

## Supplemental Conditions to form HUD 5370, General Conditions for Construction

The following supplement modifies the “General Conditions of the Contract for Construction Public and Indian Housing Programs”, Form HUD-5370 (11/2006). Where a portion of the General Condition is modified, deleted or added by these Supplementary General Conditions, the unaltered portions of the General Conditions shall remain in effect.

### Section 5. Preconstruction Conference and Notice to Proceed

**Delete:** (a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA/IHA, its architect, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operations and all other requirements of the contract. The PHA/IHA will provide the Contractor with the date, time and place of the conference.

**Replace with:** (a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA/IHA, its architect, and other interested parties convened by the PHA/IHA. **Attendance at this conference is mandatory.** The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA/IHA will provide the Contractor with the date, time, and place of the conference.

### Section 8. Differing Site Conditions

**Delete:** (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

**Replace with:** (a) The Contractor shall **within two (2) business days of discovery,** and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

### Section 9. Specifications and Drawings for Construction

**Delete:** (d) “Shop drawings” means drawings, submitted to the PHA/IHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA/IHA may duplicate, use, and disclose in any manner for any purpose shop drawings delivered under this contract.

**Replace with:** (d) “Shop drawings” means drawings, submitted to the PHA/IHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials and equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in

## Supplemental Conditions to form HUD 5370, General Conditions for Construction

detail specific portions of the work required by the contract. The PHA/IHA may duplicate, uses, and disclose in any manner and for any purpose shop drawings delivered under this contract. **The Contractor shall submit to the Architect for approval one reproducible and one opaque copy (unless otherwise noted) and to the Contracting Officer for record one opaque copy of all shop drawings as called for under the various headings of these specifications. Deliver the submittal by such method as to assure receipt within two days of sending. Notify the Architect via facsimile on the day the submittal is sent.**

**Add: Paragraph (i) The Contractor shall provide with each submittal for approval a certificate attesting that the products or materials to be supplied are (1) currently and readily available, (2) not obsolete or discontinued and (3) not to be discontinued or deleted from the supplier or manufacturers stock within the next calendar year.**

### Section 10. As -Built Drawings

**Delete:** (b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

**Replace with:** (b) **Within 5 days of notification of substantial completion,** the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks. **Substantial completion is defined as the housing authority's determination that the contract work is 98% complete and acceptable to the housing authority. No final payment will be made to the contractor until the Contracting Officer has received accurate information to be used in the preparation of permanent as-built drawings.**

### Section 20. Inspection and Acceptance of Construction

**Add to:** Paragraph (b) **If the Contracting Officer requires the Contractor to work overtime, on weekends or on holidays, the Contractor must first notify the Contracting Officer in writing of the overtime schedule. If the Contracting Officer determines it necessary to have housing authority staff present or on call during the Contractor's overtime, the contractor shall reimburse the housing authority for the staff costs at time and a half the regular staff rate. Should the Contractor fail to reimburse the housing authority by the next progress payment requested by the Contractor, the housing authority shall deduct such reimbursement from the Contractor's next progress payment.**

### Section 27. Payments

**Delete:** (b) The PHA/IHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA/IHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.

## Supplemental Conditions to form HUD 5370, General Conditions for Construction

**Replace with:** (b) The PHA/IHA shall make progress payments approximately every 30 days as the work proceeds, on the housing authority-determined value of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA/IHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.

**Add to:** Paragraph (d): In addition the Contractor shall submit with each periodic estimate, current certificates of insurance for the Contractor, subcontractors and for materials stored.

### Section 31. Disputes

**Delete:** ( c ) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA/IHA against the Contractor shall be subject to a written decision by the Contracting Officer

**Replace with:** ( c ) All claims by the Contractor shall be made in writing within ten (10) calendar days from the date of the occurrence of the dispute and submitted to the Contracting Officer for a written decision. A claim by the PHA/IHA against the Contractor shall be subject to a written decision by the Contracting Officer.

### Section 36. Insurance

**Add:** After paragraph ( c ) insert the following paragraph: (d) The Contractor shall furnish copies of all insurance certificates to the Contracting Officer and the Architect before commencing with the work, showing evidence of coverage and naming as additional insured to the policies the following persons, including their respective Commissioners, Board Members, Officers, Agents and Employees, individually and collectively.

The Contractor shall not be allowed to commence work until the required certificates are provided to the housing authority. Additionally, should the insurance become ineffective or lapse during construction, the housing authority shall require the Contractor to cease work until such time as the Contractor submits proof of insurance in compliance with the requirements of this contract. If such suspension of work is necessary, the Contractor shall not be entitled to additional time to complete the work.

### Section 40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

**Add:** After paragraph (h) insert the following paragraph: In the event of a determination by the Contracting Officer that the Contractor is not in compliance with this clause or any rule, regulation, or report submission requirements of the housing authority, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further housing authority contracts.

### Additional requirements:

**Laws of the Commonwealth of Pennsylvania.** Additionally, and under the laws of the Commonwealth of Pennsylvania, the housing authority adds the following contract requirements:

## Supplemental Conditions to form HUD 5370, General Conditions for Construction

### 1. Default

- a. The housing authority may declare the Contractor in default by written notice thereof to the Contractor, and terminate the whole or any part of this Contract for any of the following reasons.
  - 1) Failure to begin work within the time specified in the contract or as otherwise specified;
  - 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract terms;
  - 3) Unsatisfactory performance of the work;
  - 4) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
  - 5) Discontinuance of work without approval;
  - 6) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so.
  - 7) Insolvency or bankruptcy;
  - 8) Assignment made for the benefit of creditors;
  - 9) Failure or refusal within 10 days after payment by housing authority or upon written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
  - 10) Failure to protect, to repair, or to make good any damage or injury to property; or
  - 11) Breach of any provision of this Contract.
- b. In the event that the housing authority terminates this Contract in whole or in part as provided in Subparagraph a. above, the housing authority may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Contractor shall be liable to the housing authority for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract.
- c. If the Contract is terminated as provided in Subparagraph a. above, the housing authority, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the housing authority in the manner and to the extent directed by the Contracting Officer, such partially completed work, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for completed work accepted by the housing authority shall be at the Contract price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the housing authority shall be in an amount agreed upon by the Contractor and Contracting Officer. The housing authority may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the housing authority against loss.
- d. The rights and remedies of the housing authority provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## Supplemental Conditions to form HUD 5370, General Conditions for Construction

- e. The housing authority's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the housing authority of its rights and remedies in regard to the event of default or any succeeding event of default.

### 2. Assignability And Subcontracting

- a. Subject to the terms and conditions of this Contract, this Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- d. The Contractor may not, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract.
- e. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contract provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

### 3. Hazardous Substances

The Contractor shall provide information to the housing authority about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with PA. Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1 et seq.

- 1. Labeling. The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (3):
  - A) Hazardous substances:
    - a) The chemical name or common name;
    - b) A hazard warning, and

## Supplemental Conditions to form HUD 5370, General Conditions for Construction

- c) The name, address, and telephone number of the manufacturer.
- B) Hazardous mixtures:
  - a) The common name, but if none exists, then the trade name;
  - b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture;
  - c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture;
  - d) A hazard warning, and
  - e) The name, address, and telephone number of the manufacturer.
- C) Single chemicals:
  - a) The chemical name or the common name;
  - b) A hazard warning, if appropriate, and
  - c) The name, address, and telephone number of the manufacturer.
- D) Chemical Mixtures:
  - a) The common name, but if none exists, then the trade name;
  - b) A hazard warning, if appropriate;
  - c) The name, addresses, and telephone number of the manufacturer, and;
  - d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials
- National Paint and Coatings Association: Hazardous Materials Identification System
- American Society for Testing and Materials, Safety Alert Pictorial Chart
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

2. Material Safety Data Sheet. The Contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The housing authority must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the Contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The Contractor shall also notify the housing authority when a substance or mixture is subject to the provisions of the Act.

## **Supplemental Conditions to form HUD 5370, General Conditions for Construction**

Material Safety Data Sheets may be attached to the carton, container, or package mailed to the housing authority at the time of shipment.

### **4. Applicable Law**

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of law provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the housing authority of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

### **5. Integration**

The Contract, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the housing authority or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any customer or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate housing authority form.

### **Reading Housing Authority Requirements:**

#### **1. Approved Equal:**

Whenever a product is defined in this invitation by trade name and catalogue number of a manufacturer or contractor, the term "or approved equal", if not inserted therewith shall be implied. Any reference to a particular manufacturer's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a "no substitute" is requested. When a "no substitute" is requested the housing authority will consider bids for the referenced product only. The term "or approved equal" is defined as meaning any other make which, in the sole opinion of the housing authority's Contracting Officer, is of such character, quality and performance equivalence as to meet the standard of quality of products specified for which it is to be used equally as well as that specified. The bidder quoting on a product other than the referenced product shall furnish complete identification on the bid form of the product he is offering by trade name, brand and/or model number. The bidder shall also furnish with his/her bid, descriptive literature and data with respect to the substitute product he proposes to furnish. Bidders offering a substitute shall also indicate any known specification deviations from the referenced product.

#### **2. Delivery:**

All materials and products shall be delivered F.O.B. Destination with any delivered duty paid (DDP). The contractor agrees to bear the risk of loss, injury or destruction of products ordered which occur prior to receipt by the housing authority. Such loss, injury or destruction shall not release contractor from any contractual obligations. All products must be delivered within the time period specified on the order. Time is of the essence and, in addition to any other remedies contained in this invitation for bid; the order is subject to termination for failure to deliver as specified. In the event of termination, the housing authority shall have the right to purchase in the open market a corresponding

## **Supplemental Conditions to form HUD 5370, General Conditions for Construction**

quantity of the products and the contractor shall be responsible for any excess cost to the housing authority.

### **3. Inspection and Rejection:**

No product received by the housing authority shall be deemed accepted until the housing authority has had a reasonable opportunity to inspect said product. Any product which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the products or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. The decision of the Contracting Officer or his designee shall be final. It shall thereupon become the duty of the contractor to remove rejected products from the premises without expense to the housing authority within fifteen (15) days notification. Rejected products left longer than fifteen (15) days will be regarded as abandoned, and the housing authority shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the housing authority's costs and expenses in regard to the storage and sale of the products. Upon notice of rejection, the contractor shall immediately replace all such rejected products with others conforming to the specifications and which are not defective. If the contractor fails, neglects or refuses to do so, the housing authority shall then have the right to purchase in the open market a corresponding quantity of such products, and deduct from any monies due or that may thereafter become due to the contractor, the difference between the price stated in the contract or purchase order and the actual cost thereof to the housing authority.

### **4. RHA Approval of Subcontracts:**

Any proposed subcontracts shall be disclosed in Contractor's bid submission. Contractor shall furnish such written information as RHA may require concerning the proposed subcontractor, together with the proposed subcontractor's Non-collusion Affidavit in the form prescribed by the RHA within 5 days of the RHA's request for such information. Any objection shall be expressed in writing by the RHA within ten (10) days after receipt.

The RHA may, without claim for extra cost by the contractor, disapprove any subcontractor for cause on the basis of its own determination or because of the fact that the proposed subcontractors is listed as ineligible to receive awards of contracts from the United States on a current list or list furnished by HUD.

5. Nothing contained in the contract shall create any contractual relation between any subcontractor and the RHA.
6. Any amendment to this contract shall not invalidate the contract, nor shall it relieve or release the contractor from any guaranty given by him pursuant to the contract provisions, or relieve the contractor from any other obligations of the contract. All such work shall be executed under the conditions of the contract for an amount agreed to by RHA and contractor.

### **7. Withholding for damages:**

The RHA may withhold, or cause to be withheld, from any monies payable for acceptable work performed by the contractor or subcontractor, damaged caused by the contractor or subcontractor, or other claims against the contractor or subcontract such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor.



## **Supplemental Conditions to form HUD 5370, General Conditions for Construction**

### **8. Hold Harmless:**

It is understood and agreed that contractor shall be deemed and considered an independent contractor in respect to the work covered by this Agreement, and shall assume all risk and responsibility for casualties of every description in connection with the work which can be attributed either directly or indirectly to the contractor. Contractor itself, its successors, assigns, heir, executors and administrators, agrees to indemnify, defend and save harmless the RHA, all its officers and subordinates, (i) from all suits and actions of every nature brought against RHA or any of them for or on account of any damage or loss sustained by the RHA, and does agree to pay any and all such damages including costs of litigation and counsel fees whether defended by RHA or contractor, and (ii) if the contractor is required to enter premises owned, leased, occupied by or under the control of the RHA during the performance of this contract, the contractor shall indemnify and hold harmless the RHA, its officers and employees, from any loss, cost, damage expense or liability by reason of property damage, or personal injury, including death, of whatsoever nature or kind arising out of as a result of such performance, whether arising out of actions of the contractor or any of its employees, subcontractor, and lower tier subcontractors. It is not the intention of this contract or anything herein provided to confer a third party beneficiary right or action upon any person whatsoever and nothing hereinbefore or hereinafter set forth shall be construed so as to confer upon any person other than the RHA a right of action either under this contract or in any manner whatsoever.

### **9. Taxes, Industrial Laws and Benefits:**

In all matter relating to this contract, the contractor shall be acting as an independent contractor. Neither the contractor nor any of the persons furnishing materials or performing work or services which are required by this contract are employees of the RHA within the meaning of or the application of any federal, or state unemployment insurance law, or other social security, or any workmen's compensation, industrial accident law, or other industrial or labor laws. At its own expense, the contractor shall comply with such laws and assume all obligations imposed by any one or more of such laws with respect to this contract. In addition, contractor shall be liable for the payment of all federal, state and local taxes, and any special assessments.

### **10. No Waiver of Conditions:**

Failure of the RHA to insist on strict performance shall not constitute a waiver of any of the provisions of this contract or waiver of any default of the contractor.

### **11. Severability:**

If any provision of this contract or any application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this contract which can be given effect without the invalid provisions or application, and to this end the provisions of this contract are severable.