, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.

QQ. "Authorities Having Jurisdiction" means all federal, state and local government agencies having jurisdiction or approval authority over any aspect of the Work.

RR. ***ONLY APPLICABLE TO FEDERALLY-FUNDED PROJECTS.***J: "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to Owner, which includes assistance in financing the work to be performed under this contract. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.]

## **1.02 ORDER OF PRECEDENCE**

Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order:

- A. Signed Public Works Contract, including any Change Orders and Addenda.
- B. Supplemental Conditions.
- C. General Conditions.
- D. Specifications-as modified by Addenda or Change Orders. Provisions in Division 1 shall take precedence over provisions of any other Division.
- E. Drawings and details as modified by Addenda or Change Orders-in case of conflict within the Drawings, large-scale drawings shall take precedence over small-scale drawings or details.
- F. Signed and Completed Form of Bid or Proposal.
- G. Instructions to Bidders.
- H. Advertisement for Bids.

## I. Clarification of Drawings and Detail Drawings

1. Where on any drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn out parts shall apply also to other similar portions of the Work. Where ornament or other detail is indicated by starting only, such detail shall be continued throughout the courses or parts in which it occurs and shall apply to all other similar parts of the Work, unless otherwise indicated.

2. With regard to Drawings the following shall apply:

- a. Written dimensions shall be followed; drawings may not be to scale.
- b. Figure dimensions on drawings shall govern of scale dimensions; and detail drawings shall govern over general drawings.

## **1.03 EXECUTION AND INTENT**

Contractor makes the following representations to Owner:

- A. The Contract Sum is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work, as represented by the Contract Documents;
- B. Contractor has carefully reviewed the Contract Documents, had an opportunity to visit and examine the Project site, has become familiar with the local conditions in which the Work is to be performed, and has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and known subsurface conditions

and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof;

- C. Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents; and
- D. Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform the obligations required by the Contract Documents and have sufficient experience and competence to do so.

## **PART 2 - INSURANCE AND BONDS**

Within seven (7) days from the date of the Notice of Award, and prior to commencement of the Work, Contractor shall obtain all the insurance required by the Contract Documents and provide evidence satisfactory to Owner that such insurance has been procured. Review and approval of the Contractor's insurance by Owner shall not relieve or decrease the Contractor's liability in any respect. Failure of the Contractor to fully comply with the insurance requirements of this Contract will be considered a material breach of contract and, at the option of Owner, is cause for such remedy or relief as may be available to Owner by law or under any provision of this Contract, including immediate termination of the Contract.

### **2.01 CONTRACTOR'S LIABILITY INSURANCE**

- A. General Insurance Requirements: Prior to commencement of the Work, Contractor shall obtain all the insurance required by the Contract Documents and provide evidence satisfactory to

Owner that such insurance has been procured. Review of the Contractor's insurance by Owner shall not relieve or decrease the liability of Contractor. The term "insurance" herein shall include but not be limited to self-insurance, alternative risk transfer techniques, capital market solutions or any other form of risk financing.

- B. Contractor shall include in its bid the cost of all insurance and bonds required to complete the base bid work and accepted alternates, no additional payments will be made.
- C. Insurance policies, deductibles, self-insured retentions, and insurance carriers will be subject to review and approval by Owner. Except for Professional Liability Insurance coverage, if applicable, each insurer must either be 1) authorized to do business in the State of Washington and maintain A.M. Best's ratings of "A VII" or higher, or 2) procured as surplus lines under the provisions of RCW Chapter 48.15 ("Unauthorized Insurers"), except as may be otherwise approved by the Owner. Insurers or reinsurers of Professional Liability (Errors and Omissions) Insurance must have a rating of "B+VII or higher.
- D. Insurance Coverage and Terms: Contractor shall maintain the following insurance coverage during the Work and for one (1) year after Final Completion, except for Products and Completed Operations coverage which shall remain in effect for three (3) years after Final Completion. Contractor shall also maintain the following insurance coverage during the performance of any corrective Work required by section 5.16.
  - 1. Commercial General Liability (CGL) (this shall cover the use of all

equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under paragraph 2.01D.2 written on an Occurrence Form or its equivalent which shall include coverage for:

- a. Premises/Operations
- b. Products/Completed Operations
- c. Personal/Advertising Injury
- d. Contractual
- e. Independent Contractors
- f. Stop Gap (unless insured as Employers Liability under Part B. of a Workers Compensation Insurance Policy
- g. Per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per Project) or Equivalent
- h. Explosion, collapse, and underground
- i. Waiver of Subrogation

In the event that the services to be provided under this Contract involve the Contractor's contact with minor children or any Vulnerable Adults as defined by RCW 74.34.020, the Contractor shall provide evidence that sexual molestation coverage has not been excluded from the CGL policy.

2. Automobile Liability on owned and non-owned motor vehicles, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent.
3. Contractor's Pollution Liability (CPL): When project scope of work includes any or all items below, the Contractor will provide a Contractors Pollution Liability policy against claims for bodily injury, property damage and cleanup costs/environmental damages arising from pollution conditions

caused in the performance of covered operations when:

- a. The Work involves remediation, abatement, repair, maintenance or other work with asbestos containing materials, lead-containing products (paint, coatings, components), mercury, underground storage tanks, and/or other hazardous materials. A CPL policy specifically covering these exposures shall be required from the Contractor or the subcontractor performing such work.
  - b. The Work involves the transporting hazardous materials or waste, a separate policy or endorsement to the CPL policy specifically providing coverage for liability and cleanup, arising from an upset or collision during transportation of hazardous materials is required from the Contractor or subcontractor performing such work.
4. Professional Liability: When applicable, in the event that services delivered pursuant to this Contract either directly or indirectly involve or require professional services, Professional Liability, Errors and Omissions coverage shall be provided.
  5. Cyber Liability: When applicable, the Contractor shall provide Cyber Liability coverage as specified in the Supplementary Conditions section.
  6. Umbrella or Excess liability: When applicable, the Contractor shall provide Excess or Umbrella Liability coverage as specified in the Supplementary Conditions section



- E. Industrial Insurance Compliance: Contractor shall comply with the Washington State Industrial Insurance Act and, if applicable, the Federal Longshoremen's and Harbor Workers' Act and the Jones Act.
- F. Insurance to protect for the following: All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor.
- G. Owner as Additional Insured: All liability policies except Professional Liability and Workers Compensation shall be endorsed to include Owner as additional insured on a primary and non-contributory basis for Work performed in accordance with the Contract Documents, and all insurance certificates shall evidence the Owner as additional insured.
- H. Waiver of Subrogation: Contractor's policy shall provide waiver of subrogation by endorsement or otherwise.
- I. The Contractor's insurance coverage shall be primary insurance as respects the Owner, its Commissioners, officers, employees, and agents to the extent of:
  - 1. The sole negligence of Contractor or any of its Subcontractors;
  - 2. The concurrent negligence of Contractor, or any Subcontractor, but only to the extent of the negligence of Contractor or such Subcontractor; and
- 3. The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.
- J. Deductibles or Self-Insured Retention: Any deductibles or self-insured retentions \$25,000 or higher must be declared to, and approved by the Owner. The deductible and/or self-insured retention of the policies shall not limit or apply to the Prime Contractor's liability to the Owner. Payment of deductibles shall be the responsibility of the Contractor.
- K. XCU and Subsidence Perils Not Excluded: The Contractor's Commercial General Liability insurance shall not exclude perils generally known as XCU (Explosion, Collapse and Underground Property Damage), Subsidence, Absolute Earth Movement (except as respects earthquake peril only) or any equivalent peril.
- L. Railroad Protective Liability: The Contractor and/or any subcontractor of any tier shall comply with all of a railroad's risk management requirements (including purchasing Railroad Protective Liability insurance) before performing construction services adjacent to or upon a railway's right of way and/or property.
- M. No Limitation of Liability The limits of liability specified herein are minimum limits only. Such minimum limits of liability requirements shall not be construed to limit the liability of the Contractor or of any of their respective insurers. The Contractor shall include Owner as an additional insured for primary and non-contributory limits of liability for the full valid and collectible

limits of liability maintained by the Contractor whether such limits are primary, excess, contingent or otherwise. This provision shall apply regardless of whether limits maintained by the Contractor are greater than the minimum limits required by this Contract, and regardless of whether the certification of insurance by the Contractor specifies lower minimum limits than those specified for or maintained by the Contractor.

## **2.02 COVERAGE LIMITS**

The minimum coverage limits shall be as follows unless otherwise specified in Supplementary Conditions:

A. 1) Commercial General Liability Insurance.

- \$1,000,000 each Occurrence Combined Single Limit (CSL) Bodily Injury and Property Damage except \$1,000,000 each Offense
- Personal/Advertising Injury \$2,000,000 Aggregate

2) Employers Liability or Washington Stop Gap Liability. A policy of Employers Liability or a Washington Stop Gap Liability insurance endorsement with the following minimum coverage:

- \$1,000,000 Bodily Injury by Accident, Bodily Injury by Disease – Each Employee, Bodily Injury by Disease – Policy Limit; Employers Liability or Washington Stop Gap

3) Commercial Automobile Liability Insurance.

- \$1,000,000 Combined Single Limit (CSL) coverage

4) Workers Compensation. A policy of Workers Compensation. As respects Workers Compensation insurance in the State of Washington, the Prime Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington (RCW). If the Prime Contractor is qualified as a self-insurer in accordance with Chapter 51.14 RCW, the Prime Contractor shall so certify by a letter signed by a corporate officer, indicating that it is a qualified self-insured, and setting forth the limits of any policy of excess insurance covering its employees, or any similar coverage required.

5) Contractor's Pollution Liability.

- \$1,000,000 Contractor's Pollution Liability, each claim

6) Professional Liability, Errors and Omissions.

- \$1,000,000 Professional Liability, Errors and Omissions, each claim

7) Cyber Liability.

- Refer to Supplementary Conditions section for Cyber Liability Coverage

8) Umbrella or Excess Liability

- Refer to Supplementary Conditions section for Umbrella or Excess Liability Coverage

## **2.03 INSURANCE COVERAGE ENDORSEMENTS AND CERTIFICATES**

A. Additional Insured Endorsement.

1. The Owner must be included as an Additional Insured on a primary and non-contributory basis on all

Commercial General Liability and Automobile Liability policies of the Contractor. As respects the CGL insurance such additional insured status shall be evidenced by an ISO endorsement form CG2010 or equivalent.

2. Regarding to CGL insurance, such Additional Insured status shall contain a “separation of insureds” provision.
3. The Owner must be included as an Additional Insured for Contractors Completed Operations on the Commercial General Liability policy of the Contractor. As respects to CGL insurance, such additional insured status shall be evidenced by an ISO endorsement form CG2037 or equivalent. The endorsement shall remain in effect for not less than three (3) years after Final Completion of the Work .

**B. Proof of Insurance and Insurance Expiration:**

1. The Prime Contractor shall furnish certificates of insurance and policy endorsements as evidence of compliance with the insurance requirements of the Contract. Such certificates and endorsements must be signed by a person authorized by that insurance company to bind coverage on its behalf.
2. All insurance certificates shall name Owner’s Project number and Project title.
3. The Prime Contractor shall include all subcontractors at any tier as insureds, and ensure that the Prime Contractor’s coverage of subcontractors under the Prime Contractor’s policies is not excluded

by any policy provision or endorsement. Alternatively, the Prime Contractor shall:

- a. Obtain from each subcontractor not insured under the Prime Contractor’s policy or policies of insurance, evidence of insurance meeting all the requirements of this Contract, and
  - b. Maintain such evidence on file for a period of one (1) year after Final Completion except for Products and Completed Operations coverage which shall remain in effect for three (3) years after Final Completion and, upon request, submit such evidence to Owner for examination,
4. The Prime Contractor’s insurance shall not be reduced or canceled without forty-five (45) days prior written notice to Owner, except for cancellation for non-payment of premium, for which notice shall not be less than ten (10) days prior to such date, unless a longer period of written notice is required under the provisions of Revised Code of Washington (RCW 48.18.290). The Prime Contractor shall not permit any required insurance coverage to expire during the term of this Contract.
  5. Owner reserves the right to require complete, certified copies of all required insurance policies at any time during the term of this Contract, or to waive any of the insurance requirements of this Contract at its sole discretion.

**2.04 INSURANCE NON-COMPLIANCE**

- A. Failure of the Prime Contractor to fully comply with the insurance requirements of this Contract will be considered a material breach of contract and, at the option of the Owner, will be cause for such action as may be available to Owner under other provisions of this Contract or otherwise in law, including immediate termination of the Contract.

- B. Any surety fails to furnish reports on its financial condition if requested by Owner.

**2.05 PAYMENT AND PERFORMANCE BONDS**

- A. Payment and performance bonds for 100% of the Contract Sum, including all Change Orders and state sales tax, shall be furnished for the Work, and shall be in a form acceptable to the Owner.
- B. The Contractor shall provide to the Owner a Payment bond and a Performance bond. The Contractor shall provide the Payment and Performance bonds within seven (7) calendar days from the date of the Notice of Award or within an extended period granted by the Owner based upon reasons determined adequate by the Owner. Failure to furnish the Payment and Performance bonds within the time specified may render the Contractor ineligible for award. The Owner may then either award the contract to the next lowest responsible bidder or re-solicit for bids. The Owner may retain the ineligible bidder's bid bond.

**2.06 ADDITIONAL BOND SECURITY**

Contractor shall promptly furnish additional security required to protect Owner and persons supplying labor or materials required by the Contract Documents if:

- A. Owner has a reasonable objection to the surety; or

**2.07 BUILDERS RISK INSURANCE (WHEN APPLICABLE)**

- A. The Owner may purchase and maintain Builders Risk insurance in the amount of the Contract Sum, including all adjustments thereto by Change Order, on a replacement cost basis until Final Completion. The Builders Risk insurance shall cover the interests in the Work of the Owner by the Contractor and any subcontractor of any tier. Contractor shall be responsible for payment of deductibles from the Builders Risk insurance policy to be purchased by Owner, which deductible amount is currently \$25,000 unless otherwise specified in the Supplementary Conditions section. Deductible amount may be subject to increase or decrease by Owner from time to time upon written notice to Contractor.
- B. Builders Risk insurance does not cover Contractor's or Subcontractor's at any tier owned, hired, or leased property or tools, equipment, or supplies used for the construction and not intended to form a permanent part of the Work, for which Contractor and Subcontractor shall be responsible and at their sole option to insure.
- C. Owner and Contractor waive all subrogation rights against each other, any Subcontractors, A/E, A/E's subconsultants, separate contractors described in section 5.19, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Work, except such

rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

## **2.08 CRIMINAL BACKGROUND CHECKS**

Criminal Background Investigation: The Contractor shall conduct a criminal background investigation of all employees, volunteers, subcontractors and sub-consultants performing any work who may reasonably be expected to have direct or incidental contact with SHA residents, SHA staff members, or vulnerable population. In addition, a criminal background investigation shall be performed for any person performing work under this Contract who needs special entry into SHA buildings, is given temporary use of an SHA building-access card or who collects payments of any kind.

The criminal background investigation shall include, but not necessarily be limited to, a Washington State Patrol background report or if the employee, volunteer, subcontractor or subconsultant resides in a state other than Washington, the background report should be obtained from the state patrol office where the employee, subcontractor or subconsultant has resided for the last 3 years. In the event a background check provides evidence of a felony conviction within the past seven years, the results of that investigation shall be disclosed to the SHA Project Manager. If any person performing work under this Contract is charged with a felony, the Contractor agrees to remove

that person from performing any further work on the project unless and until SHA agrees in writing to allow the person to continue.

## **PART 3 - TIME AND SCHEDULE**

### **3.01 PROGRESS AND COMPLETION**

Contractor shall diligently plan, coordinate and prosecute the Work, with an adequate number of qualified personnel to achieve Substantial Completion within the Contract Time, and achieve Final Completion within 90 days thereafter, but for extenuating circumstances fully documented in a timely manner and confirmed by Owner.

### **3.02 PROJECT SCHEDULE**

- A. Within ten Days of contract execution, and prior to the commencement of work, unless otherwise stipulated in the Notice to Proceed, the Contractor shall attend an Owner initiated and facilitated preconstruction conference with representatives of Owner, its Architect, and all other pertinent Sub-Contractors of the Contractor and other interested parties . The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. Owner will provide the Contractor with the date, time, and place of the conference.

The aforementioned preconstruction conference is not intended to replace any additional preconstruction conferences deemed necessary by any and all Authorities Having Jurisdiction in conjunction with the Work. .

- B. Unless otherwise provided in Division 1, Contractor shall, within [10, unless otherwise indicated here\_\_\_\_\_] Days after issuance of the Notice to Proceed, submit a preliminary Progress Schedule.

The Progress Schedule shall show the sequence in which Contractor proposes to perform the Work, and the dates on which Contractor plans to start and finish major portions of the Work. The schedule shall also indicate dates for shop drawings and other submittals, commissioning, confidence testing, dates for acquiring materials and equipment and any other items required by Owner.

C. The Preliminary Progress Schedule shall be in the form of a critical path method analysis. The Preliminary Progress Schedule must show the major portions of the Work, indicating the start and finish dates, Substantial and Final completion dates and the proposed progression of the Work.

D. Owner shall return comments on the preliminary Progress Schedule to Contractor within 14 Days of receipt. Review by Owner of Contractor's schedule does not constitute an approval or acceptance of Contractor's construction means, methods, or sequencing, or its ability to complete the Work within the Contract Time. Failure by the Owner to indicate items on the schedule that do not conform to Contract requirements shall not alter or waive Contractor's obligation to comply with all Contract Requirements. Contractor shall revise and resubmit its schedule, as deemed necessary by Owner. Owner may withhold a portion of progress payments until a Progress Schedule has been submitted which meets the requirements of this section.

E. To its fullest extent, Contractor shall utilize and comply with the Progress Schedule. On a monthly basis, or as otherwise directed by Owner, Contractor shall, at its own expense, submit an updated Progress Schedule to Owner indicating actual progress. If, in the opinion of Owner,

Contractor is not in conformance with the Progress Schedule for reasons other than Force Majeure as identified in section 3.05, the Contractor shall take such steps as are necessary to bring the actual completion dates of the Work into conformance with the Progress Schedule. This shall include, but not be limited to: increasing the number of shifts, overtime operations, and/or days of work, whether on or off the Site, and submitting for acceptance any supplementary schedule or schedules as the Owner deems necessary to demonstrate how completion dates of the Work will be brought into conformance with the Progress Schedule.

Failure of the Contractor to comply with the requirements under these provisions shall be grounds for a determination by the Owner that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Owner may pursue any right or remedies it has under the Contract or in law.

F. Contractor shall promptly notify Owner in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone or performance of any critical path activity of the Work. Contractor shall indicate the expected duration of the delay, the anticipated effect of the delay on the Progress Schedule, and the action to be taken to eliminate the delay. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.

G. FLOAT- Float in the project Schedule shall be defined as the period of time measured by the number of days each non-critical path activity may be delayed

before it and its succeeding activities become part of the Critical Path. Unless indicated otherwise, float belongs to the Project and Contractor and Owner may both utilize float to offset delays to the Work.

**3.03 OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE**

- A. Owner may, at its sole discretion, in writing, order Contractor to suspend all or any part of the Work for such period as Owner deems necessary.
- B. Upon receipt of a written Notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 Days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:
  - 1. Authorize resumption of the Work; or
  - 2. Terminate the Work covered by the notice as provided in the termination provisions of part 9.
- C. If a Notice suspending the Work is cancelled or the period of the notice or any extension thereof expires, Contractor shall resume Work.
- D. Contractor shall be entitled to an equitable adjustment in the Contract Time, or Contract Sum, or both, for increases in the time or cost of performance directly attributable to such suspension. Contractor shall keep all costs and records related to the construction suspension separately from normal project costs and shall comply

with all requirements as more fully described and set forth in Part 7.

**3.04 OWNER'S RIGHT TO STOP THE WORK FOR CAUSE**

- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor's failure or refusal to perform the Work or from any reasonable remedial action taken by Owner based upon such failure.

**3.05 DELAY**

- A. Any delay in or failure of performance by Owner or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure"). Acts of Force Majeure include, but are not limited to:
  - 1. Acts of God or the public enemy;
  - 2. Acts or omissions of any government or City entity;
  - 3. Fire or other casualty for which Contractor is not responsible;
  - 4. Quarantine or epidemic;

- 5. Strike or defensive lockout;
  - 6. Unusually severe weather conditions which could not have been reasonably anticipated; and
  - 7. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Owner was available.
- B. Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly attributable to an act of Force Majeure, provided it makes a request for equitable adjustment according to section 7.03. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure.
- C. Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost or time of Contractor's performance is changed due to the fault or negligence of Owner, provided the Contractor makes a request according to sections 7.02 and 7.03.
- D. Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor or anyone for whose acts Contractor is responsible.
- E. To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided Contractor makes a request for equitable adjustment

according to section 7.03, but shall not be entitled to an adjustment in Contract Sum.

- F. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.
- G. Contractor shall not be entitled to an adjustment in Contract Time if the act of Force Majeure did not impact progress of the Work on the Critical Path and prevent the Contractor from completing Contract Work within the Contract Time.

### **3.06 NOTICE TO OWNER OF LABOR DISPUTES**

- A. If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract Documents, Contractor shall immediately give written notice, including all relevant information, to Owner.
- B. Contractor agrees to insert a provision in its Subcontracts and to require insertion in all sub-subcontracts, that in the event timely performance of any such contract is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor or Sub-subcontractor shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

### **3.07 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION**

- A. Liquidated Damages
  - 1. Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract are of the essence. Owner will incur serious and substantial damages if



Substantial Completion and Final Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, liquidated damages of \_\_\_\_\_ **[\$150.00 per calendar day unless otherwise specified in the Supplemental Conditions] will be assessed.**

2. The liquidated damage amounts set forth above will be assessed not as a penalty, but as damages for breach of this Contract. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from any payments to the Contractor.
3. Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents.
4. If different completion dates are specified in the contract for separate parts, phases or stages of the work, the amount of liquidated damages shall be assessed only on those relevant parts or stages which are immediately delayed.

B. Actual Damages

Actual damages will be assessed for failure to achieve Final Completion within the time provided. Actual damages will be calculated on the basis of direct architectural, administrative, and other related costs attributable to the Project from the date when Final Completion should have been achieved, based on the date Substantial Completion is actually achieved, to the date Final Completion is actually achieved. The amount of these costs may be retained by Owner and deducted from any payment due Contractor.

PART 4 - SPECIFICATIONS, DRAWINGS, DETAILS AND OTHER DOCUMENTS

4.01 DISCREPANCIES AND DUTY TO REVIEW CONTRACT DOCUMENTS

A. The intent of the Specifications, Drawings and Details is to describe and depict the complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, permits, and supplies, and perform the Work required in accordance with the Drawings, Details, Specifications, and other provisions of the Contract Documents, unless otherwise noted.

B. The Contract Documents are complementary. What is required or shown in one part of the Contract Documents shall be binding as if required and shown in all parts. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. Anything shown in one section of the drawings and not shown in another section of the drawings of which implies the elements are to be coordinated, shall be as if shown in both sections. The organization

of the specification into divisions, provisions and parts and the organization of the drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be preformed by any trade.

- C. Contractor shall carefully study, compare and reconcile the Contract Documents with each other and shall confere and coordinate with each sub-contractor. If, during the performance of the Work, Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, it shall promptly, and before proceeding with the Work affected thereby, report such conflict, error, inconsistency, or omission to Owner in writing.
- D. Contractor shall do no Work without consulting applicable Drawings, Details, Specifications, or written modifications, or Shop Drawings where required, unless instructed to do so in writing by Owner. If Contractor performs any construction activity that it knows or should have known is in conflict with Drawings, Details, Specifications, or written modifications, or Shop Drawings or is based upon an , error, inconsistency, or omission in Drawings, Details, Specifications, or written modifications, or Shop Drawings, Contractor shall be responsible for the cost of performance and, shall bear the cost for its correction.
- E. Contractor shall provide any work or materials the provision of which is clearly implied and is within the scope of the Contract Documents even if the Contract Documents do not mention them specifically.
- F. Questions regarding interpretation of the requirements of the Contract Documents shall be submitted to the Owner.

#### **4.02 PROJECT RECORD**

- A. Contractor shall legibly mark in ink on a separate set of the Drawings and Specifications all actual construction, including depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, locations of all ducting, HVAC, mechanical, electrical, and any systems not visible in walls, floors, and ceilings, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, and Change Order proposals. This separate set of Drawings and Specifications shall be known as the "Project Record."
- B. The Project Record shall be maintained on the project site throughout the construction and shall be clearly labeled "PROJECT RECORD". The Project Record shall be updated at least weekly noting all current changes and shall be available for review by Owner at all times. At the time of Substantial Completion, the Contractor shall submit to the Owner's A/E, three (3) draft copies of the project record for review and comment. The Contractor shall make all noted corrections per the comments and resubmit to A/E for final review and acceptance. Review costs incurred for additional review cycles if required, shall be at the sole expense of the Contractor.
- C. The Contractor shall indicate on the Project Record any unforeseen items that may remain on site. Whether or not the unforeseen items can remain will be determined by the Owner.
- D. Contractor shall submit the completed and finalized conformed Project Record documents with all pages of the same size, with all pages marked "Project Record" along with three (3) copies of the

same in digital format to Owner prior to Final Acceptance.

#### **4.03 SHOP DRAWINGS**

- A. "Shop Drawings" means documents and other information required to be submitted to Owner by Contractor pursuant to the Contract Documents, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment. Shop Drawings include, but are not limited to, drawings, erection drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract Documents. For materials and equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its own expense. Owner may duplicate, use, and disclose Shop Drawings provided in accordance with the Contract Documents.
- B. Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon with a stamped date and authorized signature as evidence of such coordination and review prior to submitting them to the Owner for its review. Where required by law, Shop Drawings shall be stamped by an appropriate professional licensed by the State of Washington. Shop Drawings submitted to Owner without evidence of Contractor's approval shall be returned for resubmission. Additional review costs

incurred by the Owner resulting from incomplete submissions of Shop Drawings will be at the sole expense of the Contractor. Contractor shall review, approve, and submit Shop Drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor's submittal schedule shall allow a reasonable time for A/E review. Owner will review, approve, or take other appropriate action on the Shop Drawings. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective full submittal has been reviewed and the Owner has accepted or taken other appropriate action. Owner shall respond to Shop Drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with the final reviewed Shop Drawings. Submittals made by Contractor which are not required by the Contract Documents will be returned without action.

- C. Review and acceptance or other appropriate action with regard to Shop Drawings, by Owner or A/E shall not relieve Contractor of responsibility for any errors or omissions in such Shop Drawings, nor from responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Contract Documents, review by Owner or A/E shall not constitute an approval of the safety precautions employed by Contractor during construction, or constitute an approval of Contractor's means or methods of construction. If Contractor fails to obtain review and acceptance before installation and the item or work is subsequently rejected, Contractor shall be responsible for all costs for any and all corrections.
- D. If Shop Drawings show variations from the requirements of the Contract

Documents, Contractor shall describe such variations in writing on a separate document from the Shop Drawings, at the time it submits the Shop Drawings containing such variations. If Owner reviews and accepts any such variation, an appropriate Change Order may be issued. If the variation is considered minor and does not involve an adjustment in the Contract Sum or Contract Time, a Change Order will not be issued; however, the modification shall be recorded by the Contractor on the Project Record.

- E. Unless otherwise provided in Division 1, Contractor shall submit to Owner for review 4 copies of all Shop Drawings. Unless otherwise indicated, 3 sets of all Shop Drawings shall be retained by Owner and 1 reviewed set shall be returned to Contractor.

#### **4.04 ORGANIZATION OF SPECIFICATIONS**

Specifications are prepared in sections which conform generally with trade practices. These sections are for Owner and Contractor convenience and shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by any trade.

#### **4.05 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS**

- A. The Drawings, Specifications, and other documents prepared by A/E are instruments of A/E's service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright to the Drawings, Specifications, and other documents prepared by A/E, and A/E shall be deemed the author of them and will, along with any rights of Owner, retain all

common law, statutory, and other reserved rights, in addition to the copyright. All copies of these documents, except Contractor's set, shall be returned or suitably accounted for to A/E, on request, upon completion of the Work.

- B. The Drawings, Specifications, and other documents prepared by the A/E, and copies thereof furnished to Contractor, are for use solely with respect to Work of this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner and A/E. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by A/E appropriate to and for use in the execution of the Work.

- C. Contractor, and all Subcontractors of any tier, or material or equipment supplier of any tier, grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by them. In providing Shop Drawings, they warrant that they have authority to grant to Owner a license to use the Shop Drawings, and that such license is not in violation of any copyright or other intellectual property right. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in section 5.03 from any violations of copyright or other intellectual property rights arising out of Owner's use of the Shop Drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this section.

- D. The Shop Drawings and other submittals prepared by Contractor, Subcontractors

of any tier, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor of any tier, or material or equipment supplier of any tier, on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. The Contractor, Subcontractors of any tier, and material or equipment suppliers of any tier are granted a limited license to use and reproduce applicable portions of the Shop Drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.

## **PART 5 - PERFORMANCE**

### **5.01 CONTRACTOR CONTROL AND SUPERVISION**

A. Contractor shall at all times supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner with adequate resources. Contractor shall be solely responsible for, and have full control over, construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless otherwise noted in the Contract Documents. Contractor shall disclose its means and methods of construction when requested by Owner.

1. Failure to notify the Owner of changes in the project team members and the teams staffing levels established at the start of the Project may entitle the Owner to a credit for excess General Conditions previously allocated at the start of the Project. The Owner reserves the right to withhold General Conditions for staff

removed without written notice to the Owner.

2. The Contractor shall also provide sufficient staffing and supervision to review and process Requests for Information, Change Order Proposals, Change Order Requests, Change Orders, closeout documentation, and to perform all other requirements of the Contract and all Work.

B. Performance of the Work shall be directly supervised by a competent superintendent who is satisfactory to Owner and has authority to act for Contractor. The superintendent shall be assigned only to this Project unless approved by Owner and shall not be changed without the prior written notice and consent of Owner.

C. Contractor shall be responsible for acts and omissions of Contractor, Subcontractors, Suppliers, Vendors and their employees and agents.

D. Contractor shall enforce strict discipline and good order among Contractor's employees and all other persons performing the Work. Contractor shall not permit employment of persons not skilled in tasks assigned to them. Contractor's employees shall at all times conduct business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons. Owner may, by written notice, request Contractor remove from the Work or Project site any employee Owner reasonably deems incompetent, careless, unsafe or otherwise objectionable.

E. Contractor shall keep on the Project site a copy of the Drawings, Specifications, addenda, reviewed Shop Drawings, inspection reports, permits and permit drawings.

- F. The Contractor shall perform on the site, and with its own organization, work equivalent to at least **(12 percent unless otherwise indicated here\_\_\_\_\_)** of the total amount of work to be performed under the contract. This percentage may be reduced by a change order to this contract if, during performance of the work, the Contractor requests a reduction and the Owner determines that the reduction would be to the advantage of the Project and Owner.

**5.02 PERMITS, FEES, AND NOTICES**

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all permits, licenses, and inspections necessary for proper execution and completion of the Work. Where Owner can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the Contract Sum shall be reduced accordingly by Change Order. Prior to Final Acceptance, all approved, signed permits and all Certificates of Occupancy shall be delivered to Owner.
- B. If allowances for permits or utility fees are called for in the Contract Documents and set forth in Contractor's bid or proposal, and the actual costs of those permits or fees differ from the allowances in the Contract Documents, the difference either increase or decrease shall be adjusted by Change Order.
- C. Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

**5.03 PATENTS AND ROYALTIES**

Contractor is responsible for, and shall pay, all royalties and license fees. Contractor shall defend, indemnify, and hold Owner harmless from any costs, expenses, and liabilities arising out of the infringement by Contractor of any patent, copyright, or other intellectual property right used in the Work; however, provided that Contractor gives prompt notice, Contractor shall not be responsible for such defense or indemnity when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents. If Contractor has reason to believe that use of the required design, process, or product constitutes an infringement of a patent or copyright, it shall promptly notify Owner of such potential infringement. Failure to give such notice shall make the Contractor responsible for resultant loss.

**5.04 PREVAILING WAGES. [ONLY APPLICABLE TO STATE- OR CITY-FUNDED PROJECTS. SEE SECTION 11.12 FOR FEDERALLY-FUNDED PROJECTS].**

- A. Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate.
- B. Before commencing the Work, Contractor shall file a statement under oath with Owner and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work

by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.

- C. Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060. See Section 8.
- D. Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the prefiled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.
- E. In compliance with chapter 296-127 WAC, Contractor shall pay to the Department of Labor and Industries the currently established fee for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

**5.05 HOURS OF LABOR. [ONLY APPLICABLE TO STATE- OR CITY-FUNDED PROJECTS. SEE SECTION 11.12 FOR FEDERALLY-FUNDED PROJECTS].**

- A. Contractor shall comply with all applicable provisions of RCW 49.28 and they are incorporated herein by reference. Pursuant to that statute, no laborer, worker, or mechanic employed by Contractor, any Subcontractor, or any other person performing or contracting to do the whole or any part of the Work, shall be permitted or required to work

more than eight hours in any one Day, provided, that in cases of extraordinary emergency, such as danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight hours of each Day shall be not less than one and one-half times the rate allowed for this same amount of time during eight hours' service.

- B. Notwithstanding the preceding paragraph, RCW 49.28 permits a contractor or subcontractor in any public works contract subject to those provisions, to enter into an agreement with its employees in which the employees work up to ten hours in a Day. No such agreement may provide that the employees work ten-hour days for more than four Days a week. Any such agreement is subject to approval by the employees. The overtime provisions of RCW 49.28 shall not apply to the hours, up to forty hours per week, worked pursuant to any such agreement.

**5.06 NONDISCRIMINATION**

- A. Discrimination in all phases of employment is prohibited by, among other laws and regulations, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, RCW 49.60, and the Seattle Fair Employment Practices Ordinance. These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Contractor must meet.

**B. During performance of the Work:**

1. Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, the presence of any physical, sensory, or mental disability, sexual orientation, Vietnam-era veteran status, disabled veteran status or political affiliation, nor commit any unfair practices as defined in RCW 49.60.
2. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, of any physical, sensory, or mental disability, sexual orientation, Vietnam-era veteran status, disabled veteran status, or political affiliation. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.
3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Owner that explain this clause.
4. Contractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, the presence of any physical, sensory, or mental disability,

sexual orientation, Vietnam-era veteran status, disabled veteran status or political affiliation.

5. Contractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers' representative of Contractor's obligations according to the Contract Documents and RCW 49.60.
6. Contractor shall permit access to its books, records, and accounts, and to its premises by Owner, the Washington State Human Rights Commission, and the Seattle Office of Civil Rights, for the purpose of investigation to ascertain compliance with this section of the Contract Documents.
7. Contractor shall include the provisions of this section in every Subcontract.

**5.07 SAFETY PRECAUTIONS**

- A. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.
- B. In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of employees performing the Work and other persons who may be affected by the Work; prevent damage to materials, supplies, and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for



the safety of persons or property, or to protect them from damage, injury, or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.

C. Contractor shall maintain an accurate record of exposure data on all incidents relating to the Work resulting in death, traumatic injury, occupational disease including all medical treatments or damage to property, materials, supplies, or equipment. Contractor shall immediately report any such incident to Owner. Owner shall, at all times, have a right of access to all records of exposure.

D. Contractor shall provide all persons working on the Project site with information and training on hazardous materials of the Work at the time of their initial assignment, and whenever a new hazard is introduced into their work area.

1. Information. At a minimum, Contractor shall inform persons working on the Project site of:

- a. The requirements of chapter 296-62 WAC, General Occupational Health Standards;
- b. Any operations in their work area where hazardous materials are present; and
- c. The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and material safety data sheets required by chapter 296-62 WAC.

2. Training. At a minimum, Contractor shall provide training for persons working on the Project site which includes:

- a. Methods and observations that may be used to detect the presence or release of a hazardous materials in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
- b. The physical and health hazards of the materials in the work area;
- c. The measures such persons can take to protect themselves from these hazards, including specific procedures Contractor, or its Subcontractors, or others have implemented to protect those on the Project site from exposure to hazardous materials, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and
- d. The details of the hazard communication program developed by Contractor, or its Subcontractors, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

E. Contractor's responsibility for hazardous, toxic, or harmful substances shall include the following duties:

- 1. Contractor shall not keep, use, dispose, transport, generate, or sell on or about the Project site, any materials now or hereafter designated as, or which are subject to regulation as, hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance

(hereinafter collectively referred to as "hazardous materials"), in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous material be stored more than 90 Days on the Project site.

2. Contractor shall promptly notify Owner of all spills or releases of any hazardous substances which are otherwise required to be reported to any regulatory agency and shall pay the full cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, or local law, regulation, or ordinance; all inspections of the Project site by any regulatory entity concerning the same; all regulatory orders or fines; and all responses or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Project site.

- F. All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.
- G. In an emergency affecting the safety of life or the Work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall so act if so authorized or instructed.
- H. Nothing provided in this section shall be construed as imposing any duty upon Owner or A/E with regard to, or as constituting any express or implied assumption of control or responsibility

over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.

- I. The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as Owner, Labor & Industries, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

#### **5.08 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS**

- A. Contractor shall confine all operations, including storage of materials, to Owner-approved areas.
- B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. The temporary buildings and utilities shall remain the property of Contractor and shall be removed, and the site restored to the Owner's satisfaction, by Contractor at its expense upon completion of the Work.
- C. Contractor shall use only established roadways or temporary roadways authorized by Owner. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.
- D. Ownership and control of all materials or facility components to be demolished or removed from the Project site by Contractor shall immediately vest in Contractor upon severance of the component from the facility or

severance of the material from the Project site. Contractor shall be responsible for compliance with all laws governing the storage and ultimate proper/legal disposal off site. Contractor shall provide Owner with a copy of all manifests and receipts evidencing proper disposal when required by Owner or applicable law.

- E. Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Project site. Materials and equipment may be stored on the premises subject to approval of Owner. When Contractor uses any portion of the Project site as a shop, Contractor shall be responsible for dust control, any repairs, patching, or cleaning arising from such use.
- F. Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials or equipment until the date of Substantial Completion, and shall repair or replace without cost to Owner any damage or loss that may occur, except damages or loss caused by the acts or omissions of Owner. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, and shall repair or replace without cost to Owner any such damage or loss that might occur, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any Subcontractor.

**5.09 PRIOR NOTICE OF EXCAVATION**

"Excavation" means an operation in which earth, rock, or other material on or below the existing grade is moved or otherwise displaced by any means, except the tilling of soil less than 12 inches in depth for agricultural purposes, or road ditch maintenance that does not

change the original road grade or ditch flow line. Before commencing any excavation, Contractor shall provide proper notice of the scheduled commencement of excavation to all owners of underground facilities or utilities, through locator services. Contractor shall provide adequate, ongoing locator services as required to accommodate the Work, during the course of the Work and pay all fees for locator services. Any utilities affected from Contractor activities or damaged due to the Contractors failure to adequately protect or locate utilities per the Contract Documents per the requirements set forth by the Authorities Having Jurisdiction shall be corrected and paid for by the Contractor. No additional days will be added to Contract Time due to these impacts.

**5.10 UNFORESEEN PHYSICAL CONDITIONS**

- A. If Contractor encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions that differ materially from those ordinarily found and generally recognized in construction activities of the character provided for in the Contract Documents, then Contractor shall give Notice to Owner promptly and in no event later than one-work day after the first observance of the conditions. Continued disturbance of areas encountered by the Contractor before adequate Notice is provided to the Owner, or prior to allowing the Owner ample time to observe the conditions, will constitute waiver of the Contractor's right to an equitable adjustment.
- B. If such conditions differ materially and cause a change in Contractor's cost of, or time required for, performance of any part of the Work, the Contractor may be

entitled to an equitable adjustment in the Contract Time or Contract Sum, or both, provided it makes a request therefor as provided in part 7.

**5.11 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS**

- A. Contractor shall protect from damage all existing conditions, including soils, structures, equipment, improvements, utilities, and vegetation at or adjacent the Project site. Damages on adjacent property of a third party, the locations of which are made known to or should be known by Contractor shall be promptly reported by either the Owner or Contractor to the other party. Contractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents, any defects of equipment, material, workmanship or design furnished by the Contractor, or failure by Contractor or subcontractor at any tier to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage within 7 days, Owner may have the necessary work performed and charge the cost to Contractor.
- B. Contractor shall only remove trees when specifically authorized to do so by Contract Documents and verified by owner. Contractor shall protect all vegetation that will remain in place.
- C. The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

- D. Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the original condition.
- E. New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the Contract.
- F. No structural members shall be altered or in any way weakened without the written authorization of the Owner, unless such work is clearly specified in the Contract.
- G. If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the Contract.
- H. Contractor shall conform to requirements in Part 7 in the event conditions noted in G above generate additional costs.

**5.12 LAYOUT OF WORK**

- A. Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.
- B. Contractor shall lay out the Work from baselines and bench marks indicated on the Drawings, and shall be responsible for all field measurements in connection with the layout. Contractor shall furnish,

at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. Contractor shall be responsible for executing the Work to the lines and grades that may be established. Contractor shall be responsible for maintaining or restoring all stakes and other established marks.

1. Contractor shall limit tolerances of layout to an absolute minimum. Standard industry building tolerances shall govern.

### **5.13 MATERIAL AND EQUIPMENT**

- A. All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract Documents. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of Owner, is equal to that named in the Specifications, unless otherwise specifically provided in the Contract Documents.
- B. Contractor shall do all cutting, fitting, or patching that may be required to make its parts fit together properly, or receive or be received by work of others set forth in, or reasonably implied by, the Contract Documents. Contractor shall not endanger or compromise any work by cutting, excavating, or otherwise altering the Work and shall not cut or alter the work of any other contractor unless approved in advance by Owner.
- C. Should any of the Work be found defective, or in any way not in accordance with the Contract

Documents, this work, in whatever stage of completion, may be rejected by Owner.

### **5.14 AVAILABILITY AND USE OF UTILITY SERVICES**

- A. Owner shall make all reasonable utilities available to Contractor from existing outlets and supplies, or as specified in the Contract Documents. Unless otherwise provided in the Contract Documents, the utility service consumed shall be charged to or paid for by Contractor at current rates charged to Owner or, where the utility is produced by Owner, at reasonable rates determined by Owner. Contractor will carefully conserve any utilities.
- B. Contractor shall, at its expense and in a skillful manner satisfactory to Owner, coordinate use with the Authority, install and maintain all necessary temporary connections and distribution lines, together with appropriate protective devices, and all meters required to measure the amount of each utility used for the purpose of determining charges. Prior to the date of Final Acceptance, Contractor shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.
- C. The Contractor shall provide and pay for including but not limited to all temporary heating, electricity, water, gas, covering, and enclosures and generated power necessary to properly protect all work and materials against damage by moisture and temperature to dry out the work, and to facilitate the completion of the work. No permanent heating or cooling equipment installed during the course of the Work shall be used to facilitate the Contractors work. Contractor shall turn over to Owner all major systems. in new condition and at the

time required by the Contract Documents.

accommodations for that testing, sampling, etc. as required by Owner.

- D. Commissioning of heating and cooling equipment installed during the course of the Work shall be considered "testing" of such equipment and all utilities consumed for this purpose shall be the responsibility of the Contractor to pay for. System testing activities occurring beyond Substantial Completion are subject to utility use fees and will be prorated by the Owner and will be the responsibility of the Contractor to pay for.

- C. Owner may, at any time, conduct such inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Owner shall notify Contractor when an inspection is scheduled and if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Owner, such Owner inspection and tests are for the sole benefit of Owner and do not:

### **5.15 TESTS AND INSPECTIONS**

- A. Contractor shall document and maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for inspection and quality surveillance of all its Work and all Work performed by any Subcontractor or other service related entity. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public Authorities Having Jurisdiction, and shall bear all related costs of tests, inspections, and approvals. Contractor shall provide Owner timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.

1. Constitute or imply acceptance;
2. Relieve Contractor of responsibility for providing adequate quality control measures;
3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
4. Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents; or
5. Impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.

- B. OWNER INITIATED TESTS OR INSPECTIONS Contractor shall participate, and cooperate fully with any field tests that may have performed by consultants or testing agencies on behalf of the Owner, and shall make

- C. Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.
- D. Contractor shall promptly furnish, without additional charge to Owner, all facilities, labor, material and equipment reasonably

needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge Contractor any additional cost of inspection or testing when Work is not ready at the time agreed to by Contractor and Owner for inspection or testing, or when prior rejection makes reinspection or retest necessary. Owner shall attempt to schedule inspections and tests in a manner that will cause no delay in the Work.

**5.16 CORRECTION OF NONCONFORMING WORK**

- A. If a portion of the Work is covered contrary to the requirements of the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner's observation and if found to be nonconforming, it shall be replaced at the Contractor's expense and without change in the Contract Time.
- B. If at any time prior to Final Completion Owner desires to examine the Work, or any portion of it, which has been covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an adjustment in the Contract Sum for the actual costs of uncovering and replacement, and, if completion of the Work is thereby delayed, an adjustment in the Contract Time, provided it makes a request as provided in part 7. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the full costs of uncovering and reconstruction in accordance with the Contract Documents.
- C. Contractor shall promptly correct Work found by Owner not to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion.

Contractor shall bear all costs of correcting such nonconforming Work, including additional testing and inspections as required.

- D. If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or within one year after the date for commencement of any system warranties established under section 6.08, or within the terms of any applicable special warranty required by the Contract Documents, any of the Work that is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct the Work promptly after receipt of Notice from Owner to do so. Owner shall give such notice within 7 work days after discovery of the condition. This period of one year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor's duty to correct with respect to Work repaired or replaced shall run for one year from the date of repair or replacement. Obligations under this paragraph shall survive Final Acceptance.
- E. Contractor shall remove from the Project site portions of the Work which were found not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.
- F. If Contractor fails to begin correction of nonconforming Work within 15 days after Notice to do so, Owner may replace, correct, or remove the nonconforming Work and charge the full cost thereof to the Contractor.

- G. Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- H. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have according to the Contract Documents. Establishment of the time period of one year as described in paragraph 5.16D relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.
- I. If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum shall be reduced as appropriate and equitable.
- J. This warranty shall not limit the Owner's rights under paragraph 6.09B with respect to latent defects, gross mistakes or fraud.

**5.17 SITE ORGANIZATION AND CLEAN UP**

Contractor shall at all times keep all Construction areas and Project site areas organized and orderly, including but not limited to hauling routes, infrastructures, utilities, and storage areas free from accumulations of waste materials. Contractor shall remove from the

premises during the course of the Work as appropriate and upon completion of the Work, its rubbish, tools, scaffolding, equipment, and unused materials.. Upon completing the Work, Contractor shall leave the Project site in a clean, neat, and orderly condition satisfactory to Owner. If Contractor fails to clean up as provided herein, and after reasonable notice from Owner to do so, Owner may do so and the cost thereof shall be charged to Contractor.

**5.18 ACCESS TO WORK AND OCCUPIED RESIDENTIAL UNITS.**

- A. Contractor shall provide Owner and A/E access to the Work in progress wherever located.
- B. Contractor shall conform to RCW Landlord Tenant Laws relating to accessing occupied residential units. The Owner and resident shall be notified according to RCW 59.18.070; (1) Not more than twenty-four hours, where the defective condition deprives the tenant of hot or cold water, heat, or electricity, or is imminently hazardous to life;

**5.19 OTHER CONTRACTS**

Owner may undertake or award other contracts for additional work at or near the Project site. Contractor shall cooperate with any other contractors and with Owner's employees and shall carefully adapt scheduling and performance of the Work in accordance with these Contract Documents to reasonably accommodate the other work. Contractor shall promptly notify Owner of unexpected conditions or circumstances that may hamper Contractor's ability to perform the Work.



**5.20 SUBCONTRACTORS AND SUPPLIERS**

- A. At the time of each subcontract award,, Contractor shall furnish in writing to Owner the names, addresses, telephone numbers,, Tax Identification Numbers (TIN) and Unified Business Identifier Numbers (UBI) of all Subcontractors, as well as suppliers providing materials in excess of \$2,500. Contractor shall utilize Subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents. Contractor shall not utilize any Subcontractor or supplier to whom the Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions.
- B. All Subcontracts must be in writing. By appropriate written agreement, Contractor shall require each Subcontractor, so far as applicable to the Work to be performed by the Subcontractor, to be bound to Contractor by terms of those Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Each Subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. However, nothing in this paragraph shall be construed to alter the contractual relations between Contractor and its Subcontractors with respect to insurance or bonds.
- C. Contractor shall schedule, supervise, and coordinate the operations of all

Subcontractors. No Subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work or any other obligations in accordance with the Contract Documents.

- D. Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that:
  - 1. The assignment is effective only after termination by Owner for cause pursuant to section 9.01 and only for those Subcontracts which Owner accepts by notifying the Subcontractor in writing; and
  - 2. After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract.
  - 3. The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.
- E. The Contractor shall not enter into any subcontract with any subcontractor whose firm or any of its principals have been suspended, debarred, declared ineligible or otherwise excluded from participation in this transaction by any agency of the United States Government or by any state, territory, or municipality. The Contractor will submit a signed certification of compliance with this section for itself and for any of its subcontractors as subcontract agreements are issued and will submit an annual certification of compliance for Contracts extending beyond one year in duration. The Owner will provide the certification form to the Contractor.

**5.21 WARRANTY OF CONSTRUCTION**

- A. Contractor warrants that all Work conforms to the requirements of the Contract Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed by Contractor or Sub Contractors.
- B. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract Documents, Contractor shall:
  - 1. Obtain all warranties that would be given in normal residential or commercial practice;
  - 2. Require all warranties to be executed, in writing, for the benefit of Owner;
  - 3. Enforce all warranties for the benefit of Owner ; and
  - 4. Be responsible to enforce any subcontractor's, manufacturer's, or supplier's warranty should they extend beyond the period specified in the Contract Documents.
- C. Contractor to perform warranty repairs pursuant to RCW 59.18.070: (1) Not more than twenty-four hours, where the defective condition deprives the tenant of hot or cold water, heat, or electricity, or is imminently hazardous to life.  
  
Contractor shall notice the Owner so that proper entry authorization may be arranged by Owner.
- D. The obligations under this section may survive Final Acceptance.

**5.22 INDEMNIFICATION**

- A. Contractor shall defend, indemnify, and hold Owner and A/E harmless from and against all claims, demands, losses,

damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

- 1. The sole negligence of Contractor or any of its Subcontractors;
- 2. The concurrent negligence of Contractor, or any Subcontractor, but only to the extent of the negligence of Contractor or such Subcontractor; and
- 3. The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.

- B. In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Contractor, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Contractor waives immunity as to Owner and A/E only, in accordance with RCW Title 51.

**5.23 PROHIBITION AGAINST LIENS**

The Contractor is prohibited from placing a lien on the Owner's property. This prohibition shall apply to all subcontractors of any tier and all materials suppliers.

**5.24 OWNER'S REPRESENTATIVE**

- A. Owner's Representatives. The Owner's Project Coordinator is authorized to act

on behalf of the Owner in all matters pertaining to the Work and the Contract Documents. The Owner's Project Coordinator may delegate all or part of this authority to others and will communicate this authorization in writing. No representative or employee of the Owner, other than the Owner's Project Coordinator, shall have authority to obligate the Owner for any purpose unless authorized in writing to do so by the Owner's Project Coordinator. The Owner's Project Coordinator shall have the authority to reject defective material and suspend work that is not consistent with the Contract Documents.

B. Owner's decisions, as delegated to the Owner's Representatives, will be final on all questions including, but not limited to, the following:

1. Quality and acceptability of materials and Work, as specified by the Contract Documents;
2. Measurement of unit price work;
3. Acceptability of rates of progress on the Work; and
4. Interpretation of Drawings and Specifications.

C. The following decisions are the exclusive province of the Owner's Project Coordinator, the Executive Director of Owner, and the Deputy Executive Director of Owner:

1. Determination as to the existence of Material Differing Site Conditions;
2. Fulfillment of the Contract by Contractor;
3. Payments under the Contract;
4. Issuance of a Field Authorization or Change Order; and
5. Adjustment of Critical Milestone Dates

6. Achieving Critical Milestones, Substantial Completion and Final Completion.

### **5.25 CONFLICTS**

In the event of any conflict between the Owner's Project Coordinator and any other Owner's Representative regarding any decision or directive, the Owner's Project Coordinator's decision or directive shall control.

### **5.26 APPROVAL OF OWNER'S REPRESENTATIVES**

Nothing in the Contract requires the Owner's Representatives to provide Contractor with direction or advice on how to do the Work. Although an Owner's Representative may advise Contractor of any faulty work or materials, or infringements of the terms of the Contract Documents, failure of any Owner's Representative to do so shall not constitute acceptance or approval. If an Owner's Representative approves or recommends any method or manner for doing the Work or producing materials, the approval or recommendation shall not:

- A. Constitute a representation that following the method or manner employed by Contractor will result in compliance with the Contract,
- B. Relieve Contractor or its Surety of any risks or obligations under the Contract, or
- C. Create any liability for Owner.

### **5.27 ORAL AGREEMENTS**

No oral agreement or conversation with any officer, agent, or employee of Owner, either before or after execution of the Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract. Such oral agreement or conversation shall be considered as unofficial

information and in no way binding upon Owner or Contractor unless subsequently put in writing.

## **PART 6 - PAYMENTS AND COMPLETION**

### **6.01 CONTRACT SUM**

Owner shall pay Contractor the Contract Sum for performance of the Work, in accordance with the Contract Documents. The Contract Sum shall include all taxes imposed by law and properly chargeable to the Project, including sales tax.

### **6.02 SCHEDULE OF VALUES**

Within 7 days of Notice of Award the Contractor shall submit to Owner for approval a detailed breakdown allocating the total Contract Sum to each principle category of work, in such detail as requested by Owner ("Schedule of Values"). The approved Schedule of Values shall include appropriate amounts for demobilization, punchlists, record drawings, Operating & Maintenance manuals, warranties, as-built drawings and any other requirements for Project closeout in the Contract Documents. This shall be used by Owner as the sole basis for progress payments. The Contractor shall prorate its overhead and profit over the construction period of the contract. Payment for Work shall be made only for and in accordance with those items included in the approved Schedule of Values.

### **6.03 APPLICATION FOR PAYMENT**

A. At monthly intervals, unless determined otherwise by Owner, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require.

- B. By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.011, as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in section 1.03 are true and correct, to the best of Contractor's knowledge, as of the date of the Application for Payment.
- C. At the time Contractor submits an Application for Payment, Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work on the Progress Schedule.
- D. If authorized by Owner, the Application for Payment may include a request for payment for material delivered to the Project site and suitably stored. Contractor is at all times fully responsible for any materials stored on site and not yet installed. Payment may similarly be requested for material stored off the Project site, provided Contractor complies with or furnishes satisfactory evidence of the following:
1. The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
  2. The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
  3. Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
  4. Contractor furnishes Owner a certificate of insurance extending Contractor's insurance coverage for

damage, fire, and theft to cover the full value of all materials stored, or in transit;

5. The warehouse (or secure portion thereof) is continuously under lock and key, and only Contractor's authorized personnel shall have access;
6. Owner shall at all times have the right of access in company of Contractor;
7. Contractor and its surety assume total responsibility for the stored materials; and
8. Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Project site.

**6.04 PROGRESS PAYMENTS**

- A. Owner shall make progress payments, in such amounts as Owner and any funding/lending agents determine are properly due, within 30 Days from date of Owner approval of a properly executed Application for Payment. Owner shall notify Contractor in accordance with RCW 39.76 if the Application for Payment does not comply with the requirements of the Contract Documents.
- B. Owner shall retain 5% of the amount of each progress payment until no less than 45 days after Final Acceptance and receipt of all documents required by law or the Contract Documents including, at Owner's request, consent of surety to release the retainage. In accordance with RCW 60.28, Contractor may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or

savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Contractor. Owner may permit Contractor to provide an appropriate bond in lieu of the retained funds.

- C. Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Contractor with the Contract Documents.
- D. Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in RCW 39.76 to the same extent as if the Work was a "public work" as defined in that statute.
- E. Method of Payment: Unless the Owner has granted a waiver, for contracts of one million or more, the Contractor's payments will be made electronically through a credit card issued by the Owner's banking services provider as part of its e-payables program. The application for payment and Owner's review of the Contractor's progress payments shall remain unchanged by this method of payment. For all other contracts, SHA strongly encourages enrollment in the program.

**6.05 PAYMENTS WITHHELD**

- A. Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including but not limited to:

1. Work not in accordance with the Contract Documents;
2. Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum;
3. Work by Owner to correct defective Work or complete the Work in accordance with section 5.16;
4. Failure to perform in accordance with the Contract Documents; or
5. Cost or liability that may occur to Owner as the result of Contractor's fault or negligent acts or omissions.

B. In any case where part or all of a payment is going to be withheld for unsatisfactory performance, Owner shall notify Contractor in accordance with RCW 39.76.

#### **6.06 RETAINAGE AND BOND CLAIM RIGHTS**

RCW chapters 39.08 and 60.28, concerning the rights and responsibilities of Contractor and Owner with regard to the performance and payment bonds and retainage, are made a part of the Contract Documents by reference as though fully set forth herein, and to the same extent as if the work was a "public work" and/or "public improvement" as defined in those statutes.

#### **6.07 SUBSTANTIAL COMPLETION**

Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner can fully occupy the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective or punch list work shall

have been completed. Before requesting Substantial Completion, the Contractor shall furnish the Owner, a comprehensive punchlist of items of work remaining to be performed or intended to be corrected by the Contractor on the portion of work the Contractor intends to turnover to the Owner and the dates the remaining items on the list are to be completed. Substantial Completion shall not be achieved if any system(s) and part(s) are not fully commissioned, fully tested or fully functional at the time of acceptance by Owner; if utilities, appliances are not connected; or documentation has been provided to the Owner and proven to conform per the Contract Documents and operating normally as intended or; if all required occupancy permits have not been issued; or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The date Substantial Completion is achieved shall be established in writing by Owner after a written request is submitted by Contractor.

#### **6.08 PRIOR OCCUPANCY**

A. Owner may, upon Notice to Contractor, take possession of or use any completed or partially completed portion of the Work ("Prior Occupancy") at any time prior to Substantial Completion. Unless otherwise agreed in writing, Prior Occupancy shall not: be deemed an acceptance or constitute Substantial Completion of any portion of the Work; accelerate the time for any payment to Contractor; prejudice any rights of Owner provided by any insurance, bond, guaranty, or the Contract Documents; relieve Contractor of the risk of loss or any of the obligations established by the Contract Documents; establish a date for termination or partial termination of the assessment of liquidated damages; or constitute a waiver of claims.

C. Notwithstanding anything in the preceding paragraph, Owner shall be responsible for loss of or damage to the

Work resulting from its Prior Occupancy. Contractor's one year duty to repair and any system warranties shall begin on building systems activated and used by Owner as agreed in writing by Owner and Contractor.

- D. Before taking Prior Occupancy possession of or using any work, the Owner shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that Owner intends to take possession of or use. However, failure of the Owner to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract.

**6.09 FINAL COMPLETION, ACCEPTANCE, AND PAYMENT**

- A. Final Completion shall be achieved when the Work is fully and finally complete in accordance with the Contract Documents. The date Final Completion is achieved shall be established by Owner in writing.
- B. Contractor shall request Final Acceptance from Owner. Final Acceptance is the formal action of Owner acknowledging Final Completion of the Work. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Owner's rights under any warranty or guarantee. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents, submit to Owner a Notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment, shall release Contractor or its sureties from any obligations of these Contract Documents or the Public Works Bond, or constitute a waiver of any

claims by Owner arising from Contractor's failure to perform the Work in accordance with the Contract Documents.

- C. Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to Owner of all claims by Contractor, or any such Subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those Claims made in accordance with the procedures, including the time limits, set forth in part 8.

**PART 7 - CHANGES**

**7.01 CHANGES IN THE WORK**

- A. Owner may, at any time and without notice to Contractor's surety, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Contract Time, an equitable adjustment shall be made as provided in section 7.02 or 7.03, respectively, and such adjustment(s) shall be incorporated into a Change Order.
- B. If Owner desires to order a change in the Work, the Owner may request a written Change Order Proposal (COP) from Contractor. Contractor shall submit a Change Order Proposal within 14 Days of the request from Owner, or within such other period as mutually agreed. Contractor's Change Order Proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the

Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity that may result from the change in the Work.

- C. Upon receipt of the Change Order Proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in sections 7.02 and 7.03, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Change Order Proposal, Owner may direct Contractor to proceed immediately with the Change Order Proposal Work. Contractor shall proceed with any change in the Work only after it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.
- D. If Owner and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.
- E. If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or

Contract Time, Contractor may in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 14 Days of Contractor's request. Owner may also provide Contractor with a final offer at any time. If Contractor rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided in part 8.

## **7.02 CHANGES IN THE CONTRACT SUM**

### **A. General Application**

- 1. The Contract Sum shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Sum in its Change Order Proposal.
- 2. If the cost of Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum in accordance with the following procedure. No change in the Contract Sum shall be allowed to the extent: Contractor's changed cost of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible; the change is concurrently caused by Contractor and Owner; or the change is caused by an act of Force Majeure as defined in Section 3.05.
  - a. A request for an equitable adjustment in the Contract Sum shall be based on a written Notice delivered to Owner within 7 Days of the occurrence of the event giving rise to the request. For purposes of this part, "occurrence"



means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify Owner in writing and begin to keep and maintain complete, accurate, and specific daily records including photographs, daily logs, accounting of labor, materials and equipment associated with the occurrence. Contractor shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.

- b. Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 7 Days before Contractor's written Notice to Owner. The Notice shall provide, at a minimum: a description of the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Contractor and its Subcontractors of any tier, and to the extent possible the full amount of the adjustment in Contract Sum requested. Failure to provide a timely written notice with this information shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment. Owner's interests are prejudiced, for example, if Owner receives knowledge of facts after Owner incurs costs that could have been avoided or reduced if the notice had been timely. In this case, Contractor shall receive an equitable adjustment if otherwise entitled to it, less the costs

incurred. A separate Notice must accompany each request for equitable adjustment. If Owner approval of equitable adjustment has been granted, the correspondence containing such approval shall accompany the request for equitable adjustment. Owner must approve all requests for equitable adjustments before any Change Order is executed.

- c. Within 30 Days of the occurrence of the event giving rise to the request, Owner may allow an additional period of time to ascertain more accurate data unless Owner agrees to the initial Change Order Proposal in writing,. Contractor shall supplement Notice provided in accordance with subparagraph a. above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the critical path schedule, in accordance with section 7.03C. Failure to provide such additional information and documentation

within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment. Owner's interests are prejudiced, for example,

- (1) If Owner is deprived of full knowledge of all material facts needed to verify the request or make an informed decision on Contractor's request; or
  - (2) If Owner receives knowledge of facts after Owner incurs costs that could have been avoided if the notice had been timely. In this case, Contractor shall receive an equitable adjustment only if otherwise entitled to it, less the costs incurred.
- d. Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- e. Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Contract Time that arise out of the same event(s) shall be submitted together. Failure to do so constitutes a waiver of Contractor's right to an equitable adjustment.
3. The value of any Work covered by a Change Order Proposal, or of any request for an equitable adjustment in the Contract Sum, shall be determined by one of the following methods:

- a. On the basis of a fixed price as determined in paragraph 7.02B.
  - b. By application of unit prices to the quantities of the items involved as determined in paragraph 7.02C.
4. When Owner has requested Contractor to submit a Change Order Proposal, Owner may direct Contractor as to which method in subparagraph 3. above to use when submitting its proposal. Otherwise, Contractor shall determine the value of the Work, or of a request for an equitable adjustment, on the basis of the fixed price method.

**B. Change Order Pricing -- Fixed Price**

When the fixed price method is used to determine the value of any Work covered by a Change Order, or of a request for an equitable adjustment in the Contract Sum, the following procedures shall apply:

1. Contractor's Change Order Proposal, or request for adjustment in the Contract Sum, shall be accompanied by a complete itemization of the costs, including labor, material, subcontractor costs, and overhead and profit. The costs shall be itemized in the manner set forth below, and shall be submitted on breakdown sheets in a form approved by Owner.
2. All costs shall be calculated based upon appropriate industry standard methods of calculating current Contractor labor rates for the Project and local material prices and local equipment costs.
3. If any of Contractor's pricing assumptions are contingent upon anticipated actions of Owner, Contractor shall clearly state them in

the proposal or request for an equitable adjustment.

4. The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Contractor or Subcontractor, small tools, overhead, profit, bond and insurance markups will apply to the net difference.
5. If the total cost of the change in the Work or request for equitable adjustment does not exceed \$2,500, Contractor may submit a breakdown in the following level of detail if the description of the change in the Work or if the request for equitable adjustment is sufficiently definitive to permit the Owner to determine fair value:
  - a. lump sum labor;
  - b. lump sum material;
  - c. lump sum equipment usage;
  - d. overhead and profit as set forth below; and
  - e. insurance and bond costs as set forth below.
6. Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:
  - a. Craft labor costs: These are the labor costs determined by multiplying the estimated or actual additional number of craft hours needed to perform the change in the Work by the hourly labor costs.

Craft hours should cover direct labor, as well as indirect labor due to trade inefficiencies. The hourly costs shall be based on the following:

- (1) Basic wages and benefits: Hourly rates and benefits according to applicable prevailing wages. Direct supervision shall be a reasonable percentage not to exceed 15% of the cost of direct labor. No supervision markup shall be allowed for a working supervisor's hours.
  - (2) Worker's insurance: Direct contributions to the state of Washington for industrial insurance; medical aid; and supplemental pension, by the class and rates established by the State Department of Labor and Industries.
  - (3) Federal insurance: Direct contributions required by the Federal Insurance Compensation Act; Federal Unemployment Tax Act; and the State Unemployment Compensation Act.
  - (4) Safety: Cost incurred due to the Washington Industrial Safety and Health Act, which shall be a reasonable percentage not to exceed 2% of the sum of the amounts calculated in (1), (2), and (3) above.
- b. Material costs: This is an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed first from actual known costs, second from

supplier quotations or if these are not available, from standard industry pricing guides for the local area. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges, shall be itemized.

- c. Equipment costs: This is an itemization of the type of equipment and the estimated or actual length of time the construction equipment appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for construction equipment only if used entirely and exclusively for the changed Work, or for additional rental costs actually incurred by the Contractor. Equipment charges shall be computed on the basis of actual invoice costs or if owned, from the current edition of one of the following sources in the order in which they are listed:
- (1) Associated General Contractors - Washington State Department of Transportation Equipment Rental Agreement; latest edition;
  - (2) The state of Washington Utilities and Transportation Commission for trucks used on highways.
  - (3) The National Electrical Contractors Association for equipment used on electrical work.
  - (4) The Mechanical Contractors Association of America for

equipment used on mechanical work.

The most recent edition of the Data Quest Rental Rate (Blue Book) shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed that shown in the AGC WSDOT Equipment Rental Agreement, latest edition.

- d. Allowance for small tools, expendables & consumable supplies: Small tools consist of tools which cost \$250 or less and are normally furnished by the performing contractor. The maximum rate for small tools shall not exceed the following:
- (1) For Contractor, 3% of direct labor costs.
  - (2) For Subcontractors, 5% of direct labor costs.

Expendables and consumable supplies directly associated with the change in Work must be itemized.

- e. Subcontractor costs: This is defined as payments Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Sub contractors' cost of Work shall be calculated and itemized in the same manner as prescribed herein for Contractor.
- f. Allowance for overhead: This is defined as costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to Owner of

any change in the Contract Sum but not to the cost of any change in the Contract Time for which contractor has been, or could have been (had contractor filed a sufficient, timely claim), compensated pursuant to the conditions set forth in Section 7.03. This allowance shall compensate Contractor for all noncraft labor, temporary construction facilities, field engineering, schedule updating, as-built drawings, home office cost, B&O taxes, office engineering, estimating costs, additional overhead because of extended time, and any other cost incidental to the change in the Work. It shall be strictly limited in all cases to a reasonable amount, mutually acceptable, or if none can be agreed upon to an amount not to exceed the rates below:

- (1) For Contractor, for any Work actually performed by Contractor's own forces, 10% of the cost.
- (2) For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 10% of the cost.
- (3) For Contractor, for any Work performed by its Subcontractor(s), no additional percentage allowance.
- (4) For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, no additional percentage allowance.
- (5) The cost to which overhead is to be applied shall be

determined in accordance with subparagraphs a.-e. above.

- g. Allowance for profit: This is an amount to be added to the cost of any change in contract sum, but not to the cost of change in Contract Time for which contractor has been, or could have been (had contractor filed a sufficient, timely claim), compensated pursuant to the conditions set forth in section 7.03. It shall be limited to a reasonable amount, mutually acceptable, or if none can be agreed upon, to an amount not to exceed the rates below:
  - (1) For Contractor or Subcontractor of any tier for work performed by their forces, 5% of the cost developed in accordance with 7.02B.6a.- e. above.
  - (2) For Contractor for work performed by its Subcontractor(s), 10% of the Subcontractor cost developed in accordance with 7.02B.6a. – e, less the Subcontractor(s)' profit.
  - (3) For Subcontractors of any tier for work performed by a subcontractor of a lower tier, no additional percentage allowance.
- h. Cost of change in insurance or bond premium: This is defined as:
  - (1) Contractor's liability insurance: The cost of any changes in Contractor's liability insurance arising directly from execution of the changed Work;
  - (2) Public works bond(s): The cost of the additional premium for Contractor's bond arising directly from the changed Work.

The costs of any change in insurance or bond premium shall be added after overhead and profit are calculated in accordance with subparagraphs f. and g. above.

small tools and bond and insurance costs; and

- b. Quantities must be supported by field measurement statements signed by Owner.

**C. Change Order Pricing -- Unit Prices**

1. If Owner authorizes Contractor to perform Work on a unit-price basis, Owner's authorization shall clearly state:
  - a. Scope of work to be performed;
  - b. Type of reimbursement including pre-agreed rates for material quantities; and
  - c. Cost limit of reimbursement.
2. Contractor shall:
  - a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, Contractor shall identify workers assigned to the Change Order Work and areas in which they are working;
  - b. Leave access as appropriate for quantity measurement; and
  - c. Not exceed any cost limit(s) without Owner's prior written approval.
3. Contractor shall submit costs in accordance with paragraph 7.02B. and satisfy the following requirements:
  - a. Unit prices shall include reimbursement for all direct and indirect costs of the Work, including but not limited to: overhead and profit, general conditions, supervision, safety,

**7.03 CHANGES IN THE CONTRACT TIME**

- A. The Contract Time shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Time in its Change Order Proposal.
- B. If the time of Contractor's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.
  1. A Contractor's request for an equitable adjustment in the Contract Time shall be based on Notice delivered to Owner within 7 Days of the occurrence of the event giving rise to the request. If Contractor believes it is entitled to adjustment of Contract Time, Contractor shall immediately begin to keep and maintain complete, accurate, and specific daily records including photographs, and track daily loss of productivity specific to the established critical path schedule in sufficient detail as to fully document the claim. Contractor shall give Owner access to any such record and, if requested, shall promptly furnish copies of such record to Owner.

2. Contractor shall not be entitled to an adjustment in the Contract Time for any events that occurred more than 7 Days before Contractor's Notice to Owner. The Notice shall provide, at a minimum: a description of the event giving rise to the request for an equitable adjustment in the Contract Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Time requested. Failure to provide this information in the Notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment. Owner's interests are prejudiced, for example, if Owner receives knowledge of facts after the Work incurs delay that could have been avoided if the notice had been timely. In this case, Contractor shall receive an equitable adjustment if otherwise entitled to it, less the delay incurred.
    - a. If Owner is deprived of full knowledge of all material facts needed to make an informed decision on Contractor's request; or
    - b. If Owner receives knowledge of facts after the Work incurs delay that could have been avoided if the notice had been timely. In this case, Contractor shall receive an equitable adjustment if otherwise entitled to it, less the delay incurred.
  3. Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the Notice provided in accordance with subparagraph 7.03B.2 with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in Contract Time for such act, event, or condition; and supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment. Owner's interests are prejudiced, for example,
    - a. If Owner is deprived of full knowledge of all material facts needed to make an informed decision on Contractor's request; or
    - b. If Owner receives knowledge of facts after the Work incurs delay that could have been avoided if the notice had been timely. In this case, Contractor shall receive an equitable adjustment if otherwise entitled to it, less the delay incurred.
  4. Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- C. Any change in the Contract Time covered by a Change Order, or based on a request for an equitable adjustment in the Contract Time, shall be limited to the change in the critical path of Contractor's schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Any Change Order proposal or request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the

critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by resequencing of the Work or other reasonable alternatives.

D. Contractor may request compensation for the cost of a change in Contract Time in accordance with this paragraph 7.03D, subject to the following conditions:

1. The change in Contract Time shall solely be substantiated as caused by the fault or negligence of Owner or anyone for whose acts Owner is responsible;
2. Compensation under this paragraph is limited to changes in Contract Time for which Contractor is not entitled to be compensated under section 7.02;
3. Contractor shall follow the procedure set forth in paragraph 7.03B;
4. Contractor shall establish the extent of the change in Contract Time in accordance with paragraph 7.03C; and
5. The daily cost of any change in Contract Time shall be limited to the items below, less funds that may, or could (had contractor filed a sufficient, timely claim), have been paid pursuant to a change in the Contract Sum that contributed to this change in Contract Time:
  - a. cost of nonproductive field supervision or labor extended because of the delay;
  - b. cost of weekly meetings or similar indirect activities extended because of the delay;

- c. cost of temporary facilities or equipment rental extended because of the delay;
- d. cost of insurance extended because of the delay;
- e. general and administrative overhead in an amount to be agreed upon, but not to exceed 3% of Contract Sum divided by the Contract Time for each Day of the delay.

## **PART 8 - CLAIMS AND DISPUTE RESOLUTION**

### **8.01 CLAIMS PROCEDURE**

- A. Except as otherwise provided in paragraph 5.04C or paragraph 11.12H, whichever is applicable, if the parties fail to reach agreement regarding any dispute arising from the Contract Documents, including a failure to reach agreement on the terms of any Change Order for Owner-directed Work as provided in section 7.01, or on the resolution of any request for an equitable adjustment in the Contract Sum as provided in section 7.02 or the Contract Time as provided in section 7.03, Contractor's only remedy shall be to file a Claim with Owner as provided in this section.
- B. Contractor shall file its Claim within the earlier of: 120 Days from Owner's final offer in accordance with paragraph 7.01E; or the date of Final Acceptance.
- C. The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. At a minimum, the Claim shall contain the following information:



1. A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
  2. The date on which facts arose which gave rise to the Claim;
  3. The name of each employee of Owner or A/E knowledgeable about the Claim;
  4. The specific provisions of the Contract Documents which support the Claim;
  5. The identification of any documents and the substance of any written communications that support the Claim;
  6. Copies of any identified documents, other than the Contract Documents, that support the Claim;
  7. If an adjustment in the Contract Time is sought: the specific Days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time;
  8. If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail required by, section 7.02; and
  9. A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes Owner is liable.
- D. After Contractor has submitted a fully-documented Claim that complies with all applicable provisions of parts 7 and 8, Owner shall respond, in writing, to Contractor with a decision within 60 Days from the date the Claim is received, or with notice to Contractor of the date by which it will render its decision.
  - E. To assist in the review of Contractor's Claim, Owner may visit the Project site, or request additional information, in order to fully evaluate the issues raised by the Claim. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Owner's written decision as set forth above shall be final and conclusive as to all matters set forth in the Claim, unless Contractor follows the procedure set forth in section 8.02.
  - F. Any Claim of the Contractor against the Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by the Contractor unless timely made in accordance with the requirements of this section.

## **8.02 DISPUTE RESOLUTION**

- A. All Claims arising out of the Work shall be attempted to be resolved by both parties in good faith. If Contractor disagrees with Owner's decision rendered in accordance with paragraph 8.01D Contractor shall provide Owner with a written request for Dispute Resolution. No request for Dispute Resolution of any such Claim shall be made later than 30 Days after the receipt date of Owner's decision on such Claim; failure to request Dispute Resolution within

said 30 Day period shall result in Owner's decision being final and binding upon Contractor and its Subcontractors. All other rights to equitable adjustment from this point are deemed waived.

- B. Notice of the request for Dispute Resolution shall contain all claims Contractor has against Owner and state the Contractor's specific disagreement with the Owner's decision. Within ten business days of receipt of Contractor's Notice of Request for Dispute Resolution, Owner shall advise Contractor whether the dispute will be resolved by mediation, arbitration or litigation. If the dispute is to be mediated, the parties shall mediate under the then current Construction Industry Mediation Rules of the AAA. If the parties do not agree to another location, the mediation shall take place in Seattle, Washington.
- C. Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E, and Owner and A/E shall be submitted in the same mediation.
- D. If the parties resolve the Claim(s) prior to a mediation decision, the terms of their agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim(s), including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.
- E. If any Claim is not resolved through mediation, Owner may elect to have the disputed claim(s) resolved through arbitration or litigation. Owner shall within ten working days of conclusion of the mediation, informs Contractor of its election to proceed with arbitration or litigation.

If Owner elects to have the dispute resolved through arbitration, Contractor shall file a notice, of Demand for Arbitration with the American Arbitration Association (AAA), with a copy provided to Owner, in accordance with the Construction Industry Arbitration Rules of AAA as follows:

- 1. Claims involving \$75,000 or less, exclusive of claimed interest, attorney's fees, arbitration fees and costs shall be conducted in accordance with the AAA Fast Track Procedures
- 2. Disputes over \$75,000 shall be conducted in accordance with the AAA Procedures for Large Complex Construction Disputes unless the parties agree to use the expedited rules.
- 3. For disputes conducted according this section, notwithstanding any contrary provision of the referenced rules,
  - a. the arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of Washington;
  - b. The obligations of Contractor under section 8.05 shall continue and shall not be affected;
  - c. the arbitrator shall be an attorney with at least 10 years experience in construction law;
  - d. the arbitrator shall issue a written decision setting out: a) each of the findings of facts; b) the evidence supporting each finding of fact; c) a statement of the applicable law; and d) an explanation of how the arbitrator applied the law to those facts;

**8.03 ARBITRATION**

e. if the parties do not agree to another location, the arbitration proceedings shall be conducted in Seattle, Washington.

C. The judgment upon the arbitration award may be entered, or review of the award may occur, in the court having jurisdiction thereof. No independent legal action relating to or arising from the Work shall be maintained.

D. Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E, and Owner and A/E shall be submitted in the same arbitration.

E. If the parties resolve the Claim prior to an arbitration award, the terms of the party's agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

#### **8.04 LITIGATION**

If Owner elects to resolve the dispute through litigation, Contractor shall file suit in a court of competent jurisdiction in the City of Seattle.

#### **8.05 CLAIMS AUDITS**

A. All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Contractor, or Subcontractors of any tier, shall

constitute a waiver of the Claim and shall bar any recovery.

B. In support of Owner audit of any Claim, Contractor shall, upon request, promptly make available to Owner the following documents:

1. Daily time sheets and supervisor's daily reports;
2. Collective bargaining agreements;
3. Insurance, welfare, and benefits records;
4. Payroll registers;
5. Earnings records;
6. Payroll tax forms;
7. Material invoices, requisitions, and delivery confirmations;
8. Material cost distribution worksheet;
9. Equipment records (list of company equipment, rates, etc.);
10. Vendors', rental agencies', Subcontractors', and agents' invoices;
11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
12. Subcontractors' and agents' payment certificates;
13. Cancelled checks (payroll and vendors);
14. Job cost report, including monthly totals;
15. Job payroll ledger;

16. Planned resource loading schedules and summaries;
17. General ledger;
18. Cash disbursements journal;
19. Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work;
20. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
21. If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
22. All nonprivileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim;
23. Work sheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and
24. Work sheets, software, and all other documents used by Contractor to prepare its bid.

- B. The audit may be performed by employees of Owner or a representative of Owner. Contractor, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Contractor, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors.

## **PART 9 - TERMINATION OF THE WORK**

### **9.01 TERMINATION BY OWNER FOR CAUSE**

- A. Owner may, upon 7 Days Notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:
  1. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
  2. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of its insolvency;
  3. Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents;
  4. Contractor fails to supply adequately skilled workers, an adequate number of skilled workers to do the Work, proper materials or equipment verified by actual progress made against the approved schedule.
  5. Contractor fails to make prompt payment due to Subcontractors, suppliers, or for labor;

6. Contractor materially disregards or fails to comply with recognized and established safety measures, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
  7. Contractor is otherwise in material breach of any provision of the Contract Documents.
- B. Upon termination, Owner may at its option:
1. Take possession of the Project site and take possession of or use all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work;
  2. Accept assignment of subcontracts pursuant to section 5.20; and
  3. Finish the Work by whatever other reasonable method it deems expedient.
- C. Owner's rights and duties upon termination are subject to the prior rights and duties of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.
- D. When Owner terminates the Work in accordance with this section, Contractor shall take the actions set forth in paragraph 9.02B, and shall not be entitled to receive further payment until the Work is accepted.
- E. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for A/E's services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in completing the Work, or as a result of Contractor's actions, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. Contractor shall also be liable for liquidated damages until such reasonable time as may be required for Substantial Completion. These obligations for payment shall survive termination.
- F. Termination of the Work in accordance with this section shall not relieve Contractor or its surety of any responsibilities for Work performed.
- G. If Owner terminates Contractor for cause, and it is later determined that none of the circumstances set forth in paragraph 9.01A exist, then such termination shall be deemed a termination for convenience pursuant to section 9.02.
- 9.02 TERMINATION BY OWNER FOR CONVENIENCE**
- A. Owner may, upon Notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.
- B. Unless Owner directs otherwise, after receipt of a Notice of termination for either cause or convenience, Contractor shall promptly:
1. Stop performing Work on the date as specified in the notice of termination;
  2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work which is not terminated;
  3. Cancel all orders and subcontracts, upon terms acceptable to Owner, to

the extent that they relate to the performance of Work terminated;

4. Assign to Owner all of the rights, titles, and interests of Contractor in all orders and subcontracts;
5. Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest; and
6. Continue performance only to the extent not terminated.

C. If Owner terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus a reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of part 7.

D. If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

## **PART 10 - MISCELLANEOUS PROVISIONS**

### **10.01 GOVERNING LAW**

The Contract Documents and the rights of the parties herein shall be governed by the laws of the state of Washington. Venue shall be in the

county in which Owner's principal place of business is located, unless otherwise specified.

### **10.02 SUCCESSORS AND ASSIGNS**

Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party shall assign the Work without written consent of the other, except that Contractor may assign the Work for security purposes, to a bank or lending institution authorized to do business in the state of Washington. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations set forth in the Contract Documents.

### **10.03 MEANING OF WORDS**

Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect on the date for submission of bids, except as may be otherwise specifically stated. Wherever in these Drawings and Specifications an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the Drawings, or required to complete the installation.

### **10.04 RIGHTS AND REMEDIES**

No action or failure to act by Owner or A/E shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of an acquiescence in a breach therein, except as may be specifically agreed in writing.

### **10.05 CONTRACTOR REGISTRATION**

Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27.

### **10.06 TIME COMPUTATIONS**

When computing any period of time, the Day of the event from which the period of time begins shall not be counted. The last Day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next Day that is not a weekend or holiday. When the period of time allowed is less than 7 Days, intermediate Saturdays, Sundays, and Owner-observed holidays are excluded from the computation. "Owner-observed holidays" are New Year's Day; Martin Luther King, Jr. Day; Presidents' Day; Memorial Day; Fourth of July; Labor Day; Thanksgiving, the day after Thanksgiving; and Christmas. If New Year's Day, the Fourth of July, or Christmas fall on a Saturday, they shall be observed on the preceding Friday; if on a Sunday, they shall be observed on the following Monday.

### **10.07 RECORDS RETENTION**

The wage, payroll, and cost records of Contractor, and its Subcontractors, and all records subject to audit in accordance with section 8.03, shall be retained for a period of not less than 6 years after the date of Final Acceptance.

### **10.08 THIRD-PARTY AGREEMENTS**

The Contract Documents shall not be construed to create a contractual relationship of any kind between A/E and Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

### **10.09 ANTITRUST ASSIGNMENT**

Owner and Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Contractor hereby assigns to Owner any and all claims for such overcharges as to goods, materials, and equipment purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges which result from antitrust violations commencing after the Contract Sum is established and which are not passed on to Owner under a Change Order. Contractor shall put a similar clause in its Subcontracts, and require a similar clause in its sub-Subcontracts, such that all claims for such overcharges on the Work are passed to Owner by Contractor.

### **10.10 NOTICES**

- A. Method of Serving Notices. Any and all notices required under this Contract (each, a "Notice") shall be in writing and shall be deemed delivered:
1. Three (3) Business Days after being posted by certified or registered mail to the other party's contact person at the address specified below;
  2. One (1) Business Day after being sent by recognized national overnight courier service to the other party's contact person at the address specified below;
  3. On the same Day when sent by facsimile to the contact person at the designated facsimile number of the party with confirmed receipt, provided the facsimile is sent on a Business Day and prior to 3:00 pm on that Business

Day, and otherwise, the Notice shall be deemed delivered one (1) Business Day after being sent by facsimile with confirmed receipt; or

- 4. On the same Day when delivered in person to an Authorized Representative of the other Party on the Development Site.
- 5. On the same Day when delivered via email to the Project Coordinator by 3:00 pm.

**B. Owner's Address.** The Owner's address for all Notices, other than those certain submittals described in the next paragraph, shall be:

Seattle Housing Authority  
190 Queen Anne Avenue North  
P.O. Box 19028  
Seattle, Washington 98109-1028  
Contact Person: Lyle Harris  
Email: Lyle.Harris@seattlehousing.org

Submittals of Performance and Payment Bond and Proof of Insurance, and submittal of Prevailing Wage, EEO, Apprentice Utilization, Section 3 Resident Utilization, and WMBE, and Section 3 Business Participation information and reports shall be addressed to:

Seattle Housing Authority  
190 Queen Anne Avenue North  
P.O. Box 19028  
Seattle Washington 98109-1028  
Contact Person: Greg Antoine,  
Sr. Contract Administrator. Email:  
Gregory.Antoine@seattlehousing.org  
Fax: (206) 615-3410

**C. Contractor's Address.** The address of the Contractor for all Notice shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact Person:

\_\_\_\_\_

Email:

\_\_\_\_\_  
Fax:

\_\_\_\_\_

**D. Change in Notice Address.**

Either party may change its address and contact person for Notice by delivering a Notice of such change to the other party in accordance with this Article 10.

**E. Importance of Contractor Compliance with Notice Requirements.** The Contract Documents contain many important provisions regarding delivery of notices, particularly with regards to delays, adjustments in Contract Sum or Contract Time, and other claims. Contractor's failure to comply with the applicable notice requirements in the Contract Documents, whether in terms of timely delivery or delivery in required form and substance, can and will result in the absolute forfeiture, waiver, bar and release of rights, remedies and claims that Contractor might otherwise have against Owner.

**10.11 LABOR AND INDUSTRIES REQUIRED DOCUMENTS FOR HUD FUNDED PROJECTS:**

Contractors must comply with the Prevailing Wage Policy Memorandum dated April 20, 2011 from the State of Washington's L&I regarding HUD Housing Projects –Federal Preemption, The Housing Act of 1937 and 24 CFR 965.101, accessible on Labor and Industries website at .

<http://www.lni.wa.gov/TradesLicensing/PrevWage/files/Policies/HUDHousingProjects-HousingActOf1937.pdf>. Pursuant to this Directive from the State of Washington, effective May 15, 2011, regardless of the federal wage preemption, contractors are required to file the Statement of Intent to Pay Prevailing Wages & the Affidavit of Wages



Paid forms on HUD Housing Projects. This requirement is now in addition to the observance of the required federal labor standards requirements specified in the Contract Documents.

## **PART 11 - FEDERAL PROVISIONS**

These provisions supplement other provisions in this Contract.

### **11.01 PROHIBITION AGAINST USE OF LEAD-BASED PAINT**

The Contractor shall comply with the prohibition against the use of lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

### **11.02 FEDERAL HEALTH, SAFETY, AND ACCIDENT PREVENTION**

- A. In performing this contract, the Contractor shall ensure that no laborer or mechanic shall be required to work in surroundings or in or under any working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- B. For these purposes, the Contractor shall comply with section 5.07 and with regulations and standards issued by the Secretary of Labor at 29 CFR Parts 1904 and 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C 3701-3708)

### **11.03 CLEAN AIR AND WATER APPLICABLE TO CONTRACTS IN EXCESS OF \$150,000**

- A. Definition. "Facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of

operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

- B. In compliance with regulations issued by the United States Environmental Protection Agency (EPA), 40 CFR Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401-7671q, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251-1387, et seq., and Executive Order 11738, the Contractor agrees to
  - 1. Not utilize any facility in the performance of this contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the facility remains on the list;
  - 2. Promptly notify the Owner if a facility the Contractor intends to use in the performance of this contract is on the EPA List of Violating Facilities or the Contractor knows that it has been recommended to be placed on the List;
  - 3. Comply with all requirements of the Air Act and the Water Act, including the requirements of Section 114 of the Air Act and Section 308 of the Water Act, and all applicable clean air and clean water standards; and,
  - 4. Include or cause to be included the provisions of this clause in every

subcontract, and take such action as HUD may direct as a means of enforcing such provisions.

#### **11.04 ENERGY EFFICIENCY**

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201) for the State in which the work under the contract is performed.

#### **11.05 SUBCONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE, AND LABOR SURPLUS AREA FIRMS**

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to qualified small business firms, minority firms, women's business enterprises, and labor surplus area firms:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Ensuring that qualified small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified small and minority businesses and women's business enterprises;
- D. Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by qualified small and minority businesses and women's business enterprises; and

- E. Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

#### **11.06 EQUAL EMPLOYMENT OPPORTUNITY**

- A. Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- B. The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973 as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Owner, or the Secretary of Labor for purposes of investigation to ascertain compliance with this section of the Contract, and/or such rules, regulations, and orders.
- C. In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- D. Contractor shall include the terms and conditions of this clause in every

subcontract or purchase order so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**11.07 EMPLOYMENT, TRAINING, AND CONTRACTING OPPORTUNITIES FOR LOW-INCOME PERSONS, SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3-covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
- H. If the Contractor is a Section 3 business and was awarded the contract by the Owner based on the Section 3 business preference requirements of the invitation to bid for committing to subcontract more than 25% of the dollar amount of all subcontracts to Section 3 businesses, the Contractor agrees to meet the Section 3 subcontracting commitment. Failure of the Contractor to fulfill the Section 3 subcontracting commitment shall be deemed a material breach of contract, which may result in the Owner taking any or all of the following actions: (1) demanding specific performance of the subcontracting plan; (2) withholding from contract payments the dollar amount of any or all subcontracts that were to have been awarded to Section 3 businesses or such lesser amount as may be appropriate, (3) withholding any liquidated damages that the Owner may

incur as a result of the Contractor's failure to comply with its Section 3 commitment and subcontracting plan; and (4) declaring the Contractor ineligible to compete for, or participate in, any Owner contract for a period of five years from the acceptance date of the contract in which the Section 3 subcontracting commitment was made.

**11.08 INTEREST OF MEMBERS OF CONGRESS**

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

**11.09 INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES AND FORMER MEMBERS, OFFICERS, OR EMPLOYEES**

During his or her tenure or for one year thereafter, none of the following classes of people may have an interest, direct or indirect, in this contract or the proceeds thereof:

- A. Any present or former Commissioner of Owner's Board of Commissioners, or any member of the Commissioner's immediate family. This prohibition does not apply to any present or former resident commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, Owner, or a business entity.
- B. Any employee of Owner who formulates policy or who influences decisions with respect to the Project, or any member of the employee's immediate family, or the employee's partner.
- C. Any public official, member of the local governing body, or State or local

legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the Project or Owner.

**11.10 LIMITATIONS ON PAYMENTS MADE TO INFLUENCE CERTAIN FEDERAL FINANCIAL TRANSACTIONS**

- A. The Contractor agrees to comply with Section 1352 of title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
  
- B. The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) 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 in connection with a Federal contract, grant, loan, or cooperative agreement.

**11.11 EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

- A. Owner, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's, Sub-Contractor's and Supplier's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
  
- B. The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph 11.02A. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
  
- C. The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which Owner, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

**11.12 LABOR STANDARDS - DAVIS-BACON AND RELATED ACTS**

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the construction work to be performed under the contract, except if the construction work has been determined to be "Nonroutine Maintenance" subject to the terms of that clause of this contract.

- A. Minimum Wages.

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

classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

2. 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

- i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- ii. The classification is utilized in the area by the construction industry; and
- iii. 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 HUD or its designee agree on the classification and wage rate (including the amount

designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (2)(a)(ii) or (iii) of this clause shall be paid to all workers performing work in the

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

- 3. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 4. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

B. Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the

contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

**C. Payrolls and basic records.**

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid.

Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the

plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (C)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

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:

- i. That the payroll for the payroll period contains the information required to be maintained under paragraph (C)(1) of this clause and that such information is correct and complete;
  - ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
  - iii. 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 requirements for submission of the "Statement of Compliance" required by subparagraph (2)(b)(ii) of this clause.
- 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 3729 of Title 31 of the United States Code.

3. The Contractor or subcontractor shall make the records required under subparagraph (C)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- D. 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, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not

be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor

will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in

excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

E. Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

F. Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

G. 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.

H. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7.

Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.

I. Certification of eligibility.

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

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

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

J. 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, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not

less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (J)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to 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 provisions set forth in subparagraph (J)(1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (J)(1) of this clause.

3. Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and

liquidated damages as provided in the provisions set forth in subparagraph (J)(2) of this clause.

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

**11.13 LABOR STANDARDS – HUD-DETERMINED  
NON-ROUTINE MAINTENANCE**

***If Prevailing Wage for this Contract is HUD  
Non-Routine Maintenance, the following  
section applies:***

For contracts exceeding \$2,000, HUD has determined that the construction covered by this contract consists of non-routine maintenance (as defined in 24 CFR 968.203) necessary for the operation of the Public Housing project; and the labor standards set forth below and the provisions of Section 12 of the United States Housing Act of 1937 which pertain to such work shall apply. Section 11.12 does not apply to this Contract.

**A. Minimum Wages.**

1. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally 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 due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. These payments must be made no later than one pay period following the end of the regular pay period in

which the wages were earned or accrued. A pay period may not be of any duration longer than semi-monthly. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- (i) The work to be performed by the classification required is not performed by a classification in the wage determination;
- (ii) The classification is utilized in the area by the industry; and
- (iii) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.

(b) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

B. Withholding of funds. The Owner, upon its own action or upon request of HUD shall withhold or cause to be withheld from the Contractor under this contract or any other contract subject to HUD-determined wage

rates, with the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed or working on the site of the work all or part of the wages required by the contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, or advance, until such violations have ceased. The Owner or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

C. Payrolls and basic records.

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working 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, daily and weekly number of hours worked, deductions made, and actual wages paid.

2. The Contractor or subcontractor shall make the records required under subparagraph (C)(1) available for inspection, copying, or transcription by authorized representatives of HUD or the Owner and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to make such records available may be grounds for debarment or

denial of participation in HUD's programs pursuant to 24 CFR Part 24.

D. 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.

E. Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 24 CFR Part 24.

F. Disputes concerning labor standards.

1. Disputes arising out of the labor standards provisions of paragraphs (A), (B), (C), and (E) of this clause shall be subject to the general disputes clause of this contract.

2. Disputes arising out of the labor standards provisions of paragraphs (D), and (G) of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this paragraph (F) (2) include disputes between the Contractor (or any of its subcontractors) and the Owner, HUD, the U.S. Department of Labor, or the employees or their representatives.

G. 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 permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and

one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (G) (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in subparagraph (G) (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (G) (1) of this clause.

3. Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (G)(2) of this clause.

H. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause and also a clause requiring the subcontractors to include these provisions in any lower tier

subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in this clause.

**11.14 NON-FEDERAL PREVAILING WAGE RATES**

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever either of the following occurs:

- A. Such non-Federal prevailing wage rate exceeds: (1) the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade; (2) an applicable apprentice wage rate based thereon 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 based thereon specified in a DOL-certified trainee program; or
- B. Such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

**11.15 PROCUREMENT OF RECOVERED MATERIALS**

A. In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items

designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

B. Paragraph (A) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

**PART 12 - SOCIAL EQUITY REQUIREMENTS**

**12.01 EMPLOYMENT AND TRAINING GOALS AND REQUIREMENTS**

A. HUD Section 3 Employment Goal and Requirements

1. Definitions

**“New Hire”**: A “new hire” is defined as an employee of the Contractor or any of its subcontractors who is hired specifically for the Project as a full-time employee for permanent, temporary, or seasonal employment, and who has not been a regular employee of the

Contractor or any of its subcontractors during the preceding twelve month period.

**“Section 3 Eligible Persons”:**

Section 3 eligible persons are those that meet the income criteria established by HUD for the respective geographical areas and also meet one of the following criteria. The Contractor and its subcontractors shall hire Section 3 eligible persons in the order of priority listed below:

- a. Residents of the Owner’s Project housing development.
- b. Residents of other housing developments managed by the Owner.
- c. Participants in a HUD Youthbuild program in the metropolitan statistical area.
- d. Residents of the City of Seattle, starting at the zip codes adjacent to the Project.
- e. Residents of the metropolitan statistical area (MSA) covering King, Snohomish, and Pierce Counties.

**B. HUD Section 3 Resident Utilization Requirements**

1. General: The Owner is committed to, and has a strong policy of, maximizing the employment and training opportunities provided to Section 3 eligible persons on the Project. This commitment includes a commitment to ensuring both formal and on-the-job training and working experiences for Section 3 eligible persons.
2. New Hire Utilization Goal: In order to promote the use of “Section 3 Eligible Persons” on the Project, the Owner has established a goal that 100% of all “New Hires” for the Project (including both the Contractor and all subcontractors) shall

be Section 3 eligible persons. Unless otherwise specified in the Bid Documents, as part of the Community Participation Plan to be submitted with the Bid or Proposal, the Bidder shall provide an estimated total project work force breakdown (including prime and subcontractors) for this Project. In submitting its Bid for this Project, the Bidder agrees to aspire to meet this goal consistent with the following:

- a. When “new hires” are required for the Project by either the Contractor or any subcontractor, the Contractor or subcontractor shall, prior to hiring such “new hires” through their normal recruiting process, review an Owner-maintained list of Section 3 eligible persons to determine if any of the Section 3 eligible persons have the required and appropriate skills necessary for the “new hire” position.
- b. If any of the Section 3 eligible persons on the Owner-maintained list are qualified and available for the “new hire” position, the Contractor or subcontractor shall hire the Section 3 eligible person.
- c. The Contractor and subcontractors shall hire non-Section 3 eligible persons for a “new hire” position only if no Section 3 eligible person is qualified and available for the position. The Contractor shall provide an explanation to the Owner if an eligible Section 3 person is available but is not hired.
- d. The Contractor shall report monthly to the Owner on an Owner-provided form, the status of hiring Section 3 eligible persons on the Project, including but not limited



to the following information:  
documenting all “new hires” hired by the Contractor or any subcontractor during the previous month, and the results of all reviews, interviews, and hiring of Section 3 eligible persons from the Owner’s list of Section 3 eligible persons, and the cumulative percentage of new hires of the total workforce on the job.

- e. The Contractor shall ensure that the Section 3 requirements of its contract with the Owner are included in all of its subcontracts for the Project.
- f. Failure of the Contractor to meet the Section 3 goal described above shall be considered a material breach of the contract, and the Owner may terminate the contract, withhold funds due to the Contractor, or take other actions as may be permitted by contract or otherwise.

3 Section 3 Employment Outreach: In addition to reviewing the Owner’s list of Section 3 eligible persons, the Contractor and its subcontractors shall make every effort to maximize the utilization of Section 3 eligible persons. Such actions shall include, but not be limited to the following methods:

- a. Working closely with the Owner’s job assistance offices to help identify potential residents available for hire and to evaluate the skills of interested potential hires.
- b. Helping potential hires obtain information necessary for entering apprenticeship programs, where applicable.
- c. Helping Section 3 eligible persons complete the necessary paperwork to begin work on the Project.

C. **Apprentice Utilization Goals:** (Applicable for contracts estimated to cost one million dollars or more)

The Contractor shall ensure that apprentices, registered with the Washington State Apprenticeship and Training Council (“SAC”), perform at least fifteen percent (15%) of the total Contract labor hours on this project.

1. Total Contract include the hours worked by supervisors, foremen, and superintendents if it is determined that they are subject to prevailing wage requirements pursuant to WAC 296-127-015 or federal labor standards and all hours worked as a result of change orders.

2. Total Contract labor hours do not include hours worked by foremen, superintendents, supervisors, owners, and workers who are not subject to prevailing wage requirements.

3. The Contractor shall include the apprentice utilization requirements in all subcontracts executed under this Contract, and ensure that all subcontractors are notified of the apprentice utilization requirements.

4. The Contractor shall use good faith efforts to meet the 15% apprentice utilization requirements of the Contract, including overall compliance on all Contract labor hours worked by subcontractors.

5. The Contractor shall comply with the apprenticeship training standards for each trade/craft classification used on the Project, as set forth by the Washington State Department of Labor and Industries.

**D. Apprentice Utilization Monitoring and Enforcement**

1. The Owner's Representative will verify the registration of each apprentice used on the Project with the Washington State Apprenticeship and Training Council.
2. The Owner's Representative will monitor the apprentice utilization data provided by the Contractor. If the Contractor is deficient in its use of apprentices, the Owner's Representative will meet with the Contractor to discuss the reasons for the deficiency and help the Contractor develop a written Plan for rectifying the deficiency.
3. The Owner's Representative will make routine visits to the Site for the purpose of confirming the use of apprentices. The Contractor will provide access to the site to the person designated by Owner to make visits to the Site for the purpose of confirming the use of apprentices. The person designated will be required to abide by any applicable work rules and safety Plan.

E. Workforce Goals: The Owner has established employment goals for the workforce of the Project of not less than 21 percent minorities and 20 percent women, with an employment subgoal of 4.5 percent for minority women.

**12.02 WOMEN AND MINORITY BUSINESS AND HUD SECTION 3 BUSINESS UTILIZATION GOALS AND REQUIREMENTS**

**A. Women and Minority Business Enterprise (WMBE) Subcontractor Utilization Goal and Plan:**

The Owner's aspirational goal for WMBE utilization is 14%. As part of the Community Participation Plan to be submitted with the Bid or as otherwise

specified, the Bidder shall document its plans for how it intends to solicit the participation of, and encourage the utilization of Small, Minority and Women Business Enterprises (hereinafter "WMBEs") on the Project. Consistent with the requirements of federal regulation HUD 2 CFR 200, the Bidder's plan must demonstrate the Bidder's commitment to take all necessary affirmative steps to provide contracting opportunities for WMBEs to the greatest extent possible. Such efforts shall include, but will not be limited to:

1. Identifying WMBE firms by a variety of methods, including but not limited to working with community based organizations, such as the Contractor's Resource Center (CRC) to identify a diverse group of Subcontractors.
2. Using a variety of recruitment methods, including but not limited to:
  - a. Participating in community job fairs, conferences, and trade shows
  - b. Advertising in local community publications
  - c. Placing Project information signs in strategic locations on the jobsite
  - d. Distributing bid notifications to targeted mailers/faxes
  - e. Hosting "Information Nights" for WMBE subcontractors at local area gathering places such as community centers and churches
3. Placing identified firms on formal and informal solicitation/bid lists.
4. Encouraging identified firms' participation through direct solicitation of bids or proposals whenever they are potential sources.
5. Encouraging the establishment of joint ventures among subcontractors between non-WMBE and WMBE subcontractors and/or between two WMBE

subcontractors in order to increase opportunities for as many Subcontractors as possible.

6. Advertising in minority and women's publications and/or submitting copies of competitive solicitations to minority and women's plan centers.
7. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms.
8. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms.
9. Encouraging subcontractors to subcontract with qualified WMBEs.
10. Using the services and assistance of the U. S. Small Business Administration (SBA), the State of Washington Office of Minority and Women's Business Enterprises (OMWBE), the Northwest Minority Business Council (NWMBC), and Minority Business Development Agency of the Department of Commerce.

**B. HUD Section 3 Business Utilization Goal and Requirements**

1. General: The Seattle Housing Authority (SHA) complies with Section 3 of the Housing Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, regarding use of Section 3 certified businesses and Section 3 eligible individuals. As part of its Section 3 policy, SHA provides a preference to Section 3 businesses in the award of contracts, regardless of funding source, as described in Section 00200. A listing of the firms that SHA has certified as Section 3 businesses is accessible on its webpage at

<http://seattlehousing.org/business/development/>.

2. HUD Section 3 Business Numerical Goal: As specified in 24 CFR 135.30, the numerical goal for Section 3 business participation on a PHA construction contract is 10% of the total contract amount. The Contractor will document in Part 3, the Community Participation Plan to be submitted with the bid or as otherwise specified, its efforts in aspiring to meet this numerical goal.

**12.03 REPORTING REQUIREMENTS**

- A. The Contractor, for itself and all subcontractors, shall submit to the Owner's Representative a Social Equity Report in an electronic format to be provided by Owner. This may be provided through the Owner's Labor Compliance system, if available. Such reports are due no later than the time specified for the Contractor's Monthly Pay Application. If the reports are not submitted in a timely manner, the Contractor's progress payment for that month will not be processed.
- B. The Contractor shall report workforce and apprentice utilization data required by Owner beginning the first day of work for each person. The Contractor's first submittals are due at the end of the first month after the Contract start date specified in the Notice to Proceed, and at monthly intervals thereafter as specified above. Subcontractor submittals are due at the end of the month after they commenced work and monthly thereafter as specified above.
- C. The Contractor shall report the following information on each apprentice:
  1. Apprentice's Name
  2. Home Zip Code
  3. Employment Status: New Hire or Existing Staff
  4. Section 3 status
  5. Trade/Craft

6. State Apprentice Registration I.D. Number
7. Program Sponsor and/or Hiring Source
8. Apprentice Progression Period or Percentage
9. Ethnicity/Gender
10. Labor hours for Reporting Period by Ethnicity/Gender

**D. The Contractor shall report the following information on all apprentices:**

1. Total labor hours and number of apprentice employees for reporting period by ethnicity and gender.
2. Total apprentice labor hours and number of employees to-date.
3. Total Section 3 apprentice labor hours and number of Section 3 employees for reporting period by ethnicity and gender.
4. Total Section 3 apprentice labor hours and number of Section 3 employees to date.
5. Other information as noted on the form.

**E. The Contractor shall report the following information on journey level employees:**

1. Labor hours for reporting period by ethnicity and gender, for each trade/craft.
2. Labor hours for reporting period for Section 3 employees
3. Total labor hours for Section 3 employees
4. Total journey level labor hours by ethnicity and gender, for each trade/craft.
5. Total labor hours and number of journey level employees for reporting period by ethnicity and gender.
6. Total journey level labor hours and number of employees to-date.
7. Summary information as noted on the reporting form.

**F. WMBE and HUD Section 3 Business Reporting Requirements**

1. On a weekly basis and on an Owner provided form or through the Owner's Labor Compliance Software Reporting System, Contractor shall submit to Owner's Representative a Subcontractors on Site Report which shall be completed by the Contractor for all Subcontractors performing work on the Contract for the previous week.
2. On a monthly basis and on an Owner provided form or through the Owner's Labor Compliance Software Reporting System,, Contractor shall document the Contractor's progress in meeting its Section 3 business and WMBE goal commitments.
3. Section 3 Business Commitment: If a Contractor retained Section 3 status through a commitment to subcontract with Section 3 businesses for more than 25% of the dollar amount of all subcontracts to be awarded, the Owner will monitor the Contractor's Section 3 business' compliance of that firm with their subcontracting commitment. If the Contractor fails to fulfill the Section 3 subcontracting commitment during the term of the Contract, the Owner shall consider it a material breach of contract which may result in the Owner taking any or all of the following actions:
  - a. Demanding specific performance of the subcontracting plan;
  - b. withholding from contract payments the dollar amount of any or all subcontracts that were to have been awarded to Section 3 businesses or such lesser amount as may be appropriate;
  - c. withholding any liquidated damages that the Owner may incur as a result of the successful Bidder's failure to comply with its Section 3 commitment and subcontracting plan; and

d. declaring the successful Bidder ineligible to compete for, or participate in, any Owner contract for a period of five years from the acceptance date of the contract in which the Section 3 subcontracting commitment was made.

Section 00700, Part 6.05, stop the work for cause pursuant to Section 00700, Part 3.04, or terminate the Contract for cause pursuant to Section 00700, Part 9.01.

G. The Contractor shall submit such other information as may be requested by Owner or its Administrator to verify compliance with the requirements of the Contract. The Owner reserves the right to add, delete, or change as necessary, the information required by the Contractor on the Monthly Social Equity Report form.

**END OF SECTION 00700**

H. Monthly Community Participation Plan Meetings: The Contractor may be required to attend the Owner's monthly Section 3 Advisory Committee meetings to discuss implementation of the Community Participation Plan throughout the duration of the Project.. These meetings are held the second Tuesday of every month after business hours, from 4:30 to 6:00pm. In addition to the Owner's attendance, this meeting is attended by members of the community and business representatives. If requested by the Owner, subcontractor(s) may also be required to attend the meeting.

## **12.04 VIOLATIONS**

Any material violation of the mandatory requirements of the Contract shall be considered a breach of the Contract and the Owner may withhold payment pursuant to

**SUPPLEMENTAL CONDITIONS**

The following supplements shall modify, delete, and/or add to the Bid Documents, including but not limited to Section 00200 or Section 00700 General Conditions. Where any article, paragraph, or subparagraph in the General Conditions is supplemented by one of the following paragraphs, the provisions of such article, paragraph, or subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto. The supplements referenced within this section are identified with the same number and title used for that topic in the General Conditions.

**MODIFICATIONS TO SECTION 00700 GENERAL CONDITIONS**

**1) SC PART 1 – GENERAL PROVISIONS**

Add the following definition to Seattle Housing Authority General Conditions Part 1- General Provisions 1.01 Definitions:

“Invitation to Bid”: means a formally advertised competitive selection process used for obtaining goods and services that will cost more than \$150,000, where award is made based on the lowest price submitted by a responsible bidder with a responsive bid.

**2) SC PART 10 – MISCELLANEOUS PROVISIONS**

**10.10 NOTICES.**

10.10 B Owner’s Address. The Owner’s address for all Notices, other than those certain submittals described in the next paragraph, shall be:

Seattle Housing Authority  
190 Queen Anne Avenue North  
P.O. Box 19028  
Seattle, Washington 98109-1028  
Contact Person: Lyle Harris  
Email: Lyle.Harris@seattlehousing.org

Submittals of Performance and Payment Bond and Proof of Insurance, and submittal of Prevailing Wage, EEO, Apprentice Utilization, Section 3 Resident Utilization, and WMBE, and Section 3 Business Participation information and reports shall be addressed to:

Seattle Housing Authority  
190 Queen Anne Avenue North  
P.O. Box 19028  
Seattle, Washington 98109-1028  
Contact Person: Greg Antoine, Sr. Contract Administrator  
Email: Gregory.Antoine@seattlehousing.org

10.10 C Contractor's Address. The address of the Contractor for all Notice shall be:

Contact Person: To be selected

Email: \_\_\_\_\_

**END OF SECTION 00800**

**EXECUTIVE ORDER 11246 — EQUAL EMPLOYMENT OPPORTUNITY**

SOURCE: The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p.339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

**Part I — Nondiscrimination in Government Employment**

[Part I superseded by EO 11478 of Aug. 8, 1969, 34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803]

**Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors**

**Subpart A - Duties of the Secretary of Labor**

**SEC. 201.** The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Subpart B - Contractors' Agreements**

**SEC. 202.** Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

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

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.



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2. The contractor will, in all solicitations or advancements 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, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the provisions of paragraphs (1) through (8) 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 No. 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 may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor

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or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

**SEC. 203.**

a. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

b. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

c. Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

d. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

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[Sec. 203 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684; EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13672 of July 21, 2104, 79 FR 42971]

**SEC. 204**

a. The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this **Order** in any specific contract, subcontract, or purchase **order**.

b. The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

c. Section 202 of this **Order** shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this **Order**.

d. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: provided, that such an exemption will not interfere with or impede the effectuation of the purposes of this **Order**: and provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this **Order**."

[Sec. 204 amended by EO 13279 of Dec. 16, 2002, 67 FR 77141, 3 CFR, 2002 Comp., p. 77141 - 77144]

**Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies**

**SEC. 205.** The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

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SEC. 206.**

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- a. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.
- b. The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 207.** The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 208.**

- a. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.
- b. The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

**Subpart D - Sanctions and Penalties**

**SEC. 209.** In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

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1. Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
2. Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.
3. Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
4. Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
5. After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.
6. Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 210.** Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

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[Sec. 210 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p 230]

**SEC. 211.** If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 212.** When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Subpart E - Certificates of Merit**

**SEC. 213.** The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

**SEC. 214.** Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

**SEC. 215.** The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

**Part III - Nondiscrimination Provisions in Federally Assisted Construction Contracts**

**SEC. 301.** Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to

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incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

[Sec. 301 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 302.**

- a. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.
- b. The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.
- c. The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

**SEC. 303.**

- a. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

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b. In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

c. In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 304.** Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

**Part IV - Miscellaneous**

**SEC. 401.** The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 402.** The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

**SEC. 403.**

a. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property



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in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

b. Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p, 264]

**SEC. 404.** The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

**SEC. 405.** This Order shall become effective thirty days after the date of this Order.

**END OF SECTION 00810**

In order to meet the reporting requirements of the Contract documents with regards to certified payroll and social equity reporting, the Contractor will be required to submit Certified Payrolls.

The Contractor is responsible for the accuracy and completeness of the information submitted to the Contract Administrator. In addition, the Contractor is responsible for the full compliance of the labor standards provisions applicable to the project for itself, its subcontractors, and all lower-tier subcontractors that have engaged the service of laborers or mechanics on the project.

Submission of Certified Payroll Documentation: Before payment is made by the Owner to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, all certified payroll documentation including but not limited to, payroll reports (for Contractor and subcontractors) for the period covered in the application for payment, and applicable Authorization to Sign Payroll Form must be submitted to the Owner for compliance review.

1. Statement of Intent to Pay Prevailing Wages: Before payment is made by the Owner to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, the Contractor shall submit, or shall have previously submitted to the Owner for the Project, a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.
2. Submission of Certified Payroll Documentation: Before payment is made by the Owner to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, all certified payroll documentation including but not limited to, payroll reports (for Contractor and subcontractors) for the period covered in the application for payment, and applicable Authorization to Sign Payroll Form must be submitted to the Owner for compliance review.
3. Affidavit of Wages Paid: Prior to the Owner's acceptance of the Contract, the Contractor shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Contractor and every subcontractor, of any tier, that performed work on the Project.

**END OF SECTION 00820**

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DRAIN LINE REPLACEMENT**

**SECTION 00830  
WAGE RATE SCHEDULE**

**WAGE RATE SCHEDULES  
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## SEATTLE HOUSING AUTHORITY

### CONTRACTOR PERFORMANCE EVALUATION PROGRAM

#### I. POLICY

The Seattle Housing Authority, through its Purchasing Division, is charged with the responsibility of ensuring that all public construction projects are awarded to the lowest responsive, responsible bidder, and are performed in compliance with the contract documents, and state and federal laws and regulations. The Seattle Housing Authority (SHA) is responsible to the taxpayers to oversee the expenditure of public funds, and to secure the best possible results for that expenditure. To assist the Seattle Housing Authority in evaluating a Contractor's or subcontractor's responsibility, as well as its performance on SHA contracts, the Contractor Performance Evaluation Program has been developed. The implementation of a mandatory, standardized system of evaluating Contractors' and subcontractors' performance is expected to yield consistency, objectivity, fairness, and accountability.

#### II. PURPOSE

The purpose of the Contractor Performance Evaluation Program is to better assure that Contractors considered for contract award on public construction projects and their proposed principal subcontractors either possess, or will likely possess at the time contract performance is set to begin, all qualifications necessary to successfully complete the project on time. Among other things, the Program is intended to:

- Assist SHA in exercising its discretion to determine a Contractor's qualifications and abilities to successfully perform a particular contract.
- Provide SHA with a rational basis for determining that a Contractor is or is not responsible, or for approving or disapproving his or her proposed principal subcontractor(s).
- Provide Contractors with a means of enhancing their qualifications and reputation by receiving recognition for high standards of performance.
- Encourage better working relationships between SHA and Contractors.

- Guide SHA in approving or disapproving proposed principal subcontractors on a particular project.
- Provide official, verifiable references for Contractors and subcontractors who may be under consideration for award of, or approval on, contracts to be awarded by other public owners.
- Provide a history and an assessment of a Contractor's or subcontractor's performance on prior SHA contracts for use in suspension or debarment proceedings.

The Contractor Performance Evaluation Program is not intended to determine whether a Contractor has breached a contract with SHA, or to determine the acceptability of any particular noncompliance with contract requirements.

For purposes of the Contractor Performance Evaluation program, The Seattle Housing Authority is concerned with four major areas relative to a Contractor's or subcontractor's performance on a given project:

- (1) The Contractor's or subcontractor's ability to effectively and efficiently schedule, administer, coordinate, finance, and manage its work and the work of its subcontractors on the project;
- (2) The degree and extent of the Contractor's or subcontractor's cooperation with SHA, its employees and consultants, and the public;
- (3) The Contractor's or subcontractor's initiative in all aspects of its work; and
- (4) The quality of material and workmanship in, and safe and timely completion of, the final product.

To evaluate the Contractor's or subcontractor's success in meeting the above concerns, specific performance criteria have been developed that take into account the effect the Contractor's or subcontractor's performance has had on:

- Compliance with contract requirements and applicable laws and regulations;
- Project schedule and budget;
- Public safety and convenience; and

- Increases or decreases in contract administration or consultant workload.

### III. PERFORMANCE CATEGORY EVALUATION GUIDE

The Performance Category Evaluation Guide establishes criteria to be used in evaluating the Contractor's or subcontractor's performance in connection with each Performance Category, and describes six Performance Levels, five of which range in ascending order of merit from "Inadequate" to "Superior." The "Standard" Performance Level is considered a baseline; it characterizes the level of acceptable performance normally associated with a reasonably prudent, diligent, and skilled Contractor or subcontractor working on projects of the same general type and size. Both the "Superior" and "Good" Levels characterize performance levels that exceed the baseline; they respectively connote consistent and substantial positive contributions to the overall project. Both the "Deficient" and "Inadequate" Levels characterize levels of performance that fall below the baseline, and respectively connote substantial and serious detriment to the overall project. The "No Evaluation" Level is to be used only where the Contractor or subcontractor had no direct or indirect responsibility for performance.

The six Performance Levels are more specifically described as follows, and the criteria set forth for each shall be applied in evaluating the Contractor's or subcontractor's performance in connection with each of the Performance Categories listed in Section III of the Contractor Performance Evaluation Report:

- A. Superior. To merit an evaluation of "Superior" in any Performance Category, the Contractor or subcontractor must have consistently demonstrated:
  - (1) Command or virtual mastery of the contract documents related to that Performance Category;
  - (2) Performance of the work or activity being evaluated under that Performance Category that always exceeded or surpassed the material requirements of the contract;
  - (3) A highly cooperative attitude in dealing with SHA employees, consultants, and the public in connection with that Performance Category, which attitude made a substantial, positive contribution to the project; and

- (4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner without prompting by SHA staff or consultants.

If the Contractor or subcontractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Good" Level by applying the criteria for that Level.

- B. Good. To merit an evaluation of "Good" in any Performance Category, the Contractor or subcontractor must have demonstrated:

- (1) Thorough knowledge of contract documents related to that Performance Category;
- (2) Performance of the work or activity being evaluated under that Performance Category that always met, and often exceeded, the material requirements of the contract;
- (3) A cooperative attitude in dealing with SHA employees, consultants, and the public in connection with that Performance Category, which attitude made a positive contribution to the project; and
- (4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner with only minimal prompting by SHA staff or consultants.

If the Contractor or subcontractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Standard" Level by applying the criteria for that Level.

- C. Standard. To merit an evaluation of "Standard" in any Performance Category, the Contractor or subcontractor must have demonstrated:

- (1) Acceptable knowledge of the contract documents related to that Performance Category;

- (2) Performance of the work or activity being evaluated under that Performance Category that met all material contract requirements;
- (3) A generally cooperative attitude toward SHA employees, consultants, and the public in connection with that Performance Category; and
- (4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner with only moderate prompting by SHA staff or consultants.

If the Contractor or subcontractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Deficient" and "Inadequate" Levels by applying the criteria for those Levels.

D. Deficient. To merit an evaluation of "Deficient" in any Performance Category, the Contractor or subcontractor must have demonstrated:

- (1) Marginal knowledge of the contract documents related to that Performance Category;
- (2) Performance of the work or activity being evaluated under that Performance Category that did not always meet contract requirements, and such failures were not excusable as the sole fault and responsibility of one or more other parties;
- (3) An occasionally uncooperative attitude toward SHA employees, consultants, or the public in connection with that Performance Category; or
- (4) Performance of his or her duties in connection with that Performance Category in a moderately unresponsive, inattentive, or dilatory manner, or after frequent or repeated prompting by SHA staff or consultants.

E. Inadequate. To merit an evaluation of "Inadequate" in any Performance Category, the Contractor or subcontractor must have either: (a) failed to satisfy the criteria listed for the Performance Levels of "Superior," "Good," "Standard," and "Deficient" set out



above and did not qualify for treatment under Section III.F below; or  
(b) must have demonstrated:

- (1) Inadequate knowledge of the contract documents related to that Performance Category;
- (2) Performance of the work or activity being evaluated under that Performance Category which seldom met the contract requirements, and such failures were not excusable as the sole fault and responsibility of one or more other parties;
- (3) A seriously uncooperative attitude toward SHA employees, consultants, or the public in connection with that Performance Category; or
- (4) Performance of his or her duties in connection with that Performance Category in a seriously unresponsive, inattentive, or dilatory manner, or only after frequent prompting by SHA staff or consultants.

F. No Evaluation. This Performance Level shall be used only in those circumstances where the Contractor or subcontractor had no contractual responsibility, either directly or through its subcontractors, suppliers, or materialmen, for performance related to that Performance Category. Consequently, this Performance Level is generally applicable only to certain Performance Categories in the evaluation of subcontractors.

#### **IV. OVERALL EVALUATION GUIDE**

The Contractor's or subcontractor's Overall Evaluation can be determined by placing the Overall Percentage Score calculated on the Contractor Performance Evaluation Report within the numerical ranges of the following narrative ratings in the Overall Evaluation Guide:

A. SUPERIOR (Overall Percentage Score of 85% or above)

The Contractor or subcontractor exceeded the contract requirements and expectations in most or all of the areas evaluated. The Contractor or subcontractor was extremely or completely knowledgeable regarding contract requirements and applicable laws and regulations. A consistently high level of cooperation, project management, and job site control appreciably

contributed to an unusually good result. The Contractor or subcontractor is commended for excellent performance.

**B. GOOD (Overall Percentage Score of 75% to 84%)**

The Contractor or subcontractor met contract requirements evaluated, and exceeded them in some areas. The Contractor or subcontractor was generally cooperative, and performed his/her work with a minimum of prompting. The results of the performance were very good.

**C. STANDARD (Overall Percentage Score of 70% to 74%)**

The Contractor or subcontractor generally satisfied the minimum requirements of the contract as evaluated. The Contractor or subcontractor occasionally had to be prompted or reminded of contract requirements, but overall management of the project was good, producing a good result.

**D. DEFICIENT (Overall Percentage Score of 55% to 69%)**

Even though the project may have been accepted, the Contractor's or subcontractor's performance as evaluated was marginal overall. While the Contractor or subcontractor performed some tasks satisfactorily, most elements evaluated reflected a less than satisfactory response to contract requirements.

**E. INADEQUATE (Overall Percentage Score of 54% or below)**

The Contractor's or subcontractor's performance as evaluated did not meet minimum contract requirements, or so otherwise detracted from the project as to seriously call it into jeopardy. While the project may have been accepted by SHA, the effort expended by SHA staff or consultants in prompting the Contractor or subcontractor to perform was excessive. The Contractor's or subcontractor's poor or uncooperative performance created serious unnecessary or avoidable difficulties in achieving contract completion.

A Contractor's Overall Evaluation, being based upon an averaged score on a discrete number of Performance Categories, should not be read or interpreted as a measure of whether the Contractor did or did not breach the contract in question. For example, a Contractor who receives an overall Evaluation of "Superior" may have nevertheless breached the contract (1) in an area not evaluated, or (2) within an area or Performance

Category actually evaluated but under which, on balance, the Contractor's performance was rated "Superior," "Good," or "Standard."

## **V. PERFORMANCE EVALUATION REPORTS**

In consultation with appropriate SHA staff and consultants, each Contractor Performance Evaluation Report shall be prepared by, or at the direction of, the SHA Project Manager, who will include numerical ratings substantiated, when necessary, by one or more narratives which describe the Contractor's or subcontractor's performance.

Each Performance Category has been assigned its own point range; the point ranges for the various Performance Categories have been weighted to reflect the relative importance of the Performance Categories and their overall impact on SHA projects generally. A larger number of possible points has been assigned to those elements that typically have a greater impact on the success or failure of a project. The point ranges reflect the dramatic effect either poor performance or very good performance can have on the project, e.g., in terms of workload, budget, schedule, and safety.

Every Contractor Performance Evaluation Report containing Performance Level evaluations of "Deficient" or "Inadequate," and all Overall Evaluations on projects the total cost of which is \$100,000 or more, shall contain one or more narratives which provide details substantiating the evaluations. Narratives may be provided for other Performance Categories as the project manager deems necessary.

Narratives provided with a Contractor Performance Evaluation Report shall be based upon documentation prepared during the life of the project, e.g., project diaries, inspectors' reports, and other pertinent documents. Such documentation shall constitute a major portion of the administrative record to be used for any review, appeal, or litigation that may arise from the evaluation process.

Every Contractor Performance Evaluation Report shall be signed by the project manager's supervisor before a copy of the Report shall be transmitted to SHA's Purchasing Manager, who will subsequently transmit the Report to the Contractor or subcontractor. The Report shall not be considered final until such time as the review/appeal periods described in Section VI of these instructions have been completed.

Generally, only one Contractor Performance Evaluation Report shall be issued, following completion of the contract work. However, in addition to

a final Report, one or more interim Reports may be issued at the department's discretion when:

- A contract is of long duration, particularly those in excess of one year.
- An individual charged with primary responsibility for administration of the contract will cease his or her involvement with the project prior to completion of the work.
- Contractor's/subcontractor's performance at 50% completion is deficient or inadequate.

Interim Contractor Performance Evaluation Reports shall be considered to be preliminary and shall be designated as such, and shall be processed administratively in the same manner as a Final Report. A Contractor or subcontractor may request review of an Interim Report by the department director and appeal to the Director of Finance & Administration or his/her designee pursuant to the provisions of Section VI below. All Interim Reports shall be attached to, and considered when preparing, the Final Report.

## **VI. NOTICE, REVIEW, AND APPEAL**

- A. Notice. SHA's Purchasing Division shall mail to Contractors and subcontractors a copy of their Contractor Performance Evaluation Report after completion of the Report. A Contractor or subcontractor who is given an Overall Evaluation of "Deficient" or "Inadequate" in connection with a project shall be provided with a copy of the Contractor Performance Evaluation Report via certified mail (return receipt requested).
- B. Review. A Contractor or subcontractor who disputes, or is otherwise dissatisfied with, his or her Contractor Performance Evaluation Report may request review of the Report by the department director. The request must be submitted in writing within thirty (30) calendar days of receipt by the Contractor or subcontractor of the Final Contractor Performance Evaluation Report. The request must also state, with specificity, all bases for the requested review.

The department director shall, upon receipt of a proper and timely request, review the Contractor Performance Evaluation Report and any documentation submitted by the Contractor or subcontractor with his or her request. The department director shall, on the basis

of his or her review, issue findings which may affirm, correct, or modify all or any part of the Report. A copy of the findings shall be mailed to the Contractor or subcontractor via registered mail, return receipt requested.

- C. Appeal. Within ten (10) calendar days of receipt by the Contractor or subcontractor of the department director's findings on review, the Contractor or subcontractor may appeal therefrom to the Director of Finance & Administration or his/her designee. Any such appeal shall be in writing, and shall state with specificity the bases or grounds for the appeal.

The Director of Finance & Administration or his/her designee shall review and consider the objectivity, accuracy, completeness, and fairness of the Contractor Performance Evaluation Report, together with the department director's findings, engineers' diaries, job records and other documentation, including such documentation as the Contractor may provide with the appeal.

Upon hearing and review of the department director's findings, the Director of Finance & Administration or his/her designee shall issue a determination and findings which may affirm or modify the Contractor's or subcontractor's Contractor Performance Evaluation Report. The Director of Finance & Administration or his/her designee shall notify the Contractor or subcontractor of its determination and findings by certified mail (return receipt requested).

## **VII. DISQUALIFICATION FOR WORK ON SPECIFIC PROJECT**

The SHA Director of Finance & Administration or his/her designee may determine, from Contractor Performance Evaluation Reports and other public documents relating to the project in question, that a Contractor or subcontractor who has received one or more Overall Evaluations of "Deficient" or "Inadequate" is not qualified or able to successfully perform a specific SHA project and is therefore ineligible for award of that contract.

When, on that basis, the SHA Director of Finance & Administration or his/her designee believes that the low bidder is not qualified or able to successfully perform a project, the Director of Finance & Administration or his/her designee shall notify the low bidder of its intent to award the contract to the next lowest responsive, responsible bidder. At that time, the Director of Finance & Administration or his/her designee shall also inform the Contractor of the date and time the matter of contract award has been scheduled for consideration by the Director of Finance & Administration or his/her designee. Only the Contractor or subcontractor, departmental staff, and counsel will be given an opportunity to address the

Director of Finance & Administration or his/her designee on the issue of disqualification prior to the Director of Finance & Administration or his/her designee reaching a decision on the award.

**VIII. DEBARMENT OF CONTRACTING FIRM**

Upon request of an SHA department director, the Director of Finance & Administration or his/her designee, after hearing and evaluating the evidence, may debar a Contractor or subcontractor from contracting with SHA for a period of up to two years for any of the following reasons:

- A. A Contractor or subcontractor has received overall evaluations of their performance of "Deficient" or "Inadequate" on three or more SHA projects physically completed during the preceding five (5) year period.
- B. A Contractor or subcontractor has abandoned, surrendered, or failed to complete, or failed to perform work on, or in connection with, any SHA contract.
- C. A Contractor or subcontractor has failed to perform work on an SHA contract in accordance with the contract provisions, including among other specifications, those on the quality of workmanship and the timeliness of performance, safety standards, and prevailing wage requirements.
- D. A Contractor or subcontractor has failed to comply to a substantial extent with applicable federal or State law, or with the rules and regulations implementing them.
- E. A Contractor or subcontractor has submitted false or misleading reports or statements to SHA in connection with an SHA contract.
- F. A Contractor or subcontractor has colluded with another to restrain competition.
- G. A combination of any or part of any of the above reasons.
- H. A determination by the Director of Finance & Administration or his/her designee that the performance of a Contractor or subcontractor is such that it would not be in the best interests of SHA to permit the Contractor or subcontractor to work on additional SHA projects.

**IX. RELEASE OF INFORMATION**

Contractor Performance Evaluation Reports are public documents subject to disclosure to other governments and to the public. Because the Reports and the Overall Evaluations they contain may be used as a basis for contract award and may reflect upon the Contractor's or subcontractor's reputation, care must be taken to assure that only accurate, complete, and current information is released.

- A. Final Reports. Contractor Performance Evaluation Reports may be released when:
- (1) The Report becomes final as set forth in Section V of these instructions; or
  - (2) SHA has relied upon the Report for the purpose of taking further action with respect to the Contractor or subcontractor; or
  - (3) A court has ordered release of the Report.
- B. Interim Reports. Interim Contractor Performance Evaluation Reports may only be released when:
- (1) The Contractor or subcontractor has consented in writing to the release; or
  - (2) The Contractor or subcontractor has requested and received final administrative review of an Interim Report; or
  - (3) SHA has used or relied upon the Interim Report to take action with respect to the Contractor or subcontractor; or
  - (4) A court has ordered release of the Report.
- C. Termination for Default and Pending Litigation. In the event that an SHA contract is terminated for reason of the prime Contractor's default, that fact shall be noted only on the prime Contractor's Contractor Performance Evaluation Report. In the event that a Contractor commences suit against SHA, that Contractor's Performance Evaluation Report shall not be released without approval of the SHA General Counsel's office.
- D. Intergovernmental Cooperation. All requests for Contractor or subcontractor references from agencies of foreign, federal, state, or local governments shall be referred to the Purchasing Manager or

his/her designee. If such a request is honored, the requesting agency shall be provided with copies of all Performance Evaluation Reports on the Contractor or subcontractor, together with any written objections or refutations filed with the Purchasing Division by the Contractor or subcontractor in connection therewith.

**X. INSTRUCTIONS FOR COMPLETING EVALUATION FORMS**

The SHA project manager shall first complete Sections I and II, "Contractor Data" and "Project Data."

The project manager shall then evaluate the Contractor's or subcontractor's performance in each of the Performance Categories listed in Section III of the Contractor Performance Evaluation Report and shall assign points for each. In all cases, the first step is to apply the Element Rating Guide to determine the Performance Level of the Contractor's or subcontractor's performance in each Performance Category.

The descriptions provided on the Contractor Performance Evaluation form for each Performance Category will not necessarily match precisely with the Contractor's or subcontractor's actual performance of the task(s) on a given portion of the project.

The project manager should consider the general character of the Contractor's or subcontractor's performance for each Performance Category evaluated and select the Performance Level that most closely matches the actual performance.

Once a Performance Level has been determined for a Performance Category, the corresponding point subrange will be found on the Contractor Performance Evaluation Report form. For example, suppose the project manager applied the criteria in the Performance Evaluation Guide to a Contractor's performance in relation to Performance Category Number 5 (Adherence to plans and specifications as related to quality of the work—94 points possible) and determined that the Contractor's level of performance in that Category was "Good." The corresponding point subrange would be 70-79 points.

The project manager may then, at his or her discretion, assign any number of points within the subrange. To continue the example, suppose the project manager decided that the Contractor's performance in that Performance Category fell just short of "Superior." He or she could assign the Contractor up to 79 points in that Category. Project managers should use only whole numbers within the subrange indicated for each Performance Category. If the Contractor or subcontractor was not responsible for any performance in connection with a given Performance



Category, then the Contractor's or subcontractor's evaluation in that Category should be "No Evaluation," and no points should be assigned.

When rating a prime Contractor, the project manager should consider all the work performed by the prime as well as work performed by all subcontractors, since the prime Contractor is contractually responsible to SHA for all of the work under the prime contract, whether or not the prime actually performs the work. A separate Contractor Performance Evaluation Report should be completed for the performance of each major subcontractor to evaluate that portion of the job for which the subcontractor or its subcontractors is responsible. (Rating all subcontractors shall be at the option of the SHA department; i.e., it may be deemed unnecessary to evaluate a subcontractor whose involvement in the contract work was minimal.)

Comments are always encouraged, and may be written on the reverse side of the Contractor Performance Evaluation Report or on an attachment to the Report.

However, for each Performance Category evaluated as "Deficient" or "Inadequate," the project manager must prepare a written narrative substantiating the facts and circumstances giving rise to the evaluation.

After evaluating the Contractor or subcontractor on Performance Categories listed in Section III of the Contractor Performance Evaluation Report (and assigning points for each Category), the project manager shall total all the assigned points for Section III. The Grand Total Assigned Points will then be divided by the Total Points Possible (i.e., excluding the maximum number of points available for those Performance Categories evaluated as "No Evaluation"). The project manager will calculate the Overall Percentage Score and will enter the appropriate Overall Evaluation on the basis of the following ranges:

Superior	85% and above
Good	75% to 84%
Standard	70% to 74%
Deficient	55% to 69%
Inadequate	54% and below

The project manager shall sign the Report and forward it to the department director or his/her designee for concurrence signature and submission to the Purchasing Manager. The Purchasing Division staff shall then forward signed copies of the completed Report to the Contractor or subcontractor.

If a Contractor Performance Evaluation Report is an Interim Report, the Report should indicate on its face that it is interim, and shall contain the following language:

This Performance Evaluation Report is not the final report on this Contractor on this project. The Contractor may dispute the Report or any part thereof, and need not seek review or appeal until completion and acceptance of the project.

Interim Reports, if issued, shall be attached to the Final Report.

Pending issuance of a Final Report, an Interim Report shall not be released to anyone other than SHA staff employees and the subject Contractor or subcontractor unless: (1) the Contractor or subcontractor has consented in writing; (2) the Contractor or subcontractor has requested and received final administrative review of an Interim Report; (3) SHA has used or relied upon the Interim Report to take action with respect to the Contractor or subcontractor; (4) a court has ordered release of the Report.

**END OF SECTION 00850**